

DATED _____ **2006**

**(1) THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT ACTING ON
BEHALF OF THE DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT**

and

(2) LANDMARK INFORMATION GROUP LIMITED

DRAFT SERVICES AGREEMENT

**RELATING TO THE IMPLEMENTATION AND OPERATION
OF DOMESTIC ENERGY PERFORMANCE CERTIFICATE REGISTER**

VERSION CONTROL

Version	Reason for change	Issue date
1.0	ISOP Draft issued to potential suppliers	
2.0	Draft issued at BAFO	
3.0	Amended by Pinsent Masons to incorporate client comments (version not shared with Landmark)	24 October 2006
4.0	Amended by Pinsent Masons to reflect further client comments and finalise	1 November 2006



Pinsent Masons

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BETWEEN:

1. **THE SECRETARY OF STATE ACTING ON BEHALF OF THE DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT** of Eland House, Bressenden Place, London SW1E 5DU (the "**Authority**"); and
2. **LANDMARK INFORMATION GROUP LIMITED** (registered in England and Wales under number 2892083) whose registered office is at 5-7 Abbey Court, Eagle Way, Sowter, Exeter, Devon EX2 7HY (the "**Operator**").

RECITALS

WHEREAS

- A. On 20 March 2006 the Authority issued a pre qualification questionnaire (the "**PQQ**") in relation to its requirements for an operator of the Home Condition Report Register.
- B. On 3 May 2006 the Authority issued its Invitation to Submit Outline Proposals ("**ISOP**") to Operators who had pre-qualified through the PQQ process.
- C. Following negotiations with the Operator and other recipients of the ISOP, on 4 August 2006 the Authority issued an Invitation to Submit Best and Final Offers ("**BAFO**") to the Operator and other potential service providers.
- D. Following conclusion of the negotiations and in reliance on representations made by the potential service providers during the negotiations, on 5 September 2006 the Authority selected the Operator as its preferred service provider in respect of the Services on the terms set out in this Agreement.

IT IS AGREED as follows:-

PART 1- INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the terms and expressions set out in Schedule 1 (Definition) shall have the meanings ascribed therein.
- 1.2 In this Agreement:
 - 1.2.1 the Clause headings are included for convenience only and will not affect the construction or interpretation of this Agreement;
 - 1.2.2 the Clauses, Schedules, Annexes and Appendices form part of this Agreement and will have effect as if set out in full in the body of this Agreement and any reference to this Agreement shall include the Clauses, Schedules, Annexes and Appendices;
 - 1.2.3 any reference to a Recital, Clause, Paragraph, Schedule, Annex or Appendix is to the relevant recital to, Clause of, paragraph of, schedule to, annex to or appendix to this Agreement (as the case may be);
 - 1.2.4 use of the singular includes the plural and vice versa;
 - 1.2.5 words importing a particular gender do not exclude other genders;
 - 1.2.6 any reference to a statute, statutory provision or statutory instrument includes a reference to that statute, statutory provision or statutory instrument together with all rules and regulations made under it as from time to time amended, consolidated or re-enacted;

- 1.2.7 any phrase introduced by the terms "including", "include", "in particular" or any similar expression will be construed as illustrative and the words following any of those terms will not limit the sense of the words preceding those terms;
 - 1.2.8 any reference to "persons" includes natural persons, firms, partnerships, corporations, associations, organisations, governments, government bodies, states, foundations and trusts (in each case whether or not having separate legal personality);
 - 1.2.9 the words "in writing" and "written" shall be interpreted to include any document which is recorded in manuscript, typescript and any electronic communication (as defined in Section 15 of the Electronic Communications Act 2000);
 - 1.2.10 the words "day" and "month" mean calendar day and calendar month unless otherwise stated;
 - 1.2.11 all references to the Parties include their permitted successors and permitted assigns;
 - 1.2.12 any reference to a public organisation, body or representative shall be deemed to include reference to any successor(s) to such public organisation, body or representative or any organisation, body, entity, or representative which (whether in whole or part) has or (as appropriate) have taken over any of the functions, services or responsibilities of such public organisation, body or representative, either entirely or in part (including any other part of Government, any NDPB or private body);
 - 1.2.13 any obligation on the Operator to comply with standards, specifications or procedures (including those set out in Schedule 13 (Policies and Standards) shall be deemed also to include an obligation on the Operator to comply with the standards, specifications and procedures issued by the Authority or any other statutory, regulatory or other properly interested body with which the Operator is either legally required to comply or with which the Operator reasonably could be expected to comply in order to conform to Good Industry Practice; and
 - 1.2.14 subject to the contrary being stated expressly in the Agreement, all communication between the Parties shall be in writing or shall be confirmed in writing within one Working Day of being made, or else shall be of no effect.
- 1.3 In the case of and to the extent of any conflict, inconsistency or ambiguity;
- 1.3.1 between:
 - (a) these Clauses and Schedule 1 (Definitions); and
 - (b) any other Schedules,the Clauses and Schedule 1 (Definitions) shall prevail;
 - 1.3.2 between:
 - (a) Schedule 2 (Service Specification); and
 - (b) the Operator's Proposal,Schedule 2 (Service Specification) shall prevail,
and
 - 1.3.3 between:
 - (a) this Agreement; and

- (b) any documents referenced or referred to herein (other than those within the scope of Clause 1.2.6) or to be approved by the Authority in accordance with the terms of this Agreement (and which do not form part of the Agreement),

the provisions of this Agreement shall prevail.

- 1.4 Except as otherwise expressly provided in this Agreement, all remedies available to the Operator or to the Authority for Default (of any nature or severity) under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

PART 2- APPOINTMENT

2. TERM

- 2.1 **Commencement:** in consideration of the respective covenants, obligations and undertakings set out herein, the sufficiency of which is hereby irrevocably and unconditionally acknowledged by the Parties, this Agreement shall commence on the Effective Date and, subject to earlier termination in accordance with this Agreement, shall continue in force until the later of:

- 2.1.1 the end of the day preceding the tenth anniversary of the Service Commencement Date ("**Original Expiry Date**"); and

- 2.1.2 the end of the final day of any period or periods of extension in accordance with Clauses 2.2, 2.3 and 2.4 below,

at which point it shall expire automatically without notice.

- 2.2 The Authority has the option, at its sole discretion, by serving notice on the Operator in accordance with Clause 2.3 and/or Clause 2.4, to extend the term of this Agreement provided, however, that such extension or extensions shall not, in aggregate, extend the period of the Agreement to more than twelve and a half years from and including the Service Commencement Date.

- 2.3 **Major extension:** the Authority may, by serving written notice on the Operator not less than two (2) months prior to the Original Expiry Date, extend this Agreement for a period of two years, such period to run from and including the Original Expiry Date. The date of expiry of this Agreement set by the exercise of the option under this Clause 2.3 shall be the "**Extended Expiry Date**".

- 2.4 **Minor extension:** in addition, or as an alternative, to its rights under Clause 2.3, the Authority may, by serving written notice on the Operator not less than one (1) month prior to the later of:

- 2.4.1 the Original Expiry Date; and

- 2.4.2 the Extended Expiry Date, if it applies

extend this Agreement for, as applicable, a period of up to:

- 2.4.3 twelve (12) months beyond the Original Expiry Date; or

- 2.4.4 six (6) months beyond the Extended Expiry Date,

the period of any such extension to run from and including, as applicable, the:

- 2.4.5 Original Expiry Date; or

- 2.4.6 Extended Expiry Date.

The period of extension set by the exercise of the option under this Clause 2.4 shall be the "**Minor Extension Period**". The Minor Extension Period may be brought to an end by not less than one

(1) month's written notice from the Authority to the Operator, such notice specifying the final day of the Minor Extension Period.

3. DUE DILIGENCE

3.1 The Operator acknowledges that the Authority has delivered or made available all information and documents that the Operator deems necessary and/or relevant for performance of its obligations under this Agreement and consequently the Operator shall be deemed to have understood the nature and extent of the Services and that it has satisfied itself that it will be able to provide the Services in full compliance with its obligations under this Agreement.

3.2 Prior to sign-off by the Operator of any CRF, the Operator shall ensure that it has obtained all such information necessary to ensure that the acknowledgements set out in this Clause 3 shall apply in relation to each CRF prior to its implementation.

3.3 The Operator acknowledges that there shall not be any due diligence or joint verification after the Effective Date.

3.4 No warranty or undertaking is given by the Authority as to the accuracy, completeness, adequacy or fitness for purpose of any information disclosed to or made available to the Operator (whether directly or indirectly) in the course of any due diligence in accordance with this Agreement, or that such information constitutes all of the information relevant or material to the Services. The Operator acknowledges that it has and (as the case may be) shall make its own enquiries to satisfy itself as to the accuracy of the information supplied to it in connection with this Agreement. Accordingly, all liability on the part of the Authority in connection with:

3.4.1 any information, documents or data provided to or made available to the Operator (whether directly or indirectly); and

3.4.2 any representations or statements made by or on behalf of the Authority,
in connection with such due diligence is, to the extent permitted by Law, hereby excluded.

3.5 Where the information supplied by or on behalf of the Authority is incorrect or insufficient the Operator acknowledges that it shall not:

3.5.1 be relieved of any of its obligations under this Agreement; or

3.5.2 be entitled to claim against the Authority,

except to the extent of any fraudulent misrepresentation made by or with the actual knowledge of the Authority.

PART 3- SERVICE PROVISION

4. IMPLEMENTATION

The activities of the Parties in the Implementation Phase shall be governed by Schedule 3 (Implementation).

5. THE SERVICES

5.1 The Services

5.1.1 With effect from the Effective Date, the Operator shall supply the Implementation Services in accordance with the provisions of this Agreement.

5.1.2 With effect from the Service Commencement Date, the Operator shall supply the Operational Services in accordance with the provisions of this Agreement.

5.1.3 The Operator acknowledges that it is not the exclusive supplier of any Service, or any other services to or for the benefit of the Authority or Authorised Users. The Authority shall be entitled at any time to:

- (a) provide services similar to the Services for itself; or
- (b) obtain services similar to the Services from a third party.

5.2 **Service Specification and Operator's Proposal**

5.2.1 The Operator shall provide the Services:

- (a) so as to meet the Service Specification;
- (b) in accordance with the Operator's Proposal.

5.2.2 To avoid doubt, the obligations in Clauses 5.2.1(a) and 5.2.1(b) are independent obligations. In particular:

- (a) the fact that Operator has acted in accordance with the Operator's Proposal shall not be a defence to an allegation that the Operator has not met the Service Specification; and
- (b) the fact that Operator has met the Service Specification shall not be a defence to an allegation that the Operator has failed to provide the Services in accordance with the Operator's Proposal..

5.2.3 Without prejudice to Clause 5.2.1 if it should be found that the Operator's Proposal does not fulfil the Service Specification, the Operator shall at its own expense amend the Operator's Proposal and rectify the Services or any part affected.

5.3 **Guidance and Co-operation**

The Operator shall use its best endeavours to ensure that the Services are provided in accordance with all reasonable guidance and guidelines issued to the Operator by the Authority from time to time and the Operator will co-operate fully with the Authority at all times in the provision of the Services under the Agreement.

5.4 **Disaster Recovery Services**

The Operator shall provide the Disaster recovery Services in accordance with Schedule 10 (Disaster Recovery) throughout the Term.

6. **SERVICE STANDARDS AND SERVICE LEVELS**

6.1 **Service Standards**

6.1.1 The Operator will perform its obligations under this Agreement:

- (a) in accordance and in compliance with:
 - (i) the terms of this Agreement;
 - (ii) any applicable Law; and
 - (iii) Good Industry Practice;
- (b) allocating sufficient resources at all times to provide the Services in accordance with this Agreement;

- (c) having due regard to the Authority's requirement that the Operator uses all resources in an efficient and cost effective manner; and
- (d) ensuring that no act or omission of the Operator, Sub-Contractors, Staff or other persons used in connection with the Services brings or could bring the Authority into disrepute.

6.1.2 In the event of any conflict between any of the requirements referred to in Clause 6.1.1, the Operator will draw such conflict to the attention of the Authority and the Authority shall determine (in its sole discretion) which requirement shall have precedence.

6.2 Performance and Service Levels

The Operator will provide the Services so as to achieve or exceed the Service Levels.

6.3 Monitoring of Service Levels and Reporting Obligations

The Operator shall provide records of, and reports summarising, the performance of the Services achieved by the Operator against the Service Levels in accordance with the requirements of Schedule 4 (Performance Management). Such recording and monitoring shall be subject to rights of audit in accordance with the provisions of this Agreement including Clause 21 and Schedule 6 (Finance).

6.4 Provision of Management Information

The Operator shall provide Management Information to the Authority in accordance with Schedule 5 (Management Information) throughout the Term.

6.5 Service Levels and Continuous Improvement

6.5.1 The Operator will use its best endeavours to introduce any Good Industry Practice methodology, processes and systems in particular those which impact in a positive manner for the continual improvement of the Services having regard to the following areas of benefit; fiscal, training and development, business processes and administrative systems, subject always to the Operator's need to maintain financial viability of the Services.

6.5.2 The Operator is committed to the process of continuous improvement of the Services and all Service Levels. Accordingly, through processes including (but not limited to):

- (i) initiatives to achieve Value for Money; and
- (ii) the introduction of improvements in the delivery of the Services (including through adoption of changes to or the introduction of new methodologies, tools and processes),

the Operator will keep all Services under review and where it is reasonable to conclude either that the Service Level for a Service should be increased to a more demanding level than the Service Level then current, or that a Service not currently subject to a Service Level should become so subject, the Service Level shall be increased, or a new Service Level introduced, as appropriate. Increased or new Service Levels shall be agreed in accordance with the Change Control Procedure.

7. GENERAL OBLIGATIONS OF THE OPERATOR

7.1 Co-operation with Authorised Users

7.1.1 The Operator shall:

- (a) co-operate fully with all relevant Authorised Users;

- (b) co-ordinate its efforts with any relevant Authorised Users to ensure that:
 - (i) data provided by the Authorised Users is efficiently and effectively integrated into and/or with the provision of the Services and/or the Scheme; and
 - (ii) any issues which develop between the Operator and such Authorised Users are managed proactively with the aim of suitable and prompt resolution;
- (c) provide such information regarding the operation and delivery of the Services as is reasonably required by the Authority or an Authorised User in connection with the services provided by them;
- (d) attend any meetings with any relevant Authorised Users reasonably called by the Authority;
- (e) where problems or faults relating to the Services are caused or contributed to by circumstances from time to time subsisting on such Authorised Users' side of the interface with the Services, manage the resolution or prevention of such problems or faults either by taking corrective or preventive steps in relation to the provision of the Services or (to the extent reasonably possible) by procuring the taking of corrective or preventative steps by such Authorised Users, in each case in a manner which is in the Authority's best interests and the Authority shall provide reasonable assistance with such preventative or corrective steps.

7.2 Without prejudice to the generality of Clause 7.1.1 above, the Operator shall enter into a legally binding agreement with each Accreditation Scheme the terms of which shall be approved by the Authority no later than three (3) months from the date of provisional approval by the Secretary of State of the relevant Accreditation Scheme.

7.3 **Review of Technology**

- 7.3.1 The Operator will establish and implement internal procedures whereby developments and innovations in technology and business processes and changes in industry practice are regularly reviewed to determine whether their adoption could have a beneficial impact upon the provision of any of the Services.
- 7.3.2 The Operator will promptly bring to the attention of the Authority all opportunities (other than those of a trivial nature) for improving Service quality or reducing Service cost which come to its attention, whether as a result of the procedures referred to in Clause 7.3.1 or otherwise.

7.4 **Cost Savings**

The Operator agrees that throughout the course of this Agreement it will identify all savings reasonably and properly available to the Operator in the marketplace or through its internal organisation, and all potential beneficial changes in the Services and terms generally offered by the Operator to Authorised Users, and will ensure that Authorised Users receive the benefit of such savings and changes. In particular, the Operator will ensure that the Authority:

- 7.4.1 has reasonable access to existing and emerging skills of the Staff at all times during the Term;
- 7.4.2 benefits fully from the technological and commercial advances in the market which lead to greater functionality, performance and geographical coverage being obtainable at the same or lower cost;
- 7.4.3 achieves Value for Money in relation to the Services; and

7.4.4 benefits fully from any standardisation in the Authority's, the Authorised Users' or the Operator's use of technology.

7.5 **Early Warning of Problems**

The Operator shall promptly warn the Authority whenever the Operator has reasonable grounds to believe that any failure on the part of the Authority, an Authorised User or any third party to carry out its obligations and responsibilities under or associated with this Agreement, or the manner in which they are carried out, will have, or threatens to have, a detrimental effect on the quality of the Services or the efficiency or cost (to the Authority) of their supply or the performance of any other obligations of the Operator under this Agreement.

7.6 **Portability of Data**

The Operator shall ensure that all Authority Data can be extracted from the Operator's systems and is transferable to and fully usable by the Authority and/or an Authorised User and/or a New Operator whether alone or in conjunction with the licences and rights granted, assigned or licensed pursuant to the provisions set out in Part 6 of this Agreement.

7.7 **Access to Data**

The Operator shall ensure that only those persons authorised by Law to access the data held as part of the Scheme gain access to such data.

8. **CHANGES TO THE SERVICES**

8.1 Any request or requirement for a Change to the Services shall be subject to the Change Control Procedure.

8.2 New services and deliverables to be performed or delivered by the Operator and modifications to Services and Deliverables introduced through the Change Control Procedure shall be subject to such test procedures as the Authority may agree.

9. **CHANGES IN LAW/STANDARDS**

9.1 The Operator shall bear the cost of ensuring that the Services and this Agreement comply with:

9.1.1 all changes in Law; and

9.1.2 all changes in Standards,

except for Authority Specific Changes in Law and Authority Specific Changes in Standards, in respect of which the provisions of Schedule 16 (Review Process) shall apply.

10. **CONTRACT MANAGEMENT**

10.1 **Partnership Working**

The Authority and the Operator acknowledge the benefits accruing to each of them if this Agreement is performed in a spirit of co-operation and partnership. Accordingly, the Authority and the Operator shall each seek to work closely together in a spirit of trust and co-operation to facilitate effective performance by the Operator of the provision of the Services.

10.2 **Co-Operation and Liaison**

10.2.1 The Operator acknowledges that the successful provision of the Services requires the Operator to co-operate and liaise with other partners and stakeholders.

10.2.2 The Operator shall be under a general obligation to facilitate the provision of the Services by co-operating with the Authority, its partners and stakeholders, including (without limitation):-

- (a) attending liaison meetings where appropriate; and
- (b) providing to other partners and stakeholders relevant information regarding the Services.

10.3 Contract Management

10.3.1 The Authority may implement a contract management board (the "**Contract Management Board**") as a forum for communication and discussion between the parties at a senior level of strategic and other fundamental issues relating to the provision of the Services and this Agreement generally. The Contract Management Board shall meet at the Authority's premises (unless otherwise agreed) at times specified by the Authority. The Operator's Contract Manager will attend meetings of the Contract Management Board. In the event that the Contract Manager is unavailable, the Operator may nominate, with the consent of the Authority an alternative appropriate person (who shall be a senior manager of the Operator with knowledge of the Services being performed by the Operator) to attend meetings of the Contract Management Board.

10.3.2 The Operator shall appoint:-

- (a) a Service Supervisor who shall be responsible for the day-to-day delivery of the Services. The Operator shall ensure that the Service Supervisor has the authority to take all day-to-day operational decisions in relation to the provision of the Services. The Service Supervisor shall not have the authority to make or agree amendments to this Agreement; and
- (b) a Contract Manager who shall have overall responsibility for delivery of the Services to the Authority. The Operator shall ensure that the Contract Manager has the authority to take all strategic decisions in relation to this Agreement. The Operator's Contract Manager shall have the authority to make or agree amendments to this Agreement, such amendments to be made in accordance with the provisions of Clause 45 and, if relevant, the Change Control Procedure.

10.3.3 The Operator shall not remove or replace its Service Supervisor or Contract Manager unless:

- (a) requested to do so in writing by the Authority;
- (b) the Service Supervisor or Contract Manager resigns or is dismissed; or
- (c) the Authority agrees to such removal or replacement (such agreement not to be unreasonably withheld or delayed).

10.3.4 Any replacement for the Operator's Service Supervisor or Contract Manager shall require the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed).

10.3.5 The Authority shall appoint a Contract Manager who shall have overall responsibility for managing all issues arising out of the provision of the Services or otherwise arising out of this Agreement. The identity of the Authority's Contract Manager and his/her replacement from time to time will be notified to the Operator in writing.

10.3.6 The Authority's and Operator's Contract Managers together with the Operator's Service Supervisor shall meet not less than once per quarter and during the Implementation Phase not less than once per fortnight. The venue for the meeting shall, unless otherwise

agreed be at the Authority's premises. Either Party may request more frequent meetings with a view to:-

- (a) ensuring that the other Party is fully briefed on relevant information material to this Agreement and to the provision of the Services;
- (b) ensuring the successful and efficient operation of this Agreement and provision of the Services;
- (c) considering operational issues with a view to improving the provision of the Services;
- (d) settling at an early stage any potential areas of dispute without the need of a formal referral to the Dispute Resolution Procedure; and
- (e) escalating areas of dispute within the Dispute Resolution Procedure.

11. STEP IN RIGHTS

11.1 Without prejudice to the provisions of Schedule 4 (Performance Management) or to any remedy that the Authority may have (whether under this Agreement or otherwise):

11.1.1 where the Authority reasonably believes that the Operator's failure to provide any part of the Services to the relevant Service Level or otherwise in accordance with this Agreement has an adverse, material impact on the business of the Authority or on the running of the Scheme;

11.1.2 where the Authority reasonably believes that the Operator is about to commit such a failure which, if committed, would have such an impact;

11.1.3 where the Authority considers it necessary in order to carry out any of its statutory obligations, functions or other duties;

11.1.4 on the occurrence of a Force Majeure Event; or

11.1.5 on the occurrence of an Insolvency Event in respect of the Operator,

the Authority may, by giving such written notice to the Operator as the Authority considers reasonable in the circumstances, exercise its right under Clause 11.2.

11.2 In the circumstances set out in Clause 11.1 the Authority may make arrangements for the Authority to provide and perform itself or through another contractor, such part of the Services as it decides in its discretion. Where any failure on the Operator's part is, in the reasonable opinion of the Authority, due to the failure of the Operator's management or supervisory staff to perform their work adequately or at all, or is due to the absence or insufficiency of such staff, the Authority may cause the relevant Services to be managed and supervised by the Authority's own staff, or the staff of another contractor.

11.3 Where the Authority exercises its right pursuant to Clause 11.2, the Operator shall:-

11.3.1 provide the Authority and Authority Personnel such access as is necessary for the Authority to exercise its right;

11.3.2 grant and procure that any Sub-Contractor or relevant third party grants the Authority such licences as are reasonably required (for itself or a contractor appointed to perform the step-in services) for the purposes of the Authority exercising its right;

11.3.3 afford (and procure that its Sub-Contractors afford) to the Authority (and any contractor appointed to perform the step-in services) such co-operation and access to any of the Operator's Intellectual Property, the Third Party Intellectual Property, Operator systems,

premises, equipment, documents, information or other items as are reasonably required for the purposes of exercising its right; and

- 11.3.4 indemnify and keep indemnified the Authority from and against all Losses arising in connection with the exercise of its rights pursuant to this Clause 11.

PART 4- FINANCE

12. FINANCING OF THE SCHEME

- 12.1 The Scheme will be financed in accordance with the terms and conditions of Schedule 6 (Finance) and Schedule 16 (Review Process).

13. RIGHTS OF SET-OFF

- 13.1 The Authority may set off any sum of money which is payable by the Operator to the Authority, recoverable from the Operator by the Authority or otherwise against any sum then due, or which at any later time may become due, to the Operator under or in relation to this Agreement or any other agreement with the Authority.

- 13.2 Any overpayment by the Authority to the Operator under this Agreement shall be a sum of money recoverable from the Operator.

14. REVIEW PROCESS

The financing of the Scheme shall be reviewed in accordance with Schedule 16 (Review Process) and the Operator shall comply with its obligations there under throughout the Term.

PART 5- SUB-CONTRACTING AND PERSONNEL

15. SUB-CONTRACTING

- 15.1 The Operator may not enter into any Sub-Contract without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. In seeking the Authority's consent for any Sub-Contract the Operator shall provide the Authority on request with a copy of the terms of the proposed Sub-Contract. For the avoidance of doubt, the Operator shall also be required to obtain the Authority's prior written consent if it proposes to vary or terminate any Sub-Contract or if any Sub-Contractor proposes to sub-sub-contract all or any part of the Sub-Contractor's obligations under the Sub-Contract, such consent not to be unreasonably withheld or delayed.

- 15.2 The provisions of Schedule 14 (Sub-Contracts and Sub-Contractors) shall apply.

- 15.3 The Operator shall remain responsible for the acts and omissions of its Sub-Contractors as though they were its own.

16. STAFF

- 16.1 The Operator warrants and represents that:

16.1.1 all Staff will be properly trained and instructed, qualified and adequately skilled and competent to the levels necessary to undertake the Services;

16.1.2 it shall use its best endeavours to ensure that its Staff shall execute the Services on behalf of the Authority in a workmanlike manner using the level of skill, care and expertise to be expected of competent and trained providers of services that are the same or similar to the Services;

16.1.3 it has at all times from the Effective Date (including without limitation, Staff holidays), sufficient Staff with levels of skills commensurate with the Services, as required by this

Agreement. Such provision shall include appropriate cover for voluntary absence or sickness;

16.1.4 all Staff shall be properly and adequately supervised at all times whilst performing the Services; and

16.1.5 any and all records created or maintained by the Operator under this Agreement are clear, accurate and up-to-date and shall include without limitation, record keeping of all permanent and occasional Staff as evidence of skill levels, training and induction and such records will be available at any time for inspection by the Authority and the Audit Agents.

17. **KEY PERSONNEL**

The provisions of Schedule 11 (Key Personnel) shall apply in relation to the Key Personnel.

18. **EMPLOYEE TRANSFER PROVISIONS**

The provisions of Schedule 9 (Employees) shall apply to govern the Parties' obligations in respect of the Staff upon expiry of termination of the whole or any part of the Services.

19. **NON-SOLICITATION**

19.1 Neither Party shall during the Term for six months following the termination or expiry of this Agreement either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away):

19.1.1 from the employment of the other Party, other than through genuine and general advertising in the course of recruitment, any person employed by the other Party who in the twelve (12) months prior to the date upon which the Party in question directly or indirectly solicits or entices away (or seeks to attempt to solicit or entice away such employee) has been regularly involved in the receipt and/or administration of the Services;

19.1.2 any person employed by any professional advisor to the other Party who has been regularly involved in the establishment of the Scheme.

19.2 The Operator shall procure that Sub-Contractors also observe Clause 19.1 above.

PART 6- INTELLECTUAL PROPERTY

20. **INTELLECTUAL PROPERTY RIGHTS**

20.1 Except as expressly set out in this Agreement:

20.1.1 the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Operator or its licensors, including:

- (a) the Operator Software;
- (b) the Third Party Software; or
- (c) the Operator's Background IPRs,

and

20.1.2 the Operator shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:

- (a) the Authority Software;

- (b) the Authority Data;
- (c) the Database;
- (d) the Project Specific IPRs;
- (e) the Authority's documentation, processes and procedures; and
- (f) the Authority's Know-How.

20.2 Where either party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 20.1, it shall assign in writing such Intellectual Property rights as it has acquired to the other party on the request of the other party (whenever made).

21. LICENCES GRANTED BY THE OPERATOR

21.1 The Operator hereby grants to the Authority a licence of the Operator Software and the Operator's Background IPRs on the Standard Licence Terms.

21.2 The Operator shall procure that the owners or the authorised licensors of any Third Party Software hereby grant a direct licence to the Authority on the Standard Licence Terms. If the Operator cannot obtain for the Authority a licence materially in accordance with the Standard Licence Terms the Operator will consult with the Authority on whether the rights that can be obtained are nevertheless acceptable to the Authority or whether the Operator should seek to use an alternative provider of software.

21.3 The Operator shall, if requested by the Authority grant or procure the grant to any New Operator of a licence to Use any Operator Software, Operator's Background IPRs or Third Party Software on the Standard Licence Terms.

21.4 The Operator hereby grants to the Authority a non-exclusive licence to copy the Documentation for any purpose connect with the receipt of the Services or that is incidental to the exercise of the rights granted to the Authority under this Agreement.

22. LICENCES GRANTED BY THE AUTHORITY

22.1 The Authority hereby grants to the Operator a royalty-free, non-exclusive, non-transferable licence during the Term to use:

22.1.1 the Authority Software;

22.1.2 the Database;

22.1.3 the Authority's documentation, processes and procedures.

22.1.4 the Specially Written Software from the date the relevant rights are transferred to the Authority in accordance with Clause 24.2;

22.1.5 the Project Specific IPRs from the date the relevant rights are transferred to the Authority in accordance with Clause 24.2; and

22.1.6 the Authority Data.

22.2 The licence granted in Clause 22.1:

22.2.1 includes the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Operator on the same terms as set out in Clause 32 (Confidentiality); and

22.2.2 is granted solely to the extent necessary for performing the Services in accordance with this Agreement. The Operator shall not, and shall procure that the Sub-Contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.

22.3 Neither party shall have any right to use any of the other party's names, logos or trade marks on any of its products or services without the other party's prior written consent.

22.4 In the event of the termination or expiry of this Agreement, the licence referred to in Clause 22.1, any sub-licence granted in accordance with Clause 22.2.1 and any licence granted in accordance with Clause 22.3 shall terminate automatically and the Operator shall deliver to the Authority all material licensed to the Operator pursuant to Clause 22.1 or Clause 22.3 in the Operator's possession or control.

23. **ASSIGNMENT OF IPR IN DATABASE**

23.1 The Operator hereby assigns to the Authority, with full title guarantee, title to and all rights and interest in the Database or shall procure that the first owner of the Database assigns it to the Authority on the same basis.

23.2 The assignment under Clause 23.1 shall either take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Database, as appropriate.

23.3 The Operator shall waive or procure a waiver of any moral rights in the Database assigned to the Authority under this Agreement.

23.4 To the extent that it is necessary for the Authority to obtain the full benefits of ownership of the Database, the Operator hereby grants to the Authority and shall procure that any relevant third party licensor shall grant to the Authority a perpetual, irrevocable, non-exclusive, assignable, royalty-free and global licence to use, sub-license and/or commercially exploit any Operator's Background IPRs or IPRs owned by a third party that are embedded in or which are an integral part of the Database.

24. **PROJECT SPECIFIC IPR AND SPECIALLY WRITTEN SOFTWARE**

24.1 The Operator hereby assigns to the Authority, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and the Specially Written Software or shall procure that the first owner of the Project Specific IPRs and the Specially Written Software assigns them to the Authority on the same basis.

24.2 The assignment under Clause 24.1 shall either take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs and the Specially Written Software, as appropriate.

24.3 The Operator shall waive or procure a waiver of any moral rights in any copyright works assigned to the Authority under this Agreement.

24.4 If requested to do so by the Authority, the Operator shall without charge to the Authority execute all documents and do all such further acts as the Authority may require to perfect the assignment under Clause 24.1 or shall procure that the owner of the Project Specific IPRs and the Specially Written Software does so on the same basis.

24.5 The Authority shall grant to the Operator a licence of the Project Specific IPRs and the Specially Written Software to enable the Operator to provide the Services.

24.6 Subject to Clause 24.7 and to the extent only that this is necessary to enable the Authority to obtain the full benefits of ownership of the Specially Written Software as an integrated product, the Operator hereby grants to the Authority and shall procure that any relevant third party licensor shall grant to the Authority a perpetual, irrevocable, non-exclusive, assignable, royalty-free and global

licence to Use, sub-license and/or commercially exploit any Operator's Background IPRs and Intellectual Property Rights owned by a third party that are embedded in or which are an integral part of the Specially Written Software, provided that, where the Specially Written Software consists of customisation of Operator Software and/or Third Party Software, this Clause 24.6 shall not have the effect of granting to the Authority any greater rights over the Operator Software and/or the Third Party Software than the Standard Licence Terms.

24.7 The Operator will deliver to the Authority the Specially Written Software in both Source Code and binary code forms on the Effective Date and shall provide updates of the Source Code on a quarterly basis on media that is reasonably acceptable to the Authority

25. **ESCROW**

25.1 In respect of Software which exists as at the Effective Date, the Operator shall within no later than 20 Working Days of the Effective Date and, in respect of Software which does not exist as at Effective Date and which is developed after the Effective Date, within no later than 20 Working Days of the date upon which the same is accepted and approved by the Authority, deposit the Source Code of such part of the Software that consists of Deposited Software in escrow with the Escrow Agent on the basis of the "NCC Standard Single User Agreement" or on such other terms as the Authority, the Operator and the Escrow Agent shall agree. The Operator shall ensure that the deposited version of the Source Code is the current version of the Deposited Software and that the deposited version is kept up-to-date as the Deposited Software is modified or upgraded. The Operator shall pay all storage fees under the escrow agreement and the Authority shall pay any release fees.

25.2 Where the Operator is unable to procure compliance with the provisions of Clause 25.1 in respect of any Third Party Software, it shall provide the Authority with written evidence of its inability to comply with these provisions and shall agree with the Authority a suitable alternative to escrow that affords the Authority the nearest equivalent protection. The Operator shall be excused from its obligations under Clause 25.1 only to the extent that the parties have agreed on a suitable alternative.

25.3 In circumstances where the Authority obtains the release of the Source Code from escrow, the Operator hereby grants to the Authority a perpetual, assignable, royalty-free and non-exclusive licence to Use and support the Source Code version of the Deposited Software to the extent necessary for the receipt of the Services or any Replacement Services or the Authority's normal business undertakings.

26. **IPR INDEMNITY**

26.1 The Operator shall at all times, during and after the Term, on written demand indemnify the Authority and keep the Authority indemnified against all Losses incurred by, awarded against or agreed to be paid by the Authority arising from an IPR Claim.

26.2 The Authority agrees that:

26.2.1 it will notify the Operator in writing of any IPR Claim;

26.2.2 it will allow the Operator to conduct all negotiations and proceedings and will provide the Operator with such reasonable assistance required by the Operator, each at the Operator's cost, regarding the IPR Claim; and

26.2.3 it will not, without first consulting with the Operator, make an admission relating to the IPR Claim.

26.3 The Operator shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Authority into disrepute.

26.4 The Operator shall not settle or compromise any IPR Claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).

- 26.5 If an IPR Claim is made, or the Operator anticipates that an IPR Claim might be made, the Operator may, at its own expense and sole option, either:
- 26.5.1 procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or
- 26.5.2 replace or modify the relevant item with non-infringing substitutes provided that:
- (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (b) the replaced or modified item does not have an adverse effect on any of the Services, the Database or any other information or technologies system used in connection with the Services including, for the avoidance of doubt, any software, equipment and cabling;
 - (c) there is no additional cost to the Authority; and
 - (d) the terms of the Agreement shall apply to the replaced or modified Services.
- 26.6 If the Operator elects to modify or replace an item pursuant to Clause 26.5.2 or to procure a licence in accordance with Clause 26.5.1, but this has not avoided or resolved the IPR Claim, then the Authority may terminate this Agreement by written notice with immediate effect and, without prejudice to the indemnity set out in Clause 26.1, the Operator shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs in implementing and maintaining the substitute items.
- 26.7 The provisions of Clauses 26.1 to 26.6 (inclusive) shall not apply in respect of any IPR Claim caused by:
- 26.7.1 any use by or on behalf of the Authority of the Software in either case in combination with any item not supplied pursuant to this Agreement; or
- 26.7.2 the use by the Authority of the Software in a manner not reasonably to be inferred from the provisions of this Agreement.

PART 7- INFORMATION AND DATA

27. ACCESS AND INFORMATION REQUIREMENTS

- 27.1 The Operator shall maintain during the Term and shall retain for a period of at least seven (7) years from the expiry or termination of this Agreement full, clear, accurate and up-to-date accounts relating to the Services in accordance with the Schedule 6 (Finance) and as notified by the Authority from time to time.
- 27.2 The accounts required under Clause 27.1 and Schedule 6 (Finance) shall both during and after the expiry or termination of this Agreement, be open to inspection at reasonable times and upon reasonable notice by the Authority or any Audit Agent, and their employees, agents or representatives as they may reasonably request. Such persons shall be entitled to take copies of or extracts from such accounts. The Operator shall on reasonable notice furnish oral or written explanations of the accounts if required. The Authority reserves the right to have such staff or agents carry out examinations into the economy, efficiency and effectiveness with which the Operator has used the Authority's resources in the performance of this Agreement.
- 27.3 The Operator's costs in complying with this Clause shall be borne by the Operator.
- 27.4 The Operator shall during the Term provide access to the Authority's Data to the Authority Personnel and Audit Agents.

- 27.5 The Operator shall provide access to its premises (and shall procure access to those of its sub-contractors) at all reasonable times to the Authority and the Audit Agents to inspect such documents as the Authority considers necessary in connection with this Agreement and where appropriate to speak to the Staff.
- 27.6 The Operator shall to procure access to the sites of any approved Sub-Contractors on the basis set out in Clause 27.5 above.
28. **AUTHORITY DATA**
- 28.1 The Operator shall not acquire any right in, or title to, any part of the Authority Data whether existing prior to the Effective Date, or created after such date. Title in the Authority Data shall remain with the Authority at all times.
- 28.2 The Operator shall not:
- 28.2.1 disclose, use, modify or adapt the Authority Data;
 - 28.2.2 merge or combine the Authority Data with other data;
 - 28.2.3 derive or extrapolate data from the Authority Data;
 - 28.2.4 store, copy, disclose or use the Authority Data; or
 - 28.2.5 reproduce the Authority Data in whole or in part in any form
- except as may be expressly required by, or necessary for, performance by the Operator of its obligations under this Agreement.
- 28.3 The Operator shall not remove any proprietary or copyright notices contained within or relating to any Authority Data.
- 28.4 The Operator shall be responsible for maintaining, in accordance with Good Industry Practice and all express requirements of this Agreement, secure back ups of all the Authority Data in the possession or control of the Operator and its Sub-Contractors and immediately following any collection, processing, storage and transmission of such Authority Data by or on their behalf. The Operator shall be responsible for preserving the integrity of Authority Data and preventing unauthorised disclosure, misuse, interception, theft, corruption or loss. Any such Authority Data that is lost, degraded or damaged shall, where copies of such data exist (in any form), promptly be reinstated and/or reconstituted by the Operator, at its own cost where the loss, degradation or damage is due to any Default of the Operator (including but not limited to any Default of a Sub-Contractor). If the Operator fails to do so within two (2) Working Days from and including the date of loss, degradation or damage, then the Authority may by itself or by appointment of a third party undertake the reinstatement and/or reconstitution of such Authority Data at the Operator's cost and the Operator shall procure that its Sub-Contractors co-operate fully in such process.
- 28.5 The Operator shall ensure that the back ups of Authority Data held by the Operator, or on its behalf by Material Sub-Contractors, are made available to the Authority at all times upon request in such format as the Authority may reasonably require.
- 28.6 If at any time the Operator suspects or has reason to believe that Authority Data has or may become corrupted in any way, the Operator shall notify the Authority forthwith of the remedial action it proposes to take and shall agree any proposed remedial action with the Authority in advance of taking action.
- 28.7 Save to the extent otherwise permitted by the Authority in writing (whether in this Agreement or otherwise) the Operator shall not (and shall ensure that its Sub-Contractors shall not):
- 28.7.1 process or take any Authority Data outside the EEA (or cause or permit the same to happen);

28.7.2 due to the manner in which it delivers (or requires to be delivered) the Services, cause or permit Authority Data to be accessed from outside the EEA; or

28.7.3 undertake (or cause to be undertaken) application development outside the EEA.

28.8 Following termination of this Agreement, for any reason whatsoever, the Operator shall, at the Authority's option either erase or destroy any Authority Data or return any Authority Data to the Authority or to any New Operator.

29. **PERSONAL DATA**

29.1 The Parties agree that the Authority is a Data Controller for any Personal Data which the Operator Processes in order to perform the Services and the Authority hereby appoints the Operator as Data Processor in relation to such Personal Data and, subject to Clause 15, authorises the Operator to appoint Sub-Contractors as further Data Processors on behalf of the Authority, provided that such further Data Processors are engaged on terms providing equivalent rights to the Authority against the further Data Processors and equivalent protections in relation to the Personal Data to those set out in this Agreement.

29.2 The Operator shall:

29.2.1 process the Personal Data only on behalf of the Authority in compliance with the Authority's instructions and this Agreement. If for whatever reason the Operator cannot provide such compliance, it agrees to inform the Authority promptly of its inability to comply, and the Authority is entitled to suspend the Processing of Personal Data;

29.2.2 without prejudice to the generality of Clause 29.2.1, ensure that those of its employees who are used to Process Personal Data under this Agreement have first been trained in the law of data protection and in the care and handling of Personal Data and that no other personnel of the Data Processor are allowed access to the Personal Data;

29.2.3 process the Personal Data in accordance with the laws of the United Kingdom;

29.2.4 ensure that it provides to all Data Subjects information which is required to be made available to Data Subjects under the first data protection principle;

29.2.5 promptly notify the Authority about:

(a) any legally binding request for disclosure of the Personal Data by a law enforcement department prior to any such disclosure unless otherwise prohibited;

(b) any accidental or unauthorised access which may affect the Personal Data;

29.2.6 notify the Authority in such format and with such frequency as the Authority may direct of any Data Subject Requests received directly from Data Subjects;

29.2.7 respond to any such Data Subject Request in accordance with Clause 29.3 below, unless it has been otherwise instructed not to do so by the Authority;

29.2.8 deal promptly and properly with all inquiries from the Authority relating to the Operator's Processing of the Personal Data;

29.2.9 not disclose the Personal Data to a third party in any circumstances other than at the specific request of the Authority, or where obliged to do so under any Law;

29.2.10 not transfer the Personal Data outside the EEA without the prior written consent of the Authority;

29.2.11 upon reasonable request from the Authority, submit its data processing facilities, procedures and documentation relating to Personal Data, and those of its sub-processors, to scrutiny by the Authority or the Audit Agents in order to ascertain compliance with relevant Law and the terms of this Agreement; and

29.2.12 on request by the Authority, promptly provide information which the Authority requires in order to comply with:

- (a) Data Subject Requests; and
- (b) requests from the Information Commissioner.

29.3 On receipt of a Data Subject Request directly or a request from the Authority to deal with a Data Subject Request that the Authority has received and passed onto the Operator, the Operator will promptly, and in any event within any applicable statutory response periods, respond to such Data Subject Request on behalf of the Authority and in compliance with the DPA and shall then carry out any and all necessary subsequent correspondence whether with the Data Subject or otherwise in order to deal with such Data Subject Request on behalf of the Authority. The Operator shall keep records of all Data Subject Requests and responses and shall make these available to the Authority on request. The contents of any such Data Subject Request shall constitute the Authority's Confidential Information and any response thereto forms part of Authority Data.

29.4 The Operator warrants that it has appropriate operational and technological processes and procedures in place to safeguard against any unauthorised or unlawful access, loss, destruction, theft, use or disclosure of the Personal Data.

29.5 The Operator shall indemnify and shall keep indemnified the Authority against all Losses suffered by the Authority as a result of any failure by the Operator to comply with its obligations in accordance with any part of this Clause 29.

30. **ACCESS TO THE DATABASE**

30.1 The Authority may during the hours of 9.00am to 5.00pm on a Working Day and having given prior notice have access to the Database or any part or parts thereof and to the Authority's Data in whatever form (whether or not such data is held on the Database), including for the avoidance of doubt all Personal Data, for the purposes of viewing, inspecting, downloading or copying any data or other information of whatever nature held by the Operator. The Operator shall at its own cost provide appropriate training to a reasonable number of the Authority Personnel to enable them to access the Authority's Data. For the avoidance of doubt where the Authority is investigating fraud or other unlawful activity the Authority shall be entitled to require the Operator to provide access to the Authority's Data outside of the times set out in this Clause 30.

30.2 The Authority will when accessing the Database cause as little disruption to the Operator or the Staff as reasonably practicable.

31. **FREEDOM OF INFORMATION**

31.1 The Operator acknowledges that the Authority is subject to the requirements of FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.

31.2 The Operator shall and shall procure that its Sub-Contractors shall:

31.2.1 provide the Authority with a copy of all Information in its possession, or power that and in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) from and including the date of the Authority's request; and

31.2.2 provide all assistance as may be requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10

of the FOIA or regulation 5 of the Environmental Information Regulations (as the case may be).

- 31.3 The Authority shall be responsible for determining in its absolute discretion whether any Information is exempt from disclosure in accordance with the provisions of FOIA or the Environmental Information Regulations.
- 31.4 In no event shall the Operator respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 31.5 The Operator acknowledges that the Authority may be obliged to disclose Information without consulting or obtaining consent from the Operator, or despite having taken the Operators' views into account.
- 31.6 The Operator acknowledges that all Information shall constitute Authority Data and shall be held in accordance with the obligations set out in this Agreement relating to Authority Data.

32. **CONFIDENTIALITY**

- 32.1 The Operator acknowledges that in respect of any Confidential Information obtained by the Operator from, or relating to, the Authority, the Crown or their respective servants or agents or any Crown Servant, including in the course of tendering for this Agreement, a duty of confidentiality is owed to the Authority and the Crown.
- 32.2 Each Party agrees, for itself and in the case of the Authority the Authority Personnel and, in the case of the Operator, the Staff to keep confidential and not to disclose to any person (save as set out in Clause 31 and otherwise as hereinafter provided in this Clause 32) and to safeguard any Confidential Information provided to it, or arising or acquired by it in relation to the terms or performance of this Agreement.
- 32.3 The Operator shall not and shall procure that Staff shall not disclose any Confidential Information to any third party without the prior written consent of the Authority.
- 32.4 The following circumstances shall not constitute a breach of the obligations of confidentiality contained in this Clause 32:
 - 32.4.1 disclosure of Confidential Information by the Operator to the Sub-Contractor and Staff but only to the extent necessary to enable the Operator to perform (or to cause to be performed) or to enforce any of its rights or obligations under this Agreement;
 - 32.4.2 disclosure of Confidential Information by either Party when required to do so by Law;
 - 32.4.3 disclosure of Confidential Information by the Authority to Authority Personnel to the extent necessary to enable the Authority to perform (or to cause to be performed) or to enforce any of its rights or obligations under this Agreement;
 - 32.4.4 disclosure to any consultant, sub-contractor or other person engaged by a Party in connection herewith (including any New Operator), who needs to know the information, to the extent necessary to enable that Party to perform (or cause to be performed) the Services or to enforce any of its rights under this Agreement, provided that that Party shall have first obtained from the consultant, sub-contractor or other person (as the case may be) obligations of confidentiality to protect disclosure of such information no less onerous to those set out in this Clause 32;
 - 32.4.5 disclosure of Confidential Information by either Party where and to the extent that the Confidential Information has, except as a result of breach of confidentiality by or on behalf of that Party, become publicly available or generally known to the public at the time of such disclosure;

32.4.6 disclosure of Confidential Information by either Party where and to the extent that the Confidential Information is already lawfully in the possession of a recipient or lawfully known to it prior to such disclosure;

32.4.7 possession of Confidential Information by either Party where it has been acquired from a third party who is not in breach of Law or any obligation of confidence in providing that Confidential Information;

and in the case of the Authority any disclosure of Confidential Information:

32.4.8 to the extent required for the purpose of the continued fulfilment of the Services in the event of termination of Services and/or this Agreement;

32.4.9 in relation to the procurement process for the Services as may be required to be published in the Official Journal of the European Union or under other procurement related requirements;

32.4.10 to any body to whom the Authority considers it necessary to disclose Confidential Information to fulfil its statutory and/or public functions, any NDPB, statutory corporation, other department, office or agency of the Government (including, for the avoidance of doubt, the National Audit Office) or other Crown Body or entity and/or (in any such case) their servants or agents, where required for its proper departmental, parliamentary, governmental, statutory or judicial purposes and the Operator hereby permits further disclosure by such NDPBs, statutory corporations, Crown Bodies or entities to other Crown Bodies;

32.4.11 as may be required in accordance with Clause 31 (Freedom of Information);

32.4.12 in connection with the exercise of the audit rights set out in this Agreement; and

32.4.13 to any person conducting or otherwise involved in an Office of Government Commerce 'gateway review'.

32.5 In relation to any disclosure of Confidential Information under this Agreement by the Operator, the Operator shall use its best endeavours to give the Authority prompt advance written notice of this disclosure and, where relevant, to consult and give the Authority reasonable opportunity to comment on the nature and extent of disclosure and take account of any reasonable comment made by the Authority.

32.6 The Operator shall, with respect to any Confidential Information it receives from the Authority or in connection with the Services:

32.6.1 use, and shall ensure that all Sub-Contractors and Staff use, the Confidential Information solely for the purposes of this Agreement;

32.6.2 take, and shall ensure that all Sub-Contractors and Staff take, all necessary precautions to ensure that all Confidential Information is held in confidence;

32.6.3 comply, and shall ensure that all Sub-Contractors and Staff comply, with all instructions and/or guidelines produced by the Authority from time to time for the handling and storage of Confidential Information generally or for specific items;

32.6.4 obtain from all employees of the Operator (whether under the employees' standard terms and conditions or otherwise) obligations of non-disclosure on terms no less onerous than contained in this Clause 32; and

32.6.5 obtain from all Sub-Contractors, consultants or other parties to whom disclosure is permitted under this Clause 32 (other than employees to whom Clause 32.6.4 shall apply) prior to their commencing work on the Services or receiving any Confidential Information,

a signed non-disclosure undertaking providing equivalent obligations of confidentiality as contained in this Clause 32.

- 32.7 Without prejudice to any other rights and remedies that the other Party would have, each Party agrees that damages may not be an adequate remedy for any breach of this Clause 32 and that the other Party shall be entitled to seek the remedies of injunction, specific performance and/or other equitable relief for any threatened or actual breach of this Clause 32.
- 32.8 The Operator shall not, either itself or by any Staff, consultant or other third party, use the Authority's Confidential Information other than for the purposes of this Agreement, including without limitation:
- 32.8.1 soliciting further business from the Authority, from any other part of the Crown or any Contracting Authority; or
- 32.8.2 seeking or obtaining any commercial or pecuniary advantage other than in connection with the performance of the Services.
- 32.9 The obligations with respect to Confidential Information disclosed under this Agreement shall survive termination or expiry of this Agreement and shall continue for a period of seven (7) years from the date of expiry or termination of this Agreement.
- 32.10 Save as specified in Clause 32.11, upon the Authority's written request, and in any event on termination or expiry of this Agreement and/or any Services, the Operator shall promptly return:
- 32.10.1 all or any specified part of the Authority Data and any Authority's Confidential Information which it received while providing the relevant Services;
- 32.10.2 all (or any specified part of any) physical and written records containing any Authority Data or Authority's Confidential Information related to the relevant Services; and
- 32.10.3 all (or any specified part of any) documentation relating to any other Confidential Information related to the relevant Services,
- to the Authority or, if requested by the Authority, destroy or delete the same in a manner specified by the Authority and promptly certify to the Authority that it has done the same.
- 32.11 Clause 32.10 shall not apply to any copies of Confidential Information necessary for the continued maintenance, operation and development work forming part of obligations of the Operator pursuant to Schedule 8 (Exit Plan), until its completion.
- 32.12 The Operator shall maintain a list in writing of the non-disclosure undertakings completed in accordance with this Clause 32. Where requested by the Authority in writing the Operator shall provide the Authority with a copy of the list and, subsequently upon request by the Authority in writing, copies of such of the listed non-disclosure undertakings as required by the Authority.

PART 8- WARRANTIES, LIABILITY AND INSURANCE

33. GENERAL WARRANTIES

- 33.1 The Operator warrants and represents to the Authority for the benefit of the Authority that:
- 33.1.1 it has full capacity power and authority to enter into and perform its obligations under this Agreement and has no conflicting obligations to any third party (whether contractual or otherwise);
- 33.1.2 all Sub-Contractors have full capacity power and authority to perform their obligations in connection with this Agreement and have no conflicting obligations to any third party (whether contractual or otherwise);

- 33.1.3 this Agreement is executed by a duly authorised representative of the Operator;
- 33.1.4 it has not, and will not (and shall procure that each Material Sub-Contractor has not and shall not) enter into any fixed or floating charge or other encumbrance which would take priority to the assignments or vesting of Intellectual Property in the Authority referred to in Clause 19;
- 33.1.5 there is no proceeding pending or, to the knowledge of the Operator, threatened which challenges or may have a material adverse affect on this Agreement or on the ability of the Operator to carry out its obligations under this Agreement;
- 33.1.6 the Operator and its Sub-Contractors have not and will not violate any applicable Laws or Standards;
- 33.1.7 all statements and representations in pre-contractual proposals in the Operator's response to the PQQ, SOR and BAFO when made by the Operator to the Authority were, in the context they were given at the time, true, complete and accurate in all material respects, and that the Operator has advised the Authority of any fact, matter or circumstance of which it has become aware since making such proposals which would render any such statement or representation false or misleading; and
- 33.1.8 the Operator's Proposal complies with and shall comply with and meet the Authority's service requirements contained in this Agreement throughout the Term.

Each of the above warranties shall be construed as a separate warranty and representation by the Operator and shall not be limited or restricted by reference to, or inference from, the terms of any other warranty or representation or any other terms of this Agreement.

- 33.2 Except as provided in this Agreement, there are no express warranties, representations, undertakings or conditions (statutory or otherwise) made by either Party and all warranties, representations, undertakings and conditions (statutory or otherwise) implied to be made by either Party, including implied warranties as to satisfactory quality and fitness for a particular purpose, are hereby excluded to the maximum extent permitted by Law.

34. **GENERAL INDEMNITIES**

The Operator shall indemnify and shall keep indemnified the Authority against all Losses suffered by the Authority as a result of any act or omission of the Operator.

35. **CONTROL OF CLAIMS COVERED BY AN INDEMNITY**

- 35.1 If the Authority becomes aware of a matter which may give rise to a claim under an indemnity given by the Operator in this Agreement:
 - 35.1.1 the Authority shall promptly notify the Operator as soon as is reasonably practicable and in any event within fifteen (15) Working Days of becoming aware of the matter (stating in reasonable detail the nature of the matter and, if practicable, the amount claimed) and consult with the Operator with respect to the matter. If the matter has become the subject of proceedings, where reasonably practicable the Authority shall notify the Operator within sufficient time to enable the Operator to prepare any statement of case;
 - 35.1.2 the Authority shall provide the Operator and its advisers reasonable access to premises and Authority Personnel and to all relevant assets, documents and records that it possesses or controls for the purposes of investigating the matter and enabling the Operator to take the steps referred to in Clause 35.1.1;
 - 35.1.3 the Operator shall provide to the Authority reasonable access to information that it possesses or controls and to the Staff for the purposes of understanding the nature and status of the action being taken under Clause 35.1.1 and shall consult with and take due account of the views of the Authority in relation to the proposed actions to be taken prior

to settlement or compromise of the claim. The Operator shall not use the Authority's name without the Authority's prior written consent (such consent not to be unreasonably withheld or delayed);

- 35.1.4 the Operator (at its cost) may take copies of the relevant documents or records save for any documents or records in respect of which the Authority claims privilege;
- 35.1.5 each Party shall, and shall procure that its relevant employees and professional advisers shall, use the documentation and information obtained pursuant to this Clause 35 solely for the purposes described and shall otherwise keep the documentation and information confidential in accordance with Clause 32 where such information constitutes Confidential Information. When a claim subject to an indemnity is concluded, documentation provided by either Party to the other for the purposes of the claim shall be returned; and
- 35.1.6 the Parties may agree that the Operator has the exclusive conduct of the proceedings and if so the Operator indemnifies the Authority for all costs incurred as a result of a request or choice by the Operator to conduct such proceedings.

36. **LIMITATION OF LIABILITY**

36.1 **Exclusion of certain categories of loss**

36.1.1 Neither Party shall have any liability to the other for any claim to the extent that the same is or can be characterised as a claim for (or arising from):

- (a) loss of revenue or profits;
- (b) loss of goodwill;
- (c) loss of business opportunity; or
- (d) indirect, consequential or special loss or damages,

regardless of the form of action, whether in contract, strict liability or tort (including negligence), and regardless of whether the first named Party knew or had reason to know of the possibility of the loss, injury, or damage in question.

36.1.2 The provisions of Clause 36.1.1 shall not limit the Authority's right to recover from the Operator:

- (a) additional administrative and operational costs and expenses incurred by the Authority resulting from the Default of the Operator;
- (b) wasted expenditure or charges rendered unnecessary and incurred by the Authority arising from the Default of the Operator; and
- (c) the cost of the procurement process for and the procurement of Replacement Services in respect of any unexpired period between the Effective Date and the Original Expiry Date.

36.2 **Cap on the Operator's liability**

36.2.1 The Operator's aggregate liability to the Authority (excluding claims to which Clause 36.3 applies) in respect of all losses, damages, costs, claims or expenses suffered by the Authority arising out of or in connection with:

- (a) any and all Defaults by the Operator (including but not limited to, claims arising in respect of a breach of warranty); and

- (b) any and all torts or breaches of statutory duty committed by the Operator (or any Sub-Contractor or Staff) in connection with the performance or purported performance of the Operator's obligations under this Agreement,

occurring in each Contract Year (excluding claims to which Clause 36.3 applies) will be limited and will in no circumstances whatsoever exceed the higher of:

- (c) any amount recoverable by the Operator under any insurance policy; and
- (d) **[Text Redacted]** Indexed.

36.3 **Claims and Remedies not subject to Limitation**

36.3.1 Nothing contained in this Agreement will restrict the Operator's liability for death or personal injury resulting from any act, omission or negligence of the Operator or the Staff.

36.3.2 Nothing contained in this Clause will limit the Operator's liability for:

- (a) fraud or fraudulent misrepresentation;
- (b) any claim under the indemnities in Clause 29.5, Clause 26.1 and/or Clause 35.1.6;
- (c) any claim under the employee provisions set out in Schedule 9 (Employees).

36.3.3 Nothing in this Clause 36 will affect the Authority's right to terminate this Agreement and/or any Services in accordance with this Agreement.

37. **INSURANCE AND TREATMENT OF RISK**

37.1 The Operator shall maintain for the duration of the Term and (in relation to professional errors and omission insurance only) a period of three (3) years thereafter the following policies of insurance with insurers of good repute acceptable to the Authority:

37.1.1 public liability insurance providing minimum cover of **[Text Redacted]** any one occurrence the number of occurrences being unlimited;

37.1.2 professional errors and omissions insurance appropriate to the business undertaken by the Operator, providing minimum cover of **[Text Redacted]** per occurrence and in the aggregate per annum, cover to include claims made by reason of:

- (a) misappropriation of funds;
- (b) dishonesty of individual partners, directors, employees or self employed persons contracted to and under the supervision of the Operator.

37.1.3 insurances required to comply with all statutory insurance requirements, including but not limited to, employer's liability insurance, and

37.1.4 crime (fidelity guarantee) insurance providing minimum cover of **[Text Redacted]** per event or series of connected events in respect of fraudulent acts including internal and external collusion;

37.1.5 computer "All Risks" insurance to include:

- (a) "All Risks" of physical loss or damage to computer and/or ancillary equipment, including reinstatement of data costs following loss of information on fixed discs;

- (b) damage to computer records and reinstatement of data costs following loss of information on computer records;
 - (c) additional cost of working expenditure necessarily and reasonably incurred in order to prevent or minimise the interruption of the computer equipment; and
 - (d) cover to include loss or damage caused by breakdown.
- 37.1.6 all such insurances must be effective in each case not later than the date on which the relevant risk commences under this Agreement;
- 37.1.7 the insurances shall be maintained from time to time on terms no less favourable than those generally available to a prudent operator operating to Good Industry Practice in respect of risk insured in the international insurance market from time to time.
- 37.2 The Operator shall promptly pay all premiums payable and other sums due in respect of the insurance policies referred to in Clause 37.1 and not do anything which may cause the policies to be vitiated in whole or in part.
- 37.3 The insurance policies referred to in Clause 37.1 shall extend to cover all Sub-Contractors and Staff where appropriate to the activities they undertake on behalf of the Operator.
- 37.4 In respect of the insurance policies referred to in Clauses 37.1.1 and 37.1.3, the Operator shall ensure that they contain:
- 37.4.1 an 'indemnity to principals' Clause in favour of the Authority,
 - 37.4.2 a Clause waiving the insurers' subrogation rights against the Authority and Authority Personnel.
- 37.5 The Operator shall on the written request of the Authority from time to time produce details of the policies to the Authority together with evidence of payment of all premiums due.
- 37.6 The Operator shall notify the Authority twenty (20) Working Days prior to the cancellation or non-renewal of any of the insurances listed in Clause 37.1.
- 37.7 Neither Party shall do anything or fail to take any reasonable action or permit anything within its power to occur which would entitle any insurer to refuse to pay any claim under any of the policies referred to in Clause 37.1.
- 37.8 The Operator shall give the Authority notification within twenty (20) Working Days after any claim in excess of [**Text Redacted**] on any of the insurance policies referred to in this Clause accompanied by full details of the incident giving rise to the claim.
- 37.9 Neither failure to comply or full compliance with the insurance provisions of this Agreement shall relieve the Operator of its liabilities and obligations under this Agreement.

PART 9- TERMINATION

38. TERMINATION

38.1 Termination of Agreement by the Authority 'for cause' (including change of Control and/or insolvency of the Operator and/or failure to Achieve a Milestone).

Without prejudice to such other rights as the Authority may have, this Agreement or the relevant part of the Services may be terminated in whole or in part at any time by written notice by the Authority (such notice to be effective on the date stated in that notice) if:

- 38.1.1 a Milestone is not Achieved within one month of the Milestone Date for that Milestone in accordance with the provisions of Schedule 3 (Implementation);
- 38.1.2 the Operator is in material, continuing or repeated Default in respect of its obligations under this Agreement and:
- (a) fails within thirty (30) Working Days of receipt of written notice (from and including the day on which notice is deemed to be received) of the Default from the Authority to remedy the Default; or
 - (b) the Default is not capable of being remedied;
- 38.1.3 a Deemed Material Default occurs;
- 38.1.4 there is a change in the Control of the Operator or any of its holding companies (as defined in sections 736 and 736A of the Companies Act 1985) which the Authority considers may: (i) have an adverse impact on the Services and/or (ii) adversely affect its reputation, provided that such notice is given to the Operator within six (6) months from and including the date on which the Authority is notified by the Operator of such change in Control. The Operator shall promptly notify the Authority in writing in the event of any change in Control to which this Clause 38.1.4 applies where such notification is not prohibited by Law;
- 38.1.5 any of the following events (or any event analogous to any of the following occurs in a jurisdiction other than England and Wales) occurs in respect of the Operator or any of its holding companies (as defined in section 736 and 736A of the Companies Act 1985):
- (a) a proposal is made for a voluntary arrangement within Part I of Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
 - (b) a shareholder's meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than in either case as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation not involving a reduction of capital);
 - (c) a petition is presented for its winding up or for the making of an administration order, or an application is made for the appointment of a provisional liquidator (in each case which is not dismissed within fourteen (14) Working Days from and including the date of its service) or a creditor's meeting is convened pursuant to section 98 of Insolvency Act 1986;
 - (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
 - (e) it is or becomes insolvent within the meaning of section 123 Insolvency Act 1986; and/or
- 38.1.6 the Operator is in Default and as a result the Authority incurs costs, losses or damages that [**Text Redacted**] of the aggregate value of the relevant liability cap set out in Clause 36.2.

38.2 Termination of Agreement for Convenience

The Authority shall be entitled to terminate this Agreement for convenience by serving not less than three (3) months' written notice from and including the date notice is served, to expire at any time.

38.3 **Termination of Services and/or this Agreement for continuing Force Majeure Event**

The Authority may during the continuance of any Force Majeure Event terminate this Agreement or the relevant part of the Services in whole or in part by written notice if a Force Majeure Event occurs which continues for more than ninety (90) Working Days from and including the date of the Force Majeure Event.

38.4 **Payment on Termination**

The provisions of Schedule 19 (Payment on Termination) shall apply.

39. **CONSEQUENCES OF TERMINATION**

39.1 Notwithstanding the expiry or termination of this Agreement for any reason, it shall continue in force to the extent necessary to give effect to those of its provisions which expressly or by implication have effect after termination, for any reason whatsoever, including without limitation, Clauses 7.7(Access to Data), 12.1 (Financing of the Scheme), 15.3 (Sub-Contracting), 18 (Employee Transfer Provisions), 19 (Non-Solicitation), 20 (Intellectual Property Rights), 21 (Licences Granted by the Operator), 26 (IPR Indemnity), 27 (Access and Information Requirements), 29 (Personal Data), 30 (Access to the Database), 31 (Freedom of Information), 32 (Confidentiality), 34 (General Indemnities), 36 (Limitation of Liability), 37 (Insurance and Treatment of Risk), 40 (Transfer of Responsibility on Expiry or Termination), 53(Entire Agreement), 54(The Contracts (Rights of Third Parties) Act 1999), 55(Law and Jurisdiction).

39.2 Termination of this Agreement and/or any Service shall not affect the rights of either Party accruing or accrued prior to its termination.

39.3 The Operator will prepare final accounts for the period up to and including the date of termination in accordance with Schedule 6 (Finance).

39.4 For the avoidance of doubt, the licence granted at Clause 22.1 shall terminate upon expiry or termination of this Agreement.

40. **TRANSFER OF RESPONSIBILITY ON EXPIRY OR TERMINATION**

40.1 Upon the day which is six (6) months before the expiry of this Agreement, or as soon as the Operator is aware of the proposed termination of this Agreement but in any event within one (1) month of receipt of notice of termination, or of the provision by it of the Services or any part thereof, the Operator shall comply with the provisions of Schedule 8 (Exit Plan).

40.2 The Operator shall, at no cost to the Authority, promptly provide such assistance and comply with such timetable as the Authority may reasonably require for the purpose of ensuring an orderly transfer of responsibility to the Authority or to a New Operator, as the Authority may determine in its sole discretion, upon the expiry or other termination of this Agreement. The Authority shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after the expiry or other termination of this Agreement.

40.3 Such assistance may include (without limitation) the delivery of documents and the Authority's Data in the possession or control of the Operator which relate to this Agreement and the provision of assistance in relation to any negotiation with the proprietor of Third Party Software in respect of the provision of Third Party Software licences. The Operator shall use its best endeavours to ensure that the Authority's Data is accurate and up-to-date and shall deliver the Authority's Data to the Authority or any third party designated by the Authority in such format as specified by the Authority or a format that is compatible with the Authority's then current system as at the termination date.

40.4 The Operator shall promptly and fully answer all reasonable questions about the Services which may be asked by the Authority for the purpose of adequately understanding the manner in which the Services have been provided.

- 40.5 Where Sub-Contracts have been entered into by the Operator for the sole purpose of providing the Services to the Authority, the Authority may require the Operator to use all reasonable endeavours to procure that those Sub-Contracts are assigned to the Authority or to a third party, as the Authority may determine in its sole discretion.
- 40.6 The Operator undertakes that it shall not, and will ensure that its Staff shall not, knowingly do or omit to do anything which may adversely affect the ability of the Authority to ensure an orderly transfer of responsibility of the Services.
- 40A **PAYMENT ON EXPIRY**
- 40A.1 The provisions of Schedule 20 (Payment on Expiry) shall apply.

PART 10- GENERAL

41. FORCE MAJEURE

41.1 Effect of Force Majeure

- 41.1.1 Subject to the remaining provisions of this Clause, to the extent that either Party is prevented from performing its obligations under this Agreement for reasons beyond the Party in question's reasonable power to control (a "**Force Majeure Event**") then that Party's duty to perform its obligations under this Agreement will (during the continuation of the Force Majeure Event) be read and construed as an obligation to perform such obligations to the best level achievable in the circumstances of the Force Majeure Event.
- 41.1.2 Notwithstanding Clause 41.1.1, the following shall not be deemed to constitute a Force Majeure Event for the purpose of this Agreement:
- (a) industrial action, strikes or lock-outs by employees of either Party or its sub-contractors;
 - (b) deliberate sabotage of, or malicious or reckless damage to, equipment or data where the sabotage is attributable to the relevant Party, its employees or Sub-Contractors or the employees of the Sub-Contractors;
 - (c) in relation to the Operator only, any event which a prudent services provider, operating to Good Industry Standards, could reasonably have foreseen and prevented or avoided (for example, including without limitation a virus attack which could have been prevented by use of anti-virus software or failure to obtain supplies of goods or services for use within the Services where those supplies are available);
 - (d) change in Law; and
 - (e) an event which is attributable to a Party's wilful act, neglect or failure to take reasonable precautions against the Force Majeure Event.

41.2 Effect of suspension of a Service

To the extent that any Force Majeure results in any Service being suspended (which includes such Service being delivered to a level where it is of no practical benefit), then the Authority may, at its sole discretion, require the application of one of the following options (and may change the option from time to time by written notice):

- 41.2.1 the Operator shall procure the provision of such Service from an alternative supplier until cessation of the suspension or may procure the provision of such Service direct from an alternative supplier or

41.2.2 the Operator shall provide such alternative services (during the period of the suspension) as will be calculated to minimise the disruption as a result of the suspension.

41.3 **Conditions on claiming Force Majeure**

The Party seeking relief from its obligations due to a Force Majeure Event (the "**Affected Party**") will not be entitled to invoke the provisions of Clause 41.1 unless it fully performs the following obligations:

41.3.1 on becoming aware of any Force Majeure Event which gives rise, or which is likely to give rise, to any failure in the performance of its obligations under this Agreement, it notifies the other Party as soon as reasonably practicable after becoming aware of such event, giving details of the Force Majeure Event, the obligations on its part which are or are likely to be affected and its reasonable estimate of the period for which such failure will continue or is likely to take place; and

41.3.2 it provides written confirmation and reasonable evidence of such Force Majeure Event within three (3) Working Days of notification (from and including the day on which notice is received) under Clause 41.3.1

41.4 **Mitigation and cessation of Force Majeure**

41.4.1 As soon as reasonably practicable following notification under Clause 41.3.2 the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilities the continued performance of the Services. Without prejudice to Clause 41.1.1, where the Operator is the Affected Party it shall take steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

41.4.2 The Affected Party shall notify the other Party as soon as reasonably practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event.

42. **DISPUTE RESOLUTION PROCEDURE**

42.1 In the event that a dispute arises as a result of this Agreement, the dispute shall be referred in the first instance to the Authority's Contract Manager and the Operator's Contract Manager.

42.2 Where agreement cannot be reached between the Authority's Contract Manager and the Operator's Contract Manager the matter shall be referred to the relevant Director in the Authority and the Chief Executive of the Operator for consideration.

42.3 If the dispute cannot be resolved by the Parties' representatives under Clauses 42.1 or 42.2 within a maximum of fourteen (14) days after it has been referred in accordance with such Clauses the dispute shall be determined in accordance with Clauses 42.4 to 42.7 inclusive.

42.4 If the dispute cannot be resolved under Clauses 42.1 or 42.2 above, the Parties will attempt to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure ("**Model Procedure**"). To initiate a mediation, either Party shall give written notice ("**Mediation Notice**") to the other Party requesting a mediation of the dispute and shall send a copy of the Mediation Notice to CEDR requesting CEDR to nominate a mediator in the event that the Parties are unable to agree such appointment by negotiation.

42.5 The mediation shall commence within twenty eight (28) days of the Mediation Notice being served. Neither Party will terminate such mediation until each Party has made its opening presentation and the mediator has met each Party separately for at least one (1) hour. Thereafter paragraph 14 of the Model Procedure will apply.

42.6 Neither Party shall commence any legal proceedings against the other until thirty (30) days after such mediation of the dispute in question has failed to resolve the dispute.

42.7 The Parties will co-operate with any person appointed as mediator providing him or her with such information and other assistance as he shall require and such Party will pay his or her costs as he or she shall determine, or if no determination is made by the mediator, by the Parties in equal portions.

43. **STATUS OF OPERATOR**

43.1 In carrying out its obligations under this Agreement the Operator agrees that it will be acting as an independent contractor and nothing in this Agreement shall create, or be deemed to create, a partnership, joint venture, or the relationship of principal and agent or employer and employee between the Parties.

43.2 The Operator shall not say or do anything that may lead any other person to believe that the Operator is acting as the agent of the Authority.

43.3 The Operator shall bear exclusive responsibility for the payment of national insurance contributions and for discharge of any income tax in relation to its Staff or such similar liability arising out of remuneration or the performance of the Services under this Agreement.

44. **COUNTERPART**

This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, will be an original, and all the counterparts together will constitute one and the same instrument

45. **VARIATION**

No amendment or variation to this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the Parties by their duly authorised representatives. The Operator shall comply with any formal procedures for amending or varying this Agreement under Schedule 7 (Change Control Procedure) or which the Parties may have agreed from time to time.

46. **ASSIGNMENT**

46.1 The benefit and burden of this Agreement may not be assigned or transferred in whole or in part by the Operator without the prior written consent of the Authority. Such consent may be given subject to any conditions which the Authority considers necessary.

46.2 The Authority shall be entitled to:

46.2.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any contracting authority (as defined in the Public Service Contracts Regulations 2006) (a "**Contracting Authority**") provided that any such assignment, novation or other disposal shall not increase the burden of the Operator's obligations pursuant to this Agreement; or

46.2.2 novate this Agreement to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by the Authority.

46.3 The Authority shall be entitled to disclose to any transferee any Confidential Information of the Operator which relates to the performance of the Services by the Operator. In such circumstances the Authority shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the Services and for no other purposes and, for the avoidance of doubt, the transferee shall be bound by the confidentiality requirements set out in Clause 32.

47. **WAIVER**

No delay by or omission by either Party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy.

48. **NOTICES**

48.1 Any notice or other communication under or in connection with this Agreement shall be in writing in the English language and shall be delivered personally or sent by pre-paid registered or recorded delivery post or by facsimile or other electronic media, to the Party intended to receive the notice of communication at its address set out in this Agreement or such other address as that Party may specify by notice in writing to the Party giving notice.

48.2 In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given:

48.2.1 if delivered personally, when left at the address referred to in Clause 48.1;

48.2.2 if sent by mail, forty eight (48) hours after posting it;

48.2.3 if sent by air mail seven (7) days after posting it; and

48.2.4 if sent by facsimile or other electronic media, when clearly received in full provided that a copy of the notice or communication is also put into the post in accordance with Clause 48.1 within twenty four (24) hours following despatch of the initial version.

49. **INDEPENDENT LEGAL ADVICE**

The Parties acknowledge that this Agreement has been freely entered into by both Parties after due negotiation and opportunity to obtain independent legal advice on its terms and effect.

50. **SEVERABILITY**

If any provision or part of a provision of this Agreement shall be or shall become unenforceable, void or invalid (as the case may be) such provision or part thereof shall not affect and shall be deemed to be severed from the remainder of this Agreement to the intent that the remainder of the affected provision and this Agreement shall be or shall continue to be fully enforceable and valid.

51. **DISCRIMINATION**

51.1 The Operator shall:-

51.1.1 not discriminate against, victimise or harass any person on the grounds of race, nationality, ethnic origin, religion, gender, sexual orientation, disability or age or any other grounds set out in Law, and so far as possible shall comply with any code of practice issued pursuant to any Law making any of the foregoing unlawful;

51.1.2 inform the Authority as soon as possible after it becomes aware of any investigation or proceedings brought against the Operator, or a Sub-Contractor including allegations of any of the matters set out in Clause 51.1.1;

51.1.3 indemnify the Authority against any Losses the Authority may incur as a result of the Operator's breach of this Clause 51; and

51.1.4 impose obligations on any Sub-Contractor in substantially the same terms as set out in this Clause 51.

52. **ANNOUNCEMENTS**

52.1 Save as specified in this Clause 52 or with the written consent of the other Party, neither Party shall make any public announcement concerning this Agreement in any way.

52.2 Both Parties shall take all reasonable steps to ensure the observance of the provisions of this Clause by all their employees, agents, consultants and sub-contractors.

52.3 The Authority shall be entitled to publicise this Agreement:

52.3.1 in accordance with any legal obligation upon the Authority, including any examination of this Agreement by the National Audit Office pursuant to the National Audit Act 1983 or otherwise;

52.3.2 in the circumstances specified in Clauses 31 and 32; and

52.3.3 in accordance with proper parliamentary or Governmental procedures or practice (including but not limited to obligations to report to Parliament and in accordance with Parliamentary orders and to dealing with Ministerial correspondence).

52.4 The Parties acknowledge that the National Audit Office has the right to publish details of this Agreement in its reports produced pursuant to the National Audit Act 1983 (whether to Parliament or otherwise).

53. **ENTIRE AGREEMENT**

53.1 This Agreement constitutes the entire understanding between the Parties relating to the subject matter of this Agreement and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either Party.

53.2 Each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance upon any representation or warranty or other undertaking not fully reflected in the terms of this Agreement and neither of the Parties shall have any liabilities in respect of any representation, warranty or other undertaking made prior to the Effective Date unless such representation, warranty or other undertaking was made fraudulently.

54. **THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

54.1 Subject to Clause 54.2, this Agreement is not intended to create any benefit, claim or rights of any kind whatsoever enforceable by any person who is not a Party to this Agreement. Accordingly, the Parties confirm that no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Agreement.

54.2 It is the intention of the Parties that any other department, officer or agency of the Crown, may as required from time to time act as the Authority's agent in enforcing the Authority's rights under this Agreement.

55. **LAW AND JURISDICTION**

55.1 This Agreement shall be subject to the laws of England and Wales save that, in relation to any matter on which laws of England and Wales conflict, it shall be governed by the laws of England only.

55.2 Subject to the provisions of Clause 42 and Clause 55.3, both Parties agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute arising out of or in connection with this Agreement ("Proceedings") and irrevocably submit to the jurisdiction of those courts.

55.3 The submission to the jurisdiction of the courts of England and Wales does not limit the Authority's right to take any Proceedings in any one or more jurisdictions, nor does the taking of Proceedings by the Authority in any one or more jurisdictions preclude the Authority taking Proceedings in another jurisdiction and to the extent permitted by applicable law.

EXECUTED by the Parties **AS A DEED** on the first date in this Agreement.

Schedule 1

DEFINITIONS

Achieve	in respect of any test, to successfully pass a test and, in respect of a Milestone means completion of the event or task represented by the Milestone, and " Achieved " and " Achievement " shall be construed accordingly;
Accreditation Scheme	A scheme approved by the Secretary of State in accordance with- (a) regulation 22 of the Energy Performance of Buildings (England and Wales) Regulations 2012 and any subsequent amendments; or (b) regulation 30 of the Building Regulations 2010.
Affiliate	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
Agreement	the body of this document together with its Recitals, Schedules, Annexes and Appendices;
Audit Agent	<ul style="list-style-type: none">• any internal and external auditors of the Authority;• statutory or regulatory auditors of the Authority;• the Comptroller and Auditor General, his staff and/or any appointed representatives of the National Audit Office and/or the National Audit Office for Wales;• authorised successors to any of the above; and• the Review Panel;
Authorised User	anyone that is authorised by regulations set out in paragraph 1 of Schedule 2 (Service Specification) to access the EPC Register. In some cases it can include anonymous members of the general public who are authorised but not registered;
Authority Cause	any breach by the Authority of any of the Authority's express obligations under this Agreement (unless caused or contributed to by the Operator or as the result of any act or omission by the Authority to which the Operator has given its prior consent);
Authority Data	any information in whatever form which relates to the Scheme and which is held by or on, entered into, generated or processed by or retrievable from the systems (or any part thereof), established by the Operator to administer the Scheme with or without modification including, for the avoidance of doubt:- <ul style="list-style-type: none">• all data contained in any report submitted to the Operator

for inclusion in the Scheme or generated by the Operator in the provision of the Services;

- the Database(s);

Authority Personnel	employees, officers, consultants, contractors, agents and representatives of the Authority;
Authority Software	software which is owned by or licensed to the Authority, including software which may be used by the Operator for the purposes of providing the Services, but excluding the Operator Software;
Authority Specific Changes In Law	material changes in Law which exclusively relate to or exclusively affect the Authority and the Services but excluding any such changes in Law which at the Effective Date could reasonably have been foreseen by an experienced service provider of comparable services on the basis of a draft bill, a Government department consultation paper, a bill, a draft statutory instrument, a proposal of any relevant regulatory body or a proposal in the Official Journal of the European Union;
Authority Specific Changes In Standards	material Changes in Standards which exclusively relate to or exclusively affect the Authority and the Services but excluding any such Changes In Standards which at the Effective Date could reasonably have been foreseen by an experienced service provider of comparable services with experience of both private and public sector customers;
Baseline Financial Model	the Operator's initial financial model approved by the Authority and attached as an Annex to Schedule 6 (Finance).
Breakage Costs	the redundancy payments which the Operator is required to make by Law to employees of the Operator who are wholly or mainly engaged in the provision of the Services as at the date of notice to terminate being given;
Certification Scheme	A scheme or schemes approved by the Secretary of State for Communities and Local Government referred to in Section 164 of the Housing Act 2004 to ensure that home inspectors are fit and proper persons who are properly qualified and insured to produce home condition reports;
Change	a change to the Services (whether or not requiring a change to this Agreement) or a change to this Agreement;
Change Control Procedure	the change control procedure set out in Schedule 7(Change Control Procedure);
Confidential Information	<p>all information in any form (including without limitation all Personal Data) which is confidential in nature or which may reasonably be regarded as such:</p> <ul style="list-style-type: none">(i) whether or not that information is marked or designated as confidential or proprietary;(ii) whether or not disclosed by one Party to the other Party;(iii) whether arising prior to or during the Term; and

(iv) whether commercial, financial, technical or otherwise,

including all trade secrets, processes, plans, intentions, product information, financial and other books, records, accounts, forecasts, and analyses, technical data, know how, models, reports, drawings, designs, specifications and schedules whether or not relating to the Services together with all developments, modifications, additions, alterations and amendments thereto, information relating to market opportunities, transactions, business undertaken or to be undertaken by the disclosing Party, information concerning that Party's customers, clients, suppliers, holding companies and/or subsidiaries, made by either Party in the course of performance of this Agreement together with the terms of this Agreement and the content of negotiations which preceded the entering into of this Agreement;

Contract Manager	the contract managers appointed by the Parties in accordance with Clauses 10.3.2(b) and 10.3.5
Contracting Authority	the meaning ascribed in Clause 46.2.1;
Contract Year	a period of twelve (12) months commencing on the Service Commencement Date or any anniversary thereof and ending on the day immediately preceding the following anniversary of the Service Commencement Date;
Control	<p>(i) in relation to any business entity, the power of a person to secure (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other entity; or (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other business entity, that the affairs of the first-mentioned business entity are conducted in accordance with that person's wishes; but</p> <p>(ii) in relation to a partnership means the right to a share of more than one half of the assets or income of the partnership,</p> <p>(and "Controls" and "Controlled" shall be construed accordingly);</p>
Correction Plan	the Operator's plan for the resolution of any non-conformities in any Deliverable to be agreed in accordance with Schedule 3 (Implementation);
CRF	Change Request Form (as set out in Schedule 7)
Critical Services	the Services set out in paragraph 2 of Schedule 2 (Service Specification);
Crown	means Queen Elizabeth II and any successor;
Crown Body	any department, office or agency of the Crown;
Crown Servant	the meaning set out in section 12 of the Official Secrets Act 1989;
Data Controller	the meaning set out in section 1(1) of the DPA;
Data Processor	the meaning set out section 1(1) of the DPA;
Data Subject	the meaning set out in section 1(1) of the DPA;

Data Subject Request	a Subject Access Request or other request or objection received from a Data Subject under the DPA;
Database	any database or record whether in electronic or print form that contains or incorporates the Authority's Data, including the rights in or to the database developed and supplied by the Operator to the Authority in accordance with this Agreement, and including the EPC Register and Energy Assessor Register;
Deemed Material Default	a Default so designated in this Agreement which entitles the Authority to terminate this Agreement or any of the Services in accordance with Clause 38 including at Paragraphs 4.10.2 and 7 of Schedule 4 (Performance Management), Paragraph 9.1.2 of Schedule 10 (Disaster Recovery) and Paragraph 2.2 of Schedule 13 (Security);
Default	any breach of a Party's obligations under this Agreement or any act or omission, negligence or statement of either Party, its employees, agents or sub-contractors or its sub-contractors' employees or agents in connection with or in relation to this Agreement and in respect of which such Party is liable to the other;
Default Notice	the meaning ascribed to it Paragraph 4.6 of Schedule 4 (Performance Management);
Delay	the period of time by which the implementation of the Services by reference to the Implementation Plan is delayed arising from a failure to Achieve a Milestone;
Delay Payments	the amounts payable by the Operator to the Authority in respect of a Delay and specified in Schedule 3 (Implementation);
Deliverable	any output which may be procured, created, developed or modified by or on behalf of the Operator during the performance of the Services, whether solely or jointly by the Operator with others and including an output which is required to be delivered by the Operator at a Milestone Date;
Deposited Software	the Software set out in Schedule 17 (Software), the Source Code of which is to be placed in escrow;
Disaster	the meaning ascribed to it in Schedule 10 (Disaster Recovery);
Disaster Recovery Plan	the meaning ascribed to it in Schedule 10 (Disaster Recovery);
Disaster Recovery Services	the group of Services to be provided by the Operator in accordance with the Disaster Recovery Plan and Schedule 10 (Disaster Recovery) which may involve the provision of relevant Services by alternative means and any other services required to restore the Services to normal running;
Dispute Resolution Procedure	the escalation and dispute resolution procedure set out in Clause 36;
Documentation	descriptions of the Services and Service Levels, technical specifications, user manuals, operating manuals, process definitions and procedures, and all such other documentation as: <ul style="list-style-type: none"> (a) is required to be supplied by the Operator to the

Authority under this Agreement;

- (b) is required by the Operator in order to provide the Services; or
- (c) has been or shall be generated for the purpose of providing the Services;

Domain Names

The domain names purchased and registered by the Operator on the Authority's behalf, including but not limited to:

epcregister.cc
epcregister.gb.com
epcregister.tv
epcregister.uk.com
epcregister.biz
epcregister.com
epcregister.eu
epcregister.info
epcregister.net
epcregister.me.uk
epcregister.org.uk
epcregister.co.uk
epcregister.org
hcrregister.cc
hcrregister.gb.com
hcrregister.tv
hcrregister.uk.com
hcrregister.biz
hcrregister.com
hcrregister.eu
hcrregister.info
hcrregister.net
hcrregister.me.uk
hcrregister.org.uk

DPA the Data Protection Act 1998;

EEA the European Economic Area;

Effective Date the date of this Agreement;

Eligible Expenditure shall have the meaning ascribed to it in Schedule 6 (Finance);

Energy Assessor An individual who is a member of an accreditation scheme including approved Home Inspectors who are qualified to produce

	EPCs;
Energy Assessors' Register	the consolidated register of Energy Assessors required to be provided by the Operator in accordance with Schedule 2 (Service Specification);
Energy Documents	includes Domestic Energy Performance Certificates and recommendation reports for both existing and newly constructed dwellings;
Energy Model Input Data	the data entered into the energy model to produce one or more of the energy documents;
Enhanced Licence Terms	the licence terms set out in Part 3 of Schedule 17 (Software);
Environmental Information Regulations	the Environmental Information Regulations 2004 (as amended) and any successor(s) thereto;
EPC	an Energy Performance Certificate (EPC) for a residential property that is marketed for sale or rent or is newly constructed;
EPC Register or Energy Performance Certificate Register	the central archive and associated services as set out in the Regulatory Framework;
Escrow Agent	NCC Escrow International Limited, a wholly owned subsidiary of NCC Group plc, or such other escrow agent as the Authority may nominate;
Exit Period	the period during which the Operator is required to comply with obligations pursuant to the Exit Plan and/or Schedule 8 (Exit Plan);
Exit Plan	the exit plan set out in and/or developed in accordance with Schedule 8 (Exit Plan), as updated by the agreement of the Parties from time to time;
Extended Expiry Date	the meaning ascribed to it in Clause 2.3;
Final Preparations Commencement Date	1 April 2007 (i.e. 2 months before Target Service Commencement Date);
Financial Model	the Baseline Financial Model or Re-baselined Financial Model (as the case may be);
FOIA	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice;
Force Majeure Event	the meaning ascribed to it in Clause 29;
Good Industry Practice	using standards, practices, methods and procedures conforming to Law and exercising that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in providing a similar type of service under the same or similar circumstances;
Government	the duly elected government for the time being during the reign of the Crown and/or any department, committee, office, servant or officer of such Government;

Hardware Order Date	January 2007 (i.e. two months before milestone for System Delivered on Dedicated Hardware);
HCR	a Home Condition Report and/or an Energy Performance Certificate (EPC) for a residential property marketed for sale with vacant possession (whether voluntary or mandatory in either case);
HCR Register or Home Condition Report Register	the central archive for storing and retrieving Home Condition Reports under Part 5 of the Housing Act 2004 (now repealed)
Home Inspector	an individual certified as such by a Certification or Accreditation Scheme;
Impact Assessment	an assessment carried out by the Operator of the impact on the Services following the submission of a CRF in accordance with the Change Control Procedure;
Implementation Phase	the phase during which the Operator will deliver Implementation, being the period from the Effective Date until the Service Commencement Date;
Implementation Plan	the plan for the implementation of the Services set out in Schedule 3 (Implementation);
Implementation Services	the Services to be performed during the Implementation as set out in the Implementation Plan;
Income	shall have the meaning ascribed to it in Schedule 6 (Finance);
Indexed	the proportion by which the index published in Table 4.4 (excluding mortgage interest payments) of Focus on Consumer Price Indices published monthly by the Office of National Statistics (or, failing such publication, or in the event of a fundamental change to the index, such other index as is agreed or determined pursuant to the Dispute Resolution Procedure) has increased over the most recent 12 month period for which such index is available when the indexation is performed
Information	the meaning ascribed to it in section 84 of FOIA;
Insolvency Event	the meaning ascribed to it in Clause 38.1.5;
Intellectual Property, Intellectual Property Rights or IPRs	<ul style="list-style-type: none"> (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information; (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and (c) all other rights having equivalent or similar effect in any country or jurisdiction;
IPR Claim	any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to provide the Services or as otherwise provided by the

	Operator (or to which the Operator has provided access) to the Authority in the fulfilment of its obligations;
Key Personnel	those people listed in the Annex to Schedule 11 (Key Personnel);
Know How	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the Operator's or the Authority's possession before this Agreement;
Law	<ul style="list-style-type: none"> • any statute, enactment, order, regulation and other similar instrument, by-law, obligation of the European Community, ordinance or subordinate legislation in force from time to time to which a Party is subject; • the common law and the law of equity as applicable to the Parties from time to time; • any binding court order, judgment, decree or requirement; • any applicable industry code, policy or standard enforceable by law; or • any applicable direction, guidance, policy, rule or order that is binding on a Party and that is made or given by any regulatory body (including without limitation the Financial Services Authority) having jurisdiction over a Party or any of that Party's assets, resources or business, including but not limited to any local or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the National Assembly of Wales, <p>in any jurisdiction that is applicable to this Agreement;</p>
Lodgement Fee	means the fees chargeable by the Operator to Accreditation Schemes in respect of the successful lodging of an EPC;
Long-stop Date	in respect of a Milestone, the date identified in Schedule 3 (Implementation) as being the long-stop date for successfully achieving the Milestone;
Losses	<p>any reasonably foreseeable loss, harm, damage, claims, demands, costs, charges and liabilities of every description reasonably incurred including legal expenses, disbursements and interest and for the avoidance of doubt shall include:-</p> <ul style="list-style-type: none"> • additional operational and administrative costs and expenses and the costs of engaging third parties); • (in relation to the Authority) payment of compensation to a third party and the Authority's expenses in settling such third party claim;
Management Information	the information to be provided to the Authority by the Operator in respect of the Services including in particular pursuant to Schedule 5 (Management Information);

Material Sub-Contractor	a Sub-Contractor whose obligations under a contract with the Operator are valued in excess of [Text Redacted] per annum or which include the Processing of Personal Data or whose services would be required in the event of a Disaster;
Milestone	an event or task described in the Implementation Plan which, if applicable, must be completed by the relevant Milestone Date;
Milestone Achievement Certificate	the meaning ascribed to it in Schedule 3 (Implementation);
Milestone Date	the date set against the relevant Milestone in the Implementation Plan;
Minor Extension Period	the meaning ascribed to it in Clause 2.4;
NDPB	Non-Departmental Public Body;
New Operator	any service provider that the Authority appoints for any reason to undertake services that replace the Services (or any part of them) when they are no longer provided under the terms of this Agreement;
Non-conformance Report	a report including detail of the reasons of any non-conformities in respect of any Milestone;
Operational Day	any day in an Operational Week;
Operational Hours	0600-2200 on an Operational Day;
Operational Phase	the phase in which the Operator will deliver the Operational Services and commencing from the Service Commencement Date;
Operational Services	the Services to be provided during the Operational Phase by the Operator to meet the Service Specification;
Operational Week	Monday to Saturday (inclusive);
Operator's Background IPRs	<p>(a) Intellectual Property owned by the Operator before the Effective Date, for example those subsisting in the Operator 's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Operator's Know-How or generic business methodologies; and/or</p> <p>(b) Intellectual Property created by the Operator independently of this Agreement,</p> <p>but excluding Intellectual Property owned by the Operator subsisting in the Operator Software;</p>
Operator's Proposal	the consolidated proposal for the provision of the Home Condition Report Register and Associated Consolidated Services dated 30 th July 2006;
Operator Software	software which is proprietary to the Operator, including software which is or will be used by the Operator for the purposes of providing the Services;

Original Expiry Date	the meaning ascribed to it in Clause 2.1.1;
Other Services	the Services set out in paragraph 3 of Schedule 2 (Service Specification);
Parties	the parties to this Agreement which as at the Effective Date shall mean the Authority and the Operator and " Party " shall be construed accordingly;
Personal Data	Authority Data which is personal data that falls within the definition of "data" in section 1(1) of the DPA;
Post Final Preparations Commitment Date Cancellation Fee	means either: (if termination occurs on or after the Final Preparations Commitment Date but before 1 June 2007), the sum of [Text Redacted];or (if termination occurs on or after 1 June 2007), the sum which is set out in the fourth column and fourth row (including the headings row) of the table which is set out in Annex 1 to Schedule 19;
Prior Final Preparations Commitment Date Cancellation Fee	[Text Redacted]
Processing	the meaning set out in section 1(1) of the DPA and " Process " and " Processes " shall be construed accordingly;
Projected Revenues	means the revenues projected by the Baseline Financial Model or Re-baselined Financial Model (as the case may be);
Project Specific IPRs	(a) Intellectual Property Rights in items created by the Operator (or by a third party on behalf of the Operator) specifically for the purposes of this Agreement, and updates and amendments of these items; (b) Intellectual Property Rights arising as a result of the performance of the Operator's obligations under this Agreement; and/or (c) any branding and Domain Names used in connection with the Services and/or Scheme both now and in the future but which shall not include the Operator's Background IPRs or the Specially Written Software;
Re-baselined Financial Model	the Operator's approved financial model following Review;
Registered Users	users who are pre-registered and authenticated by EPC Register;
Regular Report	a report compiled by the Operator in a form specified by the Authority but as a minimum containing the information specified in Schedule 5 (Performance Management) and Schedule 6 (Finance);

Regulatory Framework	shall bear the meaning set out in paragraph 1 of Schedule 2 (Service Specification);
Remediation Plan	a plan to be provided by the Operator in accordance with paragraph 4.1 of Schedule 4 (Performance Management) to address failure to achieve a Service Level;
Replacement Services	services provided by the Authority and/or a New Operator which replace all or part of the Services upon expiry or termination of this Agreement and/or any Services;
Request for Information	a request for information or an apparent request for information under FOIA and/or the Environmental Information Regulations;
Review	the review conducted pursuant to the Review Process;
Review Panel	the panel appointed to carry out the Review;
Review Process	the process set out in Schedule 16 (Review Process);
Revised Milestone Date	any revised date which is set for the Achievement of a Milestone;
Scheme	means the delivery of the operational elements of the Domestic Energy Performance Certificate Register;
Secretary of State	the Secretary of State for Communities and Local Government acting on behalf of the Department for Communities and Local Government;
Service Commencement Date	31 May 2007
Service Credits	the service credits set out in the Annex to Schedule 4 (Performance Management);
Service Levels	the service levels required by the Authority and agreed by the Operator as set out in Schedule 4 (Performance Management) or as otherwise agreed in accordance with the Change Control Procedure;
Service Rectification Plan	the meaning ascribed to it in paragraph 4.7 of Schedule 4 (Performance Management);
Service Supervisor	the Operator's service supervisor appointed in accordance with Clause 10.3.2(a);
Services	the Implementation Services and the Operational Services;
Service Specification	the specification set out in Schedule 2 (Service Specification);
Software	Specially Written Software, Operator Software and Third Party Software as listed in Part 1 of Schedule 17 (Software);
Source Code	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all technical information and documentation necessary for the use, reproduction, modification and enhancement of such software;

Staff	all persons employed by the Operator for the purpose of this Agreement, including without limitation, its employees, agents, consultants, representatives and Sub-Contractors and any and all of the Sub-Contractor's employees, agents and representatives engaged under this Agreement;
Standard	any protocol, standard, policy, code, direction, order or principle to be complied with by the Operator under this Agreement including those set out in Schedule 12 (Policies and Standards);
Standard Licence Terms	the licence terms set out in Part 2 of Schedule 17 (Software);
Sub-Contract	means any contract or agreement or proposed contract or agreement between the Operator and any third party whereby that third party agrees to provide to the Operator the Services or any part thereof or facilities or services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof. For the avoidance of doubt the term "Sub-Contract" shall not be regarded as including any contract or agreement between the Operator and any third party for the provision of equipment, facilities or services necessary for the general discharge of the Operator's business otherwise unrelated to the provision of the Services. The third party to such a Sub-Contract shall be referred to as a " Sub-Contractor ";
Sub-Contractor	a third party directly or indirectly contracted to Operator (including any Material Sub-Contractor) whose services and/or goods are used by the Operator within the Services;
Subject Access Request	a request by a Data Subject under section 7 of the DPA;
Target Service Commencement Date	1st June 2007;
Term	the period from the Effective Date to the date on which this Agreement (as such may be extended) expires or terminates for any reason;
Termination Payment	the payment made in the event of termination for convenience by the Authority pursuant to Clause 38.2 and calculated in accordance with Schedule 19 (Payment on Termination);
Third Party Software	software which is proprietary to any third party other than an Affiliate of the Operator, including the software specified as such in Part 1 of Schedule 17 (Software);
Transactions	means the number of transactions in respect of any Critical Service set out in Schedule 2 (Service Specification);
Unauthorised User	any user who is not registered to access the EPC Register;
Unrecovered Costs	the development costs to date for developing any Specially Written Software within the cost profile agreed and set out in the Financial Model together with any termination costs incurred by the Operator under any of its Sub-Contracts;
Use	(a) with respect to the Standard Licence Terms, the right to load, execute, store, transmit, display and copy (for the

purposes of loading, execution, storage, transmission or display) that Software;

- (b) with respect to the Enhanced Licence Terms for Software, the right to load, execute, store, transmit, display, copy (for the purposes of loading, execution, storage, transmission or display), modify, adapt, enhance, reverse compile, decode, translate, or otherwise utilise that Software; and
- (c) with respect to the Enhanced Licence Terms for Project Specific IPR other than Software, the right to copy, adapt, publish (including on the ICT Environment), distribute or otherwise use any other Project Specific IPR;

Value for Money

the optimum combination of whole-life cost and quality (or fitness for purpose) to deliver the Services and to meet the Service Specification;

Working Day

Monday-Friday inclusive but excluding public and bank holidays in England and Wales;

Year

a period of twelve months from and including the Effective Date.

Schedule 2

SERVICE SPECIFICATION

1. REGULATORY FRAMEWORK

1.1 The Operator must provide the services of the Domestic Energy Performance Certificate Register Operator as required by the following:

1.1.1 Energy Performance of Buildings Directive as may be replaced, consolidated, amended or updated from time to time

1.1.2 The Energy Performance of Buildings (England and Wales) Regulations 2012 (SI 3118/2012) as may be replaced, consolidated, amended or updated from time to time

1.1.3 The Energy Performance of Buildings (England and Wales) Regulations 2012 - Procedural Guidance as may be replaced, consolidated, amended or updated from time to time

("Regulatory Framework")

1.2 In particular, but without prejudice to the generality of Paragraph 1 above, the Operator shall meet the requirements of the Domestic Energy Performance Certificate Register, including the provision of the Critical Services and the Other Services.

1.3 In the case of and to the extent of any conflict, inconsistency or ambiguity between:

1.3.1 the Regulatory Framework;

1.3.2 the Critical Services and/or the Other Services as specified in this Agreement,

the Regulatory Framework shall prevail.

2. CRITICAL SERVICES

1.1	Energy Performance Certificate Registration
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The Energy Performance Certificate Registration process allows the Energy Performance Certificate Registrar to register an EPC in the central Domestic Energy Performance Certificate Register. Three EPC Registration Methods will be available:

Level 3: A computer-to-computer interface

Level 2: A web-based service allowing manual uploading of EPCs

Level 1: Postal registration of EPCs in electronic format

Normal day-to-day registration will be via level 3, although it is recognised that only Level 2 registration may be possible during the Implementation Phase. It is possible that some Local Registrars in small Accreditation Schemes may wish to continue using the Level 2 method, whilst larger Accreditation Schemes will wish to move to Level 3 registration as soon as their systems have been developed.

Level 1 registration will only be available if Levels 3 and 2 have failed, and will only exist as a contingency approach.

1.2	Change Energy Performance Certificate Status
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The Change Energy Performance Certificate Status process allows the Authorised User to request that the Status of an Energy Performance Certificate is updated from one Status to one of the three permitted status codes of – “Entered”, “Under Investigation” or “Not for

Issue”.

1.3	Retrieve Energy Performance Certificate
	The Retrieve Energy Performance Certificate Registration process allows an Unregistered User, Mortgage Lender or other user to retrieve a copy of the Energy Performance Certificate using the Report Reference Number from the Accreditation Scheme Local Energy Performance Certificate Register via a single central portal service.
1.4	Search Energy Assessor Register Index
	<p>The Search Energy Assessor Register Index allows an Unregistered User to search the Energy Assessor Register and identify one or more Energy Assessors that meet defined criteria.</p> <p>As well as the request / response messages the Search Energy Assessor Register Index is also required as an interactive web-page that allows entry of the criteria and displays the results of the search.</p>
1.5	Update consolidated Energy Assessor Register
	The Update Consolidated Energy Assessor Register process consolidates the Energy Assessor Register Indexes maintained by each Accreditation Scheme into a single Energy Assessor Register used to support the Search Energy Assessor Register Index service that allows the creation of a unique assessor link for individual Energy Assessors across the England and Wales and Northern Ireland Registers.
1.6	Lookup Property UPRN
	<p>This is an interactive service that will allow the user to search the database with partial Address details to identify the Property that the Energy Performance Certificate relates to.</p> <p>The facilities available for searching are dependent on the underlying data-set that is licensed</p> <p>From a successful search the user either retrieves the Unique Property Reference Number (UPRN) that uniquely identifies the Property of interest or requests a “Missing” Address to be added</p>
1.7	Validate Property UPRN
	The Validate Property UPRN service allows the service invoker to validate that the UPRN and Address details provided for an Energy Performance Certificate match each other.
1.8	Add “Missing” Address or Property
	The service allows the user to interactively request that a “Missing” Address or Property is added to the Address & Property Database by entering the required details into a web-site and receiving confirmation of the Address or Property sometime later.
1.9	EPCs for both Existing and Newly Constructed Dwellings
	Provide and maintain processes for ensuring that EPCs for both existing and newly constructed dwellings can continue to be lodged onto the Domestic EPC Register. An EPC for an existing dwelling will be lodged using the approved version of Reduced data Standard Assessment Procedure (RdSAP) and for a newly constructed dwelling using the approved version of Standard Assessment Procedure (SAP) that is in use at the time at which it is lodged.
1.10	Welsh Language Translations
	Provide Welsh language translations for all public facing EPC Register website pages and energy documents lodged onto or generated by the Domestic EPC Registers.

1.11	Access for Enforcement Officers
Provide a web-based process to allow Enforcement Officers (officers employed by Local Weights and Measures Authorities) to have full access to information relating to Energy Documents stored on or generated by the Domestic Register for the purposes of monitoring compliance with the requirements of the Energy Performance of Buildings (England and Wales) Regulations 2012.	
1.12	Northern Ireland
Provide and maintain separate Domestic EPC register services in Northern Ireland for both SAP and RdSAP EPCs and maintain processes to ensure that EPCs for buildings in Northern Ireland cannot be lodged on the England and Wales Domestic EPC Registers.	
1.13	Generate EPCs at Point of Retrieval
Provide and maintain a process whereby the PDF for each set of EPC data that is entered onto the Domestic EPC Register is generated at the point of retrieval from the underlying XML data submitted by the Energy Assessor and that the EPC can be updated to include Green Deal finance information that is provided by a Green Deal provider or equivalent organisation and updated from time to time.	
1.14	EPBD Helpdesk
Provide and maintain an EPC Public Enquiry Help Desk to implement the following services for the Domestic & Non Domestic EPC Registers for England & Wales including: <ul style="list-style-type: none"> • Provision of an EPC Public Enquiry Help Desk to the general public • Implementation of an EPC Public Enquiry Help Desk portal via the EPC Registers websites 	

3. OTHER SERVICES

3.1 Change Management

The Operator will define and publish a Change Management process to be agreed with the Authority and act as the Authority's agent to manage any changes to all sections of the Energy Performance Certificate Technical Standards ("**Technical Standards**") that pertain to the operation of the EPC Register.

As at the date of this Agreement, the agreed Change Management Process is the document titled "HCR Register Change Management ProcessV5" dated 10th November 2006.

The decision-making point of whether a requested change will be implemented or not remains with the Authority as the owner of the Technical Standards, but other aspects of the Change Management process will be carried out by the Operator which may include:

- Managing the issuing logging process on behalf of the Authority
- Liaison with key industry stakeholders, such as Accreditation Schemes, for impact analysis of proposed changes.
- Coordinating implementation of agreed changes.
- Setting timescales for changes and the implementation of those changes

3.2 IT Governance

The Operator is responsible for governing the Technical Standards on behalf of the Authority and assuring industry adherence to them.

As part of the IT Governance responsibility the Operator will:

- Provide advice on the correct implementation or interpretation of the published Technical Standards.
- Agree standards with the Authority and issue to the Accreditation Schemes and stakeholders copies of the standards produced by the Authority.
- Quality assure and version control XML schemas produced by the Operator and issue to the Accreditation Schemes and stakeholders.
- Monitor activity against the Energy Performance Certificate Register to ensure adherence to the published standards and consistency of use across the industry. For the avoidance of doubt, this is separate to any Energy Assessor Quality Assurance activity carried out on behalf of an Accreditation Scheme which shall not be the Operator's responsibility.

4. **OPERATIONAL REQUIREMENTS**

This section outlines the general policies and data management requirements that the Operator is expected to adhere to.

4.1 **User Authentication & Authorisation**

The majority of the interactions, such as retrieving an Energy Performance Certificate, are low risk transactions that do not require any special considerations.

However because of the legal standing of an Energy Performance Certificate any data maintenance activity must operate in a secure environment. Consequently no-one other than Registered Users must be able to gain access to the RAW XML data and modify the state of the Energy Performance Certificate Register and for all operations carried out by those Registered Users must be authenticated when the service is invoked.

Authentication must be a certificate or token based approach to allow for mass deployment of client applications such as Automated Valuation Models by Mortgage Lenders and Energy Performance Certificate software for Energy Assessors.

It must be possible to ensure that any message that purports to be from a particular Registered User or source is in fact from that Registered User or source.

4.2 **Back-Up & Recovery**

Operating as a "no-loss" data environment it is essential to ensure that all the Energy Performance Certificates in the Energy Performance Certificate Register are regularly backed-up to secondary storage – tape, CD, etc – to protect the data from loss or corruption.

There are no special considerations for back-up and recoverability of the Energy Performance Certificate Register over and above the normal requirements for protecting the data. The Operator shall provide:

- a schedule of back-ups detailing frequency of back-up, recycling of back-up media, back-up storage etc;
- clear step-by-step procedures to follow should a back-up need to be restored; and
- regular testing of the back-up copies to ensure integrity of the recovered data.

4.3 **Data Archiving and Retention**

The Energy Performance Certificate is to be retained as a working document for 15 years.

The data archiving process is not of immediate importance, however, at the time that archiving becomes significant all related information such as the Energy Assessor Register, the Energy Performance Certificate Index and Addressing data is to be retained for an equivalent period to ensure consistency and integrity across the entire data domain.

4.4 **Resiliency & Availability**

The Energy Performance Certificate Register and its processes must be available so that any organisation that relies upon it to carry out their own processes is able to conduct their business without delay or obstruction.

The Availability and Responsiveness requirements are as detailed in the Regulatory Framework and subject to a Service Credit mechanism as described in Schedule 4 (Performance Management)

To provide clarity:- Where the message is passed through to another party then any response or availability requirements for that 3rd party are not included in the metrics defined here.

4.5 **Operational Disaster Recovery**

Without prejudice to the generality of Schedule 10 (Disaster Recovery), a standby system should be in place allowing for an automatic switchover in the event the main system malfunctions or becomes unavailable, thus providing for minimal system outage. This transition should be transparent to the outside world and invoking the Disaster Recovery Plan should take no longer than **start of business the following day**.

It is the responsibility of the Operator to develop and agree acceptable and cost effective procedures for disaster recovery that minimises the impact of any major system outage on the housing market. This will be carried out in line with the approach described in Schedule 10 (Disaster Recovery).

4.6 **User Acceptance Test Environment**

Provide and maintain UAT (User Acceptance Testing) Environments to include testing of live code based on the current approved versions of SAP and RdSAP to enable industry to continue software development and fix bugs in a "like live" environment.

4.7 **Management Information System**

Provide and maintain management information (MI) reporting via a data warehouse for the following:

1. England and Wales Domestic EPC Registers
2. Northern Ireland Domestic EPC Register

4.8 **Public Facing Information**

Provide, maintain and display information on public facing web pages for the England and Wales Domestic EPC Register including high level, aggregated Domestic EPC Register Lodgement Statistics, Accreditation Scheme Annual Reports, "Total Lodgement Numbers", "Frequently Asked Questions" and a "Latest News Page" and "Ticker". Provide similar information for the Northern Ireland Domestic EPC Register public facing web pages except for "Total Lodgement Numbers", "Latest News Page" and "Ticker"

4.9 **Duplicate Addresses**

Develop, implement and maintain a procedure for managing duplicate addresses as follows:

When a new address is added which has already been manually entered (at least once):

- If there is only one occurrence, then the existing address record is deactivated, and its UPRN is given to the new address record.
- If there is more than one occurrence, the existing record with the highest UPRN is selected and deactivated, and its UPRN is given to the new address record. All other matching address records without reports are deactivated. All other matching address records with reports are noted and their details logged in a new table as being duplicate addresses with reports.

4.10 **EPC Adviser Tool**

Develop, deploy and maintain the EPC Adviser Tool which allows members of the public to model the effect of implementing various recommendations from an EPC, provide management information about its use and introduce a “news ticker” for people using the adviser tool.

4.11 **Address Matching**

Upgrade and thereafter maintain the Domestic Register address matching servers to include NYB & Business Names databases and increase the frequency of updates to Monthly.

4.12 **EPBD Support**

Consolidate the Letting, Managing and Administration of DCLG’s Existing EPBD Support Contracts for the range of documents lodged onto both the domestic and non-domestic Registers into the services provided under the EPC Register contracts (Operational Requirements)

4.13 **E-Mail Traffic**

Deploy processes to ensure the monitoring and traceability of incoming and outgoing Domestic and Non Domestic Register e-mail traffic.

4.14 **Assessor Information**

Develop and implement a process for maintaining up to date information about energy assessors including a notification system that will be controlled by the EPC Register Management Information System platform, to distribute notifications of various changes in assessor status, to each accreditation scheme with which the assessor is a member and create and maintain a new assessor domain object within the schema to be used exclusively for uploading assessor information. The assessor information required when an EPC is lodged will remain unchanged.

4.15 **Welsh Government**

Provide the Welsh Government with access to the MIS reports available at www.centraldatastore.com. (Operational Requirements)

4.16 **Making EPC Data Publicly Available**

Develop, implement and maintain the systems and processes needed to make EPC Data Publicly Available. (Operational Requirements)

4.17 **Quality Assurance Flags**

Introduce and maintain a system to enable Accreditation Schemes to flag individual EPCs that have been subject to Quality Assurance checks. (Operational Requirements)

4.18 **Home Condition Reports**

The Domestic EPC Register will continue to retain copies of Home Conditions Reports which were created and lodged as a result of the relevant provisions of the Housing Act 2004 (now repealed) and provide a copy to the owner of the building to which it relates upon request.

Schedule 3

IMPLEMENTATION

1. INTRODUCTION

- 1.1 This Schedule sets out the respective responsibilities of Operator and the Authority in respect of the Implementation Phase.
- 1.2 This Schedule sets out, for each of the Services:
 - 1.2.1 the implementation acceptance procedures associated with the Implementation Phase (paragraph 2 below);
 - 1.2.2 the Deliverables associated with the Implementation Phase (as detailed in Table 1 below);
 - 1.2.3 details of Service Credits applicable during the Implementation Phase (paragraph 4 below);
 - 1.2.4 the generic and specific responsibilities of Operator in respect of the Implementation Phase (paragraph 5.1 below)
 - 1.2.5 the generic and specific responsibilities of the Authority in respect of the Implementation Phase (paragraph 5.1.2(a) below)
 - 1.2.6 This Implementation Plan will be amended by the parties under the Change Control Procedure if requirements change.

2. IMPLEMENTATION ACCEPTANCE PROCEDURES

- 2.1 The acceptance procedure in respect of each of the Milestones is as follows:
 - 2.1.1 Type A – documentation from the Operator formally reviewed against Schedule 18 (Documentation Deliverables) and accepted by the Authority;
 - 2.1.2 Type B – witnessing of successful testing of component of a proposed Implementation Service has been completed; and/or
 - 2.1.3 Type C – documentation formally published by the operator to the Accreditation Schemes which complies with an agreed product description.
- 2.2 The Authority shall provide written confirmation to signify formal acceptance of a Milestone.

3. MILESTONES

Unless noted in Table 1, the Implementation Service to be implemented as part of the Dry-Run is the Operational Service as set out in Schedule 2 (Service Specification).

Table 1

Implementation Milestone	Applicable Acceptance Procedure	Milestone Date	Definition Of Deliverable⁽¹⁾
Creation of UPRN (includes address lookup)	Type B	27 October 2006	As per Schedule 2 (Service Specification)

Lodgement of PDF	Type B	27 October 2006	As per Schedule 2 (Service Specification)
Retrieval of PDF	Type B	27 October 2006	As per Schedule 2 (Service Specification)
Validation of data item for registration purposes (EPC)	Type B	27 October 2006	As per Schedule 2 (Service Specification) Delivered on 27/10/06 but switched off as dependent on Accreditation Scheme sending data to be checked.
Change EPC status	Type B	27 October 2006	As per Schedule 2 (Service Specification) Delivered but switched off as Accreditation Scheme dependent.
Add new address information	Type B	30 January 2007	As per Schedule 2 (Service Specification) Delivered 27/10/06 but disabled until January 2007
Set up and search EA register	Type B	27 October 2006 27 October 2006	As per Schedule 2 (Service Specification) Delivered 27/10/06 but disabled as dependent on Accreditation Schemes sending data.
Update consolidated EA register for automated feed from AS	Type B	Within 3 weeks of agreeing standards	As per Schedule 2 (Service Specification) Not specified yet and depending on Accreditation Schemes. Can be provided within 3 weeks of agreeing specification and standards.
Retrieval functionality (AVM interface XML data for mortgage lenders. List of relevant reports for property)	Type B	27 October 2006	As per Schedule 2 (Service Specification) Delivered on 27/10/06 but dependent on mortgage lenders.
Facilities for Welsh translation	Type B	15 February 2007	As per Schedule 2 (Service Specification)
Business Continuity Test on shared infrastructure	Type B	15 th January 2007	In Business Continuity Strategy
All Operational services implemented	Type B	30 th March 2007	
Business Continuity Test on dedicated hardware	Type B	15 th March 2007	In Business Continuity Strategy
System implemented on dedicated hardware	Type B	30 th March 2007	

Table 2

Milestone	Applicable Acceptance Procedure	Sign Off By:	Definition Of Deliverable
Documentation			
Implementation Strategy	Type C	30 December 2006	Schedule 18 -Documentation Deliverables
Transition Strategy	Type A	30 December 2006	Schedule 18 -Documentation Deliverables
Implementation Plan	Type C	30 January 2007	Schedule 18 -Documentation Deliverables
Business Continuity Strategy	Type C	30 January 2007	Schedule 18 -Documentation Deliverables

Business Continuity Design	Type C	28 February 2007	Schedule 18 -Documentation Deliverables
Commercial Strategy	Type C	30 January 2007	Schedule 18 -Documentation Deliverables
Commercial Design	Type C	28 February 2007	Schedule 18 -Documentation Deliverables
Operator Test Logs	N/A	28 February 2006	Schedule 18 -Documentation Deliverables
EPC Register Operator Stakeholder Management Plan	Type A	30 December 2006	Schedule 18 - Documentation Deliverables
EPC Register Operator Communication Plan	Type C	30 January 2007	Schedule 18 - Documentation Deliverables

4. IMPLEMENTATION PHASE SERVICE CREDITS

4.1 For each week a documentation Milestone (as set out in Table 2 above) is delivered late, one (1) Service Credit will be charged for that week.

4.2 In respect of the Implementation Phase, no more than three (3) Service Credits can be charged in any Operational Week.

5. RESPONSIBILITIES DURING ACCEPTANCE PROCEDURES

5.1 Operator's Responsibilities

5.1.1 Type A:

- (a) Submission of draft documentation 4 weeks prior to milestone deadline with an invitation for the Authority to formally comment
- (b) Submission of final draft of documentation 1 week prior to the relevant Milestone Date with the list of the Authority's comments and what actions were taken to clear them, and a request for sign-off

5.1.2 Type B:

- (a) At least 4 weeks in advance of witnessed acceptance tests, to invite the Authority and the Accreditation Schemes to be present at witnessed acceptance tests and to provide the test scripts that are to be witnessed and a précis of the test data
- (b) To demonstrate the test scripts being run against the system using the test data

5.1.3 Type C: Documentation formally published to the Accreditation Schemes which complies with an agreed Product Description

- (a) To publish the draft documentation 4 weeks prior to the relevant Milestone Date with an invitation for the Accreditation Schemes to formally comment;
- (b) Submission of final draft of documentation 1 week prior to the relevant Milestone Date with the list of the Accreditation Schemes comments and what actions were taken to clear them, and a request for sign-off
- (c) To address any major issues raised by the Authority before publication
- (d) Publication on the relevant Milestone Date

5.2 The Authority's Responsibilities

5.2.1 Type A:

- (a) To comment on draft documentation within 2 weeks of receipt
- (b) To approve a document if all these comments have been satisfactorily actioned in the final draft received

5.2.2 Type B:

- (a) To accept an invitation to the witnessed acceptance tests and provide comments on the test scripts the précis of the test data to be used at least 2 weeks in advance.
- (b) To attend the witnessed tests

5.2.3 Type C:

- (a) To liaise with the Accreditation Schemes to ensure that they are satisfied with progress on the draft document
- (b) To inform the Operator if there are any major issues arising at least 2 weeks in advance of the relevant Milestone Date

6. **IMPLEMENTATION DELAYS - GENERAL PROVISIONS**

6.1 If, at any time, the Operator becomes aware that it will not (or is unlikely to) Achieve any Milestone by the Milestone Date it shall immediately notify the Authority of the fact of the Delay and summarise the reasons for it.

6.2 The Operator shall, as soon as possible and in any event not later than 10 days from and including the date of the initial notification under Paragraph 6.1, give the Authority full details in writing of:

6.2.1 the reasons for the Delay;

6.2.2 the consequences of the Delay; and

6.2.3 if the Operator claims that the Delay is due to an Authority Cause, the reason for making that claim.

6.3 Whether the Delay is due to an Authority Cause or not, the Operator shall deploy all additional resources, and take all reasonable steps to eliminate or mitigate the consequences of the Delay.

6.4 Where the Operator considers that a Delay is being caused or contributed to by an Authority Cause the Authority shall not be liable to compensate the Operator for Delays to which Paragraphs 8 or 9 apply unless the Operator has fulfilled its obligations set out in, and in accordance with, Paragraph 6.2.

6.5 Any disputes about or arising out of Delays shall be resolved through the Dispute Resolution Procedure. Pending the resolution of the Dispute both parties shall continue to work to resolve the causes of, and mitigate the effects of, the Delay.

Correction Plan

6.6 The Operator shall submit a draft Correction Plan where:

6.6.1 it becomes aware that it will not Achieve a Milestone by the Milestone Date; or

6.6.2 it has failed to Achieve a Milestone by its Milestone Date, whether that failure arises because of:

- (a) a failure to submit any or all Deliverables in respect of that Milestone;
- (b) a failure to successfully to complete the Milestone; or
- (c) any non-conformance in respect of that Milestone.

6.7 The draft Correction Plan shall identify the issues arising out of the Delay and the steps that the Operator proposes to take to Achieve the Milestone in accordance with this Agreement.

6.8 The draft Correction Plan shall be submitted to the Authority for its approval as soon as possible and in any event not later than 10 days (or such other period as the Authority may permit and notify to the Operator in writing) from and including the date of the initial notification under Paragraph 6.1 or the issue of a Non-conformance Report.

6.9 The Authority shall not withhold its approval of a draft Correction Plan unreasonably. If the Authority does not approve the draft Correction Plan it shall inform the Operator of its reasons and the Operator shall take those reasons into account in the preparation of a further draft Correction Plan, which shall be resubmitted to the Authority within 5 Working Days from and including the date of the rejection of the first draft.

6.10 The Operator shall comply with its Correction Plan following its approval by the Authority.

7. DELAYS DUE TO OPERATOR DEFAULT

7.1 If a Milestone is not Achieved due to an Operator Default, the Authority shall issue a Non-conformance Report to the Operator setting out in the reasons for the relevant Milestone not being Achieved and the consequential impact on any other Milestones. The Authority will then have the options set out in Paragraph 7.2.

7.2 If a Milestone is not Achieved due to an Operator Default, the Authority may at its discretion (without waiving any rights in relation to the other options) choose to confirm acceptance of the Milestone conditional on the remediation of the non-conformities of the Deliverable, in accordance with an agreed Correction Plan, and the Operator shall indemnify and shall keep the Authority indemnified in respect of any Losses suffered by the Authority as a result.

7.3 In respect of any delay not covered by Paragraph 7.2, the Authority reserves its rights. Otherwise the indemnity is the primary remedy for the Operator's failure to Achieve the relevant Milestone Date and it shall be the Authority's exclusive financial remedy except where:

7.3.1 the Authority is otherwise entitled to or does terminate this Agreement for the Operator's Default or for Force Majeure; or

7.3.2 the Milestone is not Achieved by the relevant Long-Stop Date.

8. DELAYS TO MILESTONES DUE TO AUTHORITY CAUSE

8.1 Without prejudice to Paragraph 6.3 and subject to Paragraph 6.4, if the Operator would have been able to Achieve the Milestone by its Milestone Date but has failed to do so as a result of an Authority Cause the Operator will have the rights and relief set out in this Paragraph 8.

8.2 The Operator shall:

8.2.1 subject to Paragraph 8.3, be allowed an extension of time equal to the Delay caused by that Authority Cause;

8.2.2 not be in breach of this Agreement as a result of the failure to Achieve the relevant Milestone by its Milestone Date;

8.2.3 have no liability for any indemnity under Paragraph 7.2 above in respect of the relevant Milestone to the extent that the Delay results directly from the Authority Cause; and

8.2.4 be entitled to have any losses and/or expenses as set out in Paragraph 8.4 taken into account at the next Review in accordance with the Review Process.

8.3 The Authority Contract Manager shall:

8.3.1 consider the duration of the Delay, the nature of the Authority Cause and the effect of the Delay and the Authority Cause on the Operator's ability to comply with the Implementation Plan;

8.3.2 consult with the Operator Contract Manager in determining the effect of the Delay;

8.3.3 fix a Revised Milestone Date; and

8.3.4 if appropriate, make any consequential revision to subsequent Milestones in the Implementation Plan

8.4 If the Operator has incurred any direct loss and/or expense as a result of a Delay due to an Authority Cause, such loss and/or expense shall be taken into account at the next Review in accordance with the Review Process. The Operator shall provide the Authority and the Review Panel with any information they may require in order to assess the validity and extent of loss and/or expense.

8.5 Any Change that is required to the Implementation Plan pursuant to Paragraph 8.3 or the Charges pursuant to Paragraph 8.4 shall be implemented in accordance with the Change Control Procedure. If the Operator's analysis of the effect of the Delay in accordance with Paragraph 6.2 permits a number of options, then the Authority shall have the right to select which option shall apply.

8.6 The Authority shall not delay unreasonably when considering and determining the effect of a Delay under this Paragraph 8 or in agreeing a Change pursuant to the Change Control Procedure.

8.7 The Operator shall and shall procure that each Sub-contractor shall take and continue to take all reasonable steps to eliminate or mitigate any losses and/or expenses that it incurs as a result of an Authority Cause.

9. **DELAYS NOT DUE TO ONE PARTY**

Without prejudice to Paragraph 6.3 and subject to Paragraph 6.4, where a Delay is attributable in part to the Operator's Default and in part to an Authority Cause the Parties shall negotiate in good faith with a view to agreeing a fair and reasonable apportionment of responsibility for the Delay. The parties agree that Delay Payments shall be recoverable subject to reductions to reflect the extent to which the Authority has contributed to the Delay. If necessary, the parties may escalate the matter in accordance with the Dispute Resolution Procedure.

Schedule 4

PERFORMANCE MANAGEMENT

1. PURPOSE

- 1.1 This Schedule describes the performance management regime which is to be adopted by the Parties in relation to this Agreement. The performance management regime is to be used to measure the Operator's compliance with its obligations under this Agreement, including in the delivery of the Services.
- 1.2 In addition to the measurements set out in this Performance Management Schedule, other processes shall be used by the Authority for measuring the Operator's performance including exercise of the audit rights set out in this Agreement.

2. COMPLIANCE WITH SERVICE LEVELS

During the Term, the Operator shall meet or exceed the Service Levels set out in the Annex to this Schedule and take corrective action in the event of any failure to do so.

3. RE-PERFORMANCE

If any part of the Services is not performed in accordance with this Agreement then the Operator shall promptly re-perform or replace the relevant part of the Services without additional charge to the Authority.

4. REMEDIATION AND RECTIFICATION

Breach of Individual Service Levels

- 4.1 Where the Operator incurs Service Credits in respect of any Service Level, the Operator shall, unless notified otherwise by the Authority, prepare a written rectification plan ("**Remediation Plan**") in respect of the failure to meet that Service Level. The first Remediation Plan issued to the Authority by the Operator in any Contract Year shall be signed by the signatory Level 1 set out in paragraph 5 of this Schedule. If a second Remediation Plan is issued to the Authority by the Operator in the same Contract Year this shall be signed by the signatory Level 2 set out in paragraph 5 of this Schedule and so forth. Remediation Plans shall provide the following information:-
- 4.1.1 identification of the scale of the problem; and
- 4.1.2 the steps that the Operator proposes to take to rectify or improve its performance including all failures to meet Service Levels; and
- 4.1.3 a statement as to how success in implementing the Remediation Plan will be measured; and
- 4.1.4 a statement as to the timescales within which the Remediation Plan will be implemented; and
- 4.1.5 such other information as may be reasonably required by the Authority.
- 4.2 The Remediation Plan(s) shall be submitted as part of the Regular Report. The Operator shall make such amendments to the Remediation Plan(s) as may reasonably be requested by the Authority.
- 4.3 The Authority shall approve the Remediation Plan(s) as soon as reasonably practicable but in any event within ten (10) Working Days from and including the date of its submission to the Authority.

- 4.4 As soon as the Authority has approved the Remediation Plan(s), the Operator shall fully implement the Remediation Plan(s) in accordance with its terms (including the timescales set out in the Remediation Plan(s)).
- 4.5 If the Operator fails fully to implement any Remediation Plan(s) in accordance with its terms (including timescales) then without prejudice to any other remedy available to the Authority, the Authority may issue a Default Notice.

Default Notices and Repeated Breaches of Service Levels

- 4.6 Without prejudice to the generality of Paragraph 3 above, where the Operator is, in the reasonable opinion of the Authority, in material breach of its obligations under this Agreement (including Remediation Plan(s)) or that the overall level of performance is materially deficient then, without prejudice to any other remedy available to the Authority, the Authority may serve upon the Operator a notice ("**Default Notice**") and the provisions of this Paragraph shall apply.
- 4.7 Where the Authority serves a Default Notice then the Operator shall, unless notified otherwise by the Authority, prepare a written rectification plan ("**Service Rectification Plan**"). The Service Rectification Plan shall be issued to the Authority by the Operator's Level 5 signatory and shall provide the following information:-
- 4.7.1 identification of the scale of the problem; and
 - 4.7.2 the steps that the Operator proposes to take to rectify or improve its performance including all failures to meet Service Levels; and
 - 4.7.3 a statement as to how success in implementing the Service Rectification Plan will be measured; and
 - 4.7.4 a statement as to the timescales within which the Service Rectification Plan will be implemented; and
 - 4.7.5 such other information as may be reasonably required by the Authority.

The Service Rectification Plan shall be part of the Performance Review Report referred to in paragraph 8.2 below. The Operator shall make such amendments to the Service Rectification Plan as may reasonably be requested by the Authority.

- 4.8 The Authority shall approve the Service Rectification Plan as soon as reasonably practicable but in any event within ten (10) Working Days from and including the date of its submission to the Authority.
- 4.9 As soon as the Authority has approved the Service Rectification Plan, the Operator shall fully implement the Service Rectification Plan in accordance with its terms (including the timescales set out in the Service Rectification Plan).
- 4.10 If the Operator fails fully to implement the Service Rectification Plan in accordance with its terms (including timescales) then without prejudice to any other remedy available to the Authority, the Authority may:
- 4.10.1 make such arrangements through another contractor, third party or by itself, to provide and perform the Services in whole or in part to which the Operator is in default. Any expenditure so incurred shall be paid by the Operator to the Authority on demand or may be deducted by the Authority from any sums due or which may become due to the Operator; or
 - 4.10.2 terminate this Agreement pursuant to Clause 38.1.3 as a Deemed Material Default by notice in writing specifying such notice as the Authority considers appropriate in the circumstances.

5. ESCALATION

The Operator's signatory levels shall be as follows:-

Signatory Level	Individual
1	Project Manager
2	Programme Manager
3	Contracts Manager
4	Solutions Managing Director
5	Chief Executive Officer

6. CALCULATION OF SERVICE CREDITS

6.1 The value of one Service Credit is calculated as follows:

(In respect of the period up to 31 May 2008) Total 10 year Projected Revenues x 20% ÷ (number of weeks from the Service Commencement Date to Original Expiry Date x 6)

(In respect of the period from and including 01 June 2008) Total 10 year Projected Revenues x 25% ÷ (number of weeks from the Service Commencement Date to Original Expiry Date x 6)

6.2 In the Operational Phase, no more than 6 Service Credits can be charged in any one Operational Week.

6.3 Service Credits will be calculated 13 times a year, every 4 weeks, (excluding New Year's Day) ("**Measurement Period**").

6.4 Service Credits will be noted in the Financial Model as a deduction against the Operating Expenses and shall be taken into consideration as part of the Review process set out in Schedules 16 (Review Process) and the calculation of any payment on expiry under Schedule 20 (Payment on Expiry).

7. SERIOUS UNDERPERFORMANCE

The Authority shall have the right to terminate the Agreement in accordance with Clause 38.1.3 as a Deemed Material Default if:

7.1.1 the Operator incurs more than 24 Service Credits calculated over any 3 consecutive Measurement Periods; or

7.1.2 a Critical Service has been unavailable for more than 24 hours; or

7.1.3 the following high availability Critical Services ("**High Availability Critical Services**") have been unavailable twice or more for more than 6 hours in any Operational Week:

(a) Energy Performance Certificate and Energy Model Input Data Registration

(b) Retrieve Energy Performance Certificate

(c) Search Energy Assessor Register Index

- (d) Lookup Property Unique Property Reference Number
- (e) Validate Property Unique Property Reference Number
- (f) Provide Welsh language translations of all public facing Domestic register web pages and EPC PDFs
- (g) Access to the Domestic EPC Register for enforcement officers
- (h) Generate EPC PDF at point of retrieval

8. REPORTING OBLIGATIONS

- 8.1 The Operator shall ensure that it has appropriate systems and procedures in place to capture and report on compliance with Service Levels as required by this Schedule.
- 8.2 No later than four (4) weeks of the end of the relevant Measurement Period, the Operator shall submit a performance review report for that Measurement Period ("**Performance Review Report**"), reporting achievement versus Service Levels. Each Performance Review Report must analyse failures and provide a fully costed "Service Rectification Plan" to improve performance. Future reports must report on the progress of Service Rectification Plans.
- 8.3 Joint Performance Review meetings will initially be held every four weeks, then quarterly by agreement. These meetings will agree any necessary Service Rectification Plans, and the allocation of Service Credits towards the costs of rectification at the Operator's own cost. Any Service Credits in excess of the costs of rectification will be taken into consideration at the next Review pursuant to the Review Process.

9. AUTHORISED USER SATISFACTION SURVEYS

- 9.1 The Operator shall undertake, throughout the Term, an agreed programme of regular and ad-hoc Authorised User satisfaction surveys.
- 9.2 The Operator shall, prior to undertaking each survey, consult with the Authority in relation to the questions to be asked in any such Authorised User satisfaction surveys and the sample size of Authorised Users to be surveyed, and incorporate any reasonable suggestions by the Authority in to the format or questions that it uses.
- 9.3 The Operator shall provide the results of all Authorised User satisfaction surveys to the Authority within a reasonable time after the conclusion of survey activity.
- 9.4 The Authority reserves the right to:-
 - 9.4.1 require the Operator to appoint an independent third party to conduct regular or ad-hoc Authorised User satisfaction surveys in place of the Operator. In such event the Operator shall meet the costs of the Authorised User satisfaction surveys conducted by the third party;
 - 9.4.2 impose a Service Level on the Operator with reference to the results of Authorised User surveys.

ANNEX TO SCHEDULE 4

SERVICE LEVELS

Service Levels are calculated as a percentage of both availability and responsiveness across the Transactions processed.

Table 1

Section	Service	Availability	Response time (beginning from the time that the EPC Register receives a request for the service and ending when the EPC Register responds to the request)
1.1	Energy Performance Certificate Registration	High	< 2 minutes on-line / 12 hours off-line
1.2	Change Energy Performance Certificate Status	Medium	< 12 hours
1.3	Retrieve Energy Performance Certificate	High	< 1 minute
1.4	Search Energy Assessor Register Index	High	< 1 minute
1.5	Update Consolidated Energy Assessor Register	Medium	< 8 hours
1.6	Lookup Property Unique Property Reference Number	High	<1 minute per step
1.7	Validate Property Unique Property Reference Number	High	<1 minute
1.8	Add new address details to the EPC Register, once information has been received	Medium	Helpdesk 24 hours service
1.9	Provide Welsh translation once EPC PDF has been generated	High	<1 minute
1.10	Access to the Domestic EPC Register for enforcement officers	High	<2 minutes during an operational week
1.11	Domestic EPC Register for Northern Ireland	High	The same as the England and Wales Domestic EPC Register

1.12	Create unique assessor link for individual assessors registered with more than 1 accreditation scheme	High	<8 hours
1.13	Generate EPC PDF once XML data has been lodged and a register user wants to view the EPC	High	<1 minute

AVAILABILITY REQUIRED

If a High Availability Critical Service included in Table 1 is in failure as indicated in the first column in Table 2 below, the corresponding Service Credits which are set out in the second column of the Table 2 will be charged:

Table 2

Hours in failure in any one Operational Week:	Service Credits
>½ Hour	1
>1 Hour	2
>1 ½ Hours	3
>2 Hours	4
> 2 ½ Hours	5
>3 Hours	6

RESPONSIVENESS REQUIRED

The level of responsiveness as set out in Table 1 above is required for 95% of Transactions for each type of Critical Service in any Operational Week. If this is not achieved, then the following Service Credits will be imposed:

Table 3

%age of Transactions for each type of Critical Service failing to meet responsiveness requirement	Service Credit
>5%	1
>10%	2
>15%	3
>20%	4
>25%	5
>30%	6

OTHER SERVICES

Any failure must be notified in writing to the Authority. Each failure must be categorised as follows:

Category One: any failure that compromises a Critical Service to the extent that more than 5% of Transactions are affected

Category Two: any failure that compromises a Critical Service to the extent that more than 1% of Transactions are affected

Category Three: any failure that compromises a Critical Service to the extent that less than 1% of Transactions are affected

Category Four: failure that compromises Other Services but does not immediately affect Critical Services

Service failures must be rectified within the rectification periods set out in Table 4 below. If Service failures are not rectified within the relevant rectification period, Service Credits will be charged as follows:

Table 4

Category of failure	Rectification Period	Service Credit per Rectification Period
Category One	3 hours	1
Category Two	6 hours	1
Category Three	24 hours	1
Category Four	30 days	1

Schedule 5

MANAGEMENT INFORMATION

1. STANDARD REPORTS

1.1 Standard management information reports shall:

- 1.1.1 have consistent definitions- agreed with the Authority - used throughout and included in each report;
- 1.1.2 have an extract date;
- 1.1.3 will consistently produce same answers when run with the same parameters; and
- 1.1.4 have data which must be accurate and be verifiable.

1.2 Any apparent contradiction with data in other reports must be explained.

1.3 The Operator will provide to the Authority such standard reports as the Authority shall notify to the Operator from time to time and where the Authority varies requirements, the Parties shall use the Change Control Procedure (where relevant).

1.4 In addition to the data and reports required to monitor the Service Levels described in Schedule 4 (Performance Management), the Operator shall collect and hold the following information for analysis in the MI reports:

- 1.4.1 A full copy of the transaction logs must be kept for the life of the report. The most recent three months should be kept on-line but the rest can be archived to secondary storage.
- 1.4.2 Periodic copy of Report Index for each measurement period. This is required both as a full extract and as an update to a previous extract. The full extract will be by specific request as a means of recreating or validating the DCLG copy of the index.
- 1.4.3 Transaction monitoring - for each published service we require: Total number of requests received; Number of successful Requests; Number of failed / rejected Requests. These are to be analysed by Accreditation Scheme (if applicable) and period.
 - For Rejected Requests a sub analysis is required analysing by category of validation failure:
 - Report Header
 - Energy Assessor details (including missing PII details)
 - Address details
 - Structural message errors – missing mandatory data-item, unrecognised element names etc.
 - Energy Performance Certificate data-value error – invalid values, data formats etc.
- 1.4.4 For each service we require an analysis of response time against SLA requirements. The reported figures are total number of requests; %age < SLA lower limit, %age within SLA upper limit, +25%, +50%, +100% of SLA upper limit.
 - For example if SLA requirement requires response in less than 2 minutes then the bands would become <120 seconds, < 150 seconds (25%), 180 seconds (50%), 240 seconds (100%) of the SLA.

- It is the intention to provide a skeleton MS-Excel spreadsheet for the reporting of statistical information
- 1.4.5 As an additional report we require for each service a list of unscheduled outages within the period including start time and end time and reason.
- 1.4.6 Other ad-hoc reporting requirements may be identified as part of the Energy Performance Certificate Register monitoring procedures.
- 1.5 The Operator shall provide the following Management Information reports to the Authority:
- 1.5.1 the Regular Report; and
- 1.5.2 the Performance Review Report
- 1.6 The reports are to be provided on the following basis and frequency:
- 1.6.1 Regular Report on a quarterly basis in each Contract Year; and
- 1.6.2 the Performance Review Report no later than four (4) weeks of the end of the relevant Measurement Period;
- 1.7 The data collected and reported in accordance with Paragraphs 1.5 and 1.6 above shall be monitored and reviewed from time to time and may be changed by mutual agreement between the Parties (through the Change Control Procedure where appropriate).
- 2. GENERAL**
- 2.1 The Authority shall be entitled, upon giving reasonable notice, to request that the Operator compile a report in accordance with the Authority's reasonable instructions.
- 2.2 For the avoidance of doubt, the Operator shall not be in Default of its obligations set out in this Schedule to the extent that it has not received the information required from a third party in order to carry out such obligations.
- 2.3 Additional management information shall be supplied by the Operator on request by the Authority and where relevant the Change Control Procedure shall be used. The Authority shall allow the Operator a reasonable period to test the management information report required and to adequately prepare to provide the management information requested by the Authority. Such management information shall not be included in the weekly/monthly management information report run until the Operator has had a reasonable time to test and prepare.
- 2.4 Ad hoc management information reports are to be supplied by the Operator on request (reasonable timescales to be agreed with the Authority upon receipt of the request) and, where relevant, following the Change Control Procedure.

Schedule 6

FINANCE

1. INTRODUCTION

- 1.1 The Operator shall comply with principles of open book accounting as set out in this Schedule ("**Open Book Accounting Principles**").
- 1.2 The Operator will maintain the Project Account and for the purposes of this Agreement report and account on the basis of UK generally accepted accounting principles ("**UK GAAP**"). Without prejudice to the foregoing, the Project Account will be maintained on a consistent basis throughout the term of this Agreement and will follow the Operator's accounting policies where these are appropriate to the Services provided. In particular, the Project Account shall consistently apply the assumptions and models referred to in the Baseline Financial Model as amended during any previous Review Process.

2. DEFINITIONS

In this Schedule, the following words and phrases shall have the meanings set out below:-

" Eligible Expenditure "	shall bear the meaning set out in paragraph 5 of this Schedule;
" Income "	means the sums received by the Operator in respect of Lodgement Fees;
" Project Account "	shall mean the account maintained in accordance with paragraph 4 of this Schedule.
" Regular Report "	shall bear the meaning set out in Schedule 1;

3. PURPOSE OF OPEN BOOK ACCOUNTING

Open Book Accounting is required to enable the Authority to independently validate the level of margin made by the Operator and to ensure that the provision of the Services provides Value for Money. In this context "Margin" means the extent to which Income exceeds Eligible Expenditure.

4. PROJECT ACCOUNT

- 4.1 The Operator will maintain a separate Project Account that records all income and Eligible Expenditure relating to this Agreement.

5. ELIGIBLE EXPENDITURE

- 5.1 Expenditure incurred in the Project Account will be limited to Eligible Expenditure. The categories of Eligible Expenditure shall be those set out in the agreed Financial Model as per Annex 1 to this Schedule 6.
- 5.2 For the avoidance of doubt, the following cost items do not constitute Eligible Expenditure:
- 5.2.1 recoverable VAT;
 - 5.2.2 Corporation Tax; and

5.2.3 any sum expressed in this Agreement to be "payable by" the Operator, or at "the Operator's cost" or "at no additional charge to the Authority/Authorised User" or other similar expression. For example any sums payable by the Operator under any indemnity in this Agreement shall not be reclaimable as Eligible Expenditure.

6. **PROJECT ACCOUNTING**

6.1 The format of the Project Accounts will be as follows:

6.1.1 Balance Sheet – to report on the EPC Register related assets and liabilities.

6.1.2 Financial Model (Actuals) – updated financial model with true actuals – i.e. transaction levels and salaries and the fully completed back up sheets to include operating expenses.

6.1.3 Financial Model (Forecast) – updated with future projections for the next accounting period – i.e. projected transaction levels based on market trends.

7. **FAMILIARISATION WITH THE CONTRACTOR'S SYSTEMS**

As part of the Open Book Accounting Principles, the Authority should have confidence that the Operator's management information systems and financial systems are understood and are reliable for the intended purpose. As part of these arrangements the Operator shall provide the Authority with details of how their accounting systems will operate in respect of this Agreement and will allow this to be verified by the Authority.

8. **AUDIT ACCESS**

The Operator shall allow the Authority all reasonable access to its records in order to verify the accuracy of the Project Accounts and/or Regular Reports, and the Operator is otherwise subject to the audit requirements set out in this Agreement.

ANNEX 1 TO SCHEDULE 6

BASELINE FINANCIAL MODEL

Annex 1 to Schedule 6 (Baseline Financial Model) is replaced with the following:

[Text Redacted; Financial Model - Seven Pages]

Schedule 7

CHANGE CONTROL PROCEDURE

DEFINITIONS USED IN THIS SCHEDULE

In this Schedule, the following words and phrases shall have the meanings set out below:-

Authority CRF	a Change Request Form completed where a Change is requested by the Authority;
CRF	Change Request Form (Template Form included as Annex 1);
Final signed copy of the CRF	a pdf copy of [Part E] of the Change Request Form that has been approved by the Authority and signed and dated by a duly authorised official in the Authority and served by the Authority on the Operator in accordance with clause 48 of this Agreement;
Financial Consequence	details of the financial consequences of a proposed Change produced in accordance with Paragraph 9.4 below and to be taken into consideration in the Review Process;
Impact Assessment	an impact assessment produced in accordance with Paragraph 9.2 below;
Operator CRF	a Change Request Form completed where a Change is requested by the Operator;
Transition Plan	a plan for the implementation of a Change produced in accordance with Paragraph 9.3 below;

1. PURPOSE

This Schedule sets out the procedures to be used by the Parties in connection with proposed Changes.

2. PRINCIPLES

- 2.1 Implementation of Changes for which there is an agreed mechanism (excluding this Change Control Procedure) set out or referred to in this Agreement shall not constitute Changes to which this Change Control Procedure applies. For the avoidance of doubt, the Change Control Procedure is different from the change management process referred to in 3.1 of Schedule 2 (Service Specification).
- 2.2 The Parties shall conduct discussions relating to proposed Changes in good faith.
- 2.3 The approach to Change Control set out in this amended Schedule 7 is based on the Operator taking responsibility for drafting the terms of any CRF (in accordance with the format specified in this Schedule), whether originated by itself or at the request of the Authority, and subject to the Authority's agreement.

- 2.4 Until such time as a final signed copy of any CRF has been served on the Operator by the Authority, the Operator shall continue to supply the Services in accordance with the Agreement.
- 2.5 Any work undertaken by the Operator, its Staff, Sub-Contractors or agents which has not been authorised in advance by the Authority under paragraph 2.4 and which has not been otherwise agreed in accordance with this Change Control Procedure shall be undertaken entirely at the expense and liability of the Operator.
- 2.6 Any discussions, negotiations or other communications which may take place between the Parties prior to the issue of a final signed copy of the CRF (including the submission of any written communications) shall be without prejudice to the rights of either Party.

3. MINOR CHANGES

- 3.1 The Parties acknowledge that minor variations to this Agreement not giving rise to the requirement for a CRF may be necessary to reflect operational and administrative procedures during the term of the Agreement. The Parties further acknowledge that such minor variations shall be agreed in writing between the Parties' respective Contract Managers.
- 3.2 The Operator shall use reasonable endeavours to incorporate minor variations requested by the Authority within the current specification and budget of the Services and shall not initiate an Operator CRF on the Authority unless in the reasonable opinion of the Operator the change involves a demonstrable material increase to its costs or requires a material change to the Agreement.

4. COSTS OF CHANGES

- 4.1 The provisions of Schedule 16 (Review Procedure) shall apply PROVIDED THAT the Operator's costs in preparing and responding to any CRF shall be borne by the Operator and shall not constitute Eligible Expenditure for the purposes of Schedule 16 (Review Procedure).
- 4.2 It is important that implementation costs are planned 'as late as possible' so as to reduce the sunk costs in case of major changes required (say, from Dry Run Feedback). Therefore, the following shall apply:

Change	Cost Impact for the purposes of Schedule 16 (Review Procedure)
Changes to system requirements prior to Final Preparations Commitment Date	Necessary software redevelopment costs and any termination costs from third-party software and services commitments
Changes to system requirements after Final Preparations Commitment Date but before Hardware Order Date	All above costs plus incidental staff costs (e.g. termination or cross-training costs).
Changes to system requirements after Hardware Order Date	Costs as agreed through Change Control Procedure

5. REQUESTS FOR CHANGE

- 5.1 The Authority shall be entitled to:-
- 5.1.1 request any Change to the Services; and
- 5.1.2 require a Change to the Services from time to time to reflect any Change in Law.

- 5.2 The Operator shall be entitled to require a Change to the Services from time to time to reflect any material Change in Law that has a direct material impact upon the Operator's provision of the Services.
- 5.3 Subject to Paragraph 5.2, the Operator shall only be entitled to request a Change to the Services if such Change:-
- 5.3.1 enhances the Operator's operational effectiveness in providing the Services or takes advantage of technological developments so as to improve the provision of the Services; and
 - 5.3.2 will not increase the overall cost of providing the Services; and
 - 5.3.3 will not have a detrimental effect on the overall quality of the Services.
- 5.4 The Authority may at its absolute discretion reject any request for a Change to the Services or to the Operator's Proposal proposed by the Operator.
6. **AUTHORITY REQUEST FOR CHANGE**
- 6.1 The Operator agrees to take all necessary steps to enable any Change required by the Authority to be implemented and in order to give effect to the Principles specified in paragraph 2 of this Schedule.
- 6.2 If the Authority wishes to request or requires a Change, it shall notify the Operator in accordance with paragraph 6.3 of this Schedule and subject to the provisions of clause 48 of this Agreement.
- 6.3 The Authority shall:
- 6.3.1 set out the Change required in sufficient detail to enable the Operator to complete an Authority CRF and
 - 6.3.2 specify the deadline by which the Operator shall provide to the Authority an Authority CRF (being not less than twenty-one (21) Working Days from and including the date of receipt of the Authority's Request for Change) ("**Response Deadline**").
- 6.4 As soon as practicable, and in any event by the Response Deadline, the Operator shall deliver to the Authority the Authority CRF.
- 6.5 As soon as practicable after the Authority receives the Authority CRF, the Parties shall discuss and agree the issues set out in the Authority CRF. In such discussions:
- 6.5.1 the Authority may give instructions to the Operator to enable it to modify the Authority CRF in which case the Operator shall, as soon as practicable and in any event within fourteen (14) Working Days from and including the date of receipt of such modification, notify the Authority of any consequential changes that the Operator wishes to make to the Authority CRF; and
 - 6.5.2 where the Authority reasonably requests and in order to give full effect to the proposed Authority CRF, the Operator shall provide such additional information as the Authority reasonably requests in order to evaluate the Authority CRF fully.
- 6.6 The Operator shall not refuse an Authority request for Change unless such Change:-
- 6.6.1 would materially and adversely affect the risks to health and safety of any person;
 - 6.6.2 would require the Services to be performed in any way that infringes a Law; and/or
 - 6.6.3 is demonstrated by the Operator to:

- (a) be technically impossible to implement (where neither the Operator's Proposal or the Services description states that the Operator has the technical capacity and flexibility required to implement the proposed Change); or
- (b) represent a material risk to the Services; or

6.6.4 is predicted to have a material impact on the ability of the Operator to meet any Service Level where as a result of the Change the Service Level is not modified accordingly.

6.7 If the Parties cannot within a reasonable period of time agree on the contents of the Authority CRF then the dispute will be determined in accordance with the Dispute Resolution Procedure.

6.8 As soon as practicable after the contents of the Authority CRF have been agreed or otherwise determined pursuant to the Dispute Resolution Procedure, the Authority shall either:

6.8.1 issue a final signed copy of the Authority CRF; or

6.8.2 withdraw the notification referred to in paragraph 6.2.

6.9 If the Authority does not issue a final signed copy of the Authority CRF within thirty (30) Working Days from and including the date of the contents of the Authority CRF having been agreed or determined, then the Authority Request for Change shall be deemed to have been withdrawn.

6.10 In the event that the Authority issues a final signed copy of the Authority CRF then:-

6.10.1 the Operator shall implement the Change in accordance with the Transition Plan specified in the CRF;

6.10.2 the Parties shall enter into any documents necessary to amend this Agreement or any relevant related document which are necessary to give effect to the Change

7. OPERATOR REQUEST FOR CHANGE

7.1 If the Operator wishes to request or requires a Change, it must serve an Operator CRF on the Authority.

8. CONTENTS OF OPERATOR CRF

8.1 The Operator CRF must:

8.1.1 set out the proposed Change in sufficient detail to enable the Authority to evaluate it in full;

8.1.2 specify the Operator's reasons for proposing the change in the Services;

8.1.3 include an Impact Assessment, an Transition Plan and a Financial Proposal;

8.1.4 indicate if there are any dates by which a decision by the Authority is critical.

8.2 The Authority shall evaluate the Operator's proposed change in the Services in good faith, taking into account all relevant issues, including whether:

8.2.1 there would be a change to the financial arrangements;

8.2.2 the change affects the quality of the Services or the likelihood of successful delivery of the Services;

8.2.3 the change will interfere with the relationship of the Authority or the Operator with third parties;

- 8.2.4 the financial strength of the Operator is insufficient to perform the changed Services; or
- 8.2.5 the change materially affects the risks or costs to which the Authority are exposed; or
- 8.2.6 the change would, if implemented, result in a change in the nature of the Services.

Proposed Changes by the Operator where costs would be incurred as an "invest to save" approach will only be considered by the Authority where the savings are in excess of the costs, where a Detailed Review is to be carried out in accordance with paragraph 5 of Schedule 16 and lodgement fee payers will benefit from cost reductions.

- 8.3 As soon as practicable after receiving the Operator CRF, the Parties shall meet and discuss the matter referred to in it. During their discussions the Authority may propose modifications or accept or reject the Operator CRF.
- 8.4 If the Authority accepts the Operator CRF (with or without modification), the Authority shall issue a final signed copy of the Operator CRF
- 8.5 In the event that the Authority issues a final signed copy of the Operator CRF then:-
 - 8.5.1 the Operator shall implement the Change in accordance with the Transition Plan
 - 8.5.2 the Parties shall enter into any documents necessary to amend this Agreement or any relevant related document which are necessary to give effect to the Change.
- 8.6 If the Authority rejects the Operator CRF, it shall advise the Operator of the criteria set out in Paragraph 8.2 upon which its decision for such a rejection is based.

9. CONTENT OF DOCUMENTS

9.1 CRF

Both Authority and Operator CRFs shall consist of a CRF in the form attached to this Schedule 7 [Annex 1] :-

- 9.1.1 the Impact Assessment;
- 9.1.2 the Transition Plan.
- 9.1.3 the Financial Consequence.

9.2 Impact Assessment

The Impact Assessment shall include details of:-

- 9.2.1 any impact on the provision of the Services;
- 9.2.2 any impact on the Operator's ability to meet its obligations under this Agreement;
- 9.2.3 any amendment required to this Agreement and/or any related document as a result of the Change;
- 9.2.4 details (where known) of the potential impact on any third parties;
- 9.2.5 details of how the proposed Change will ensure compliance with any applicable Change in Law;
- 9.2.6 such other information as the Authority may reasonably request in (or in response to) a CRF

9.3 *Transition Plan*

The Transition Plan shall include:-

- 9.3.1 details of the activities necessary to implement the proposed Change including any testing required;
- 9.3.2 details of appropriate allocations of responsibility;
- 9.3.3 a project plan including timelines, key dates, milestones and deadlines;
- 9.3.4 details of the activities required to address issues identified in the Impact Assessment; and
- 9.3.5 details of the activities required to implement the Financial Consequence;

9.4 *Financial Consequence*

The Financial Consequence shall include details of:-

- 9.4.1 the estimated capital expenditure (if any), including any capital replacement costs, arising from or required to implement the Change;
- 9.4.2 the estimated increase or decrease in operating expenditure relating to the provision of the Services, with an analysis showing the costs of staff, consumables, sub-contracted and bought-in services, after the Change is implemented, information on resource costs including future impact of changes on revenues and profits, broken down by financial year, and estimated level of these costs;
- 9.4.3 any interest, expenses or other third party financing costs to be incurred as a result of implementing the Change;
- 9.4.4 details of any estimated overhead recoveries and long term cost savings that are anticipated after the Change is implemented; and
- 9.4.5 the profit which the Operator seeks to achieve in the provision of the additional parts of the Services.

10. APPROVAL OF COMPLETED CHANGES

- 10.1 On completion or delivery of any approved Change, the Operator will provide a summary to the Authority to confirm the Change has been enacted. This shall include details of the actual resource levels and costs incurred in completing the Change, and the date completed. These costs should be set out in the Financial Model, in accordance with Schedule 6.
- 10.2 The Authority shall review and sign-off the satisfactory completion of any Change and record this approval on the CRF (Part F).
- 10.3 The Operator must ensure that where they intend to adopt an alternative approach to that agreed in the original CRF, the Authority is notified. Should any Change be adapted from what was agreed in the original CRF, an amendment to the CRF will be completed, to document the adapted service requirements, approach, costs etc and be subject to signature by the Authority to confirm approval.
- 10.4 Should the Change be cancelled prior to full completion, the Authority will confirm the cancellation by recording this on the CRF. The Operator shall confirm to the Authority the full amount of any costs incurred and this shall also be captured in the cancellation amendment to the CRF.

11. CHANGE CONTROL LOG

The Operator shall keep and share with the Authority a record of all approved Changes, including copies of the approved CRFs.

ANNEX 1 TO SCHEDULE 7

CHANGE REQUEST FORM

Change Request Form

PART A - Change Details	
Change Ref. Number	Change Urgency Low / Medium / High
Project Name _____ Registers affected by this release: <input type="checkbox"/> Domestic Eng/Wales <input type="checkbox"/> Domestic NI	Project Manager
Change Originator: Operator CRF <input type="checkbox"/>	Authority CRF <input type="checkbox"/>
Change classification: Minor <input type="checkbox"/> Substantive <input type="checkbox"/>	
Change Initiator	Initiators Role
Change Related to Risk/Issue No	Date Change Request Raised
Change to be authorised by the following: DCLG: - Landmark: -	
Nature of the Change [Change title] <u>Change required</u> <u>Reason for Change</u> <u>Key dates</u> <u>Clarifications</u> <u>Proposed Solution</u>	
Approval for Impact Analysis	
<input type="checkbox"/> Approved	<input type="checkbox"/> Rejected

Change Request Form

Approver's Name	Date Approved
Approver's Rationale / Comment	
Assigned To	Impact Analysis Due Date

<p>PART B - Impact Analysis</p> <p>Check the appropriate checkboxes in the field to indicate what areas are affected by the change. This will also indicate the appropriate authority to sign off the Change Request. <input type="checkbox"/> Timescale <input type="checkbox"/> Budget <input type="checkbox"/> Resource <input type="checkbox"/> Scope/Business Functionality <input type="checkbox"/> Other Systems</p> <p>Include the impact on:</p> <ul style="list-style-type: none"> • Benefits • Infrastructure and Operations • Alignment to strategy / architecture standards • Alignment to the project objectives/requirements • Impact on other projects • Impact on other systems (list affected systems) • Impact on Green Deal / DECC work or any other outputs / services
--

Impact Statement - Development
Impact Statement – Testing (New Tests to be Introduced)
Risks
Transition Plan
<p><i>NB: Must include details of the activities needed for implementation (including any testing); appropriate allocations of responsibility; the activities required to address issues identified in the Impact Assessment; and the activities required to implement the Financial Consequence; and a project plan including timelines, key dates, milestones and deadlines.</i></p>

Change Request Form

Financial Consequences (Total Cost Summary)				
Total cost to develop and implement this change, including third party costs =				
<u>Broken down as:</u>				
Hardware =				
Software =				
Hosting =				
Internal manpower =				
Third party costs =				
Any estimated overhead recoveries:				
Profit which the Operator seeks to achieve in the provision of the additional parts of the Services:				
Manpower Costs				
Task	Impact Analysis Effort (days)	Delivery Effort (days)	Cost (£)	
Group Services Manager				
Project Manager				
Release Manager				
Contract/Delivery Manager				
Systems Manager				
Business Analyst				
Systems Administrator				
Technical Architect				
DBA Manager				
DBA				
QA Team				
Software Engineers				
Service Team				
On Going Effort				
Total				
Total number of days effort to deliver change =				
Cost Profile				
Financial Year	Capital Costs (£)	Capitalised Costs (£)	Staff	Running Costs (£)
2013/14				
2014/15				
2015/16				
2016/17				
2017/18				
Benefits and Savings				

Change Request Form

Financial Year	Source of savings	Total amount
2013/14		
2014/15		
2015/16		
2016/17		
2017/18		

COST RECOVERY DETAILS	
Amount to be charged to lodgement fee:	Amount to be cost recovered directly: [insert purchase order number]
APPORTIONMENT	
Domestic E&W [insert percentage]	Non Domestic E&W [insert percentage]
Domestic NI [insert percentage]	Non Domestic NI [insert percentage]
Approver's Rationale / Comment	

Approval for Impact Assessment to be Released to Customer	
Approver's Name	Date
Approver's Rationale / Comment	
Date Released to Customer	

PART C – Authority Authorisation to proceed with the change	
The Authority has reviewed the Change Request proposal and either approves the change to proceed or rejects the Change Request. No work shall be undertaken by the Operator without Authority approval to proceed.	
<input type="checkbox"/> Approved	<input type="checkbox"/> Rejected
Approver's Name	Date
Approver's Rationale / Comment	

PART D - Solutions QA Testing	
Tested and Accepted by Solutions QA Acceptor Name	Date
Sign off by Solutions QA	Date

PART E - Approval for Implementation by Authority

Change Request Form

The Authority agrees the change has been completed and can be implemented into the live service.	
<input type="checkbox"/> Approved	<input type="checkbox"/> Rejected
Approver's Name	Date
Approver's Rationale / Comment	
Assigned To	Implementation Due Date

PART F - Final Sign Off and Closure		
The Authority agrees the change has been successfully implemented into live service and is operating in the manner and standard agreed.		
Approver's Name	Approver's Signature	Date Closed
<input type="checkbox"/> Approved	<input type="checkbox"/> Rejected	
Approver's Rationale / Comment		

Notes
Miscellaneous Notes

Change Request Form

CHANGE REQUEST REVISIONS - VERSION CONTROL

1.1 Owner/Author:

AMENDMENTS

Version	Date	Change Details
0.1		

DOCUMENT Change History

1.2 Owner/Author: [Text Redacted]

AMENDMENTS

Issue	Date	Change Details
Issue 0.1	15/11/2006	Draft – for review
1.0	08/01/2007	Approved format
2.0	28/03/2008	Impact statement approval section added
3.0	28/04/2008	Systems to Solutions handover section added
4.0	15/04/2009	Updates to align with FOI request template and introduction of section to highlight new tests added as a result of change
5.0	06/08/2009	Updates to capture specific change details
6.0	01/02/2012	Updated to add indicative cost line
7.0	06/07/2012	Updated to add cost breakdown below indicative cost line and removed of unused sections
8.0	05/04/2013	Amendments following lodgement fee review process
9.0	29/04/2013	Further amendments following lodgement fee review process

Next Review Date: 01/04/2014

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Schedule 8

EXIT PLAN

1. INTRODUCTION

- 1.1 This Schedule describes the duties and responsibilities of the Operator and the Authority leading up to and covering the expiry or termination of this Agreement for whatever reason and the transfer of the provision of the Services.
- 1.2 This Schedule defines the Exit Plan and defines how it shall be revised to ensure that it remains workable at any time. Further details of such plan may be further set out in documents agreed between the parties or generated through the Change Control Procedure.
- 1.3 The Operator acknowledges the importance of keeping the Exit Plan up to date during the term of this Agreement and to reflect the impact of all relevant Changes to the Services and/or the Operator's Proposal. The Operator shall not make any additional charge for undertaking its obligations pursuant to this Schedule and/or the Exit Plan and/or any work undertaken in making changes to the Exit Plan. Where only principles of relating to the Exit Plan are set out in this Schedule, the parties shall use all reasonable endeavours to agree the relevant details in accordance with such principles.
- 1.4 The Authority shall be entitled to disclose the contents of the Exit Plan to any future tenderer for the Services (or their equivalent) and to the New Operator.

2. OBJECTIVES

- 2.1 The objective of this Schedule is to ensure:
 - 2.1.1 an orderly and smooth transition of provision of the Services from the Operator to a New Operator or to the Authority or to the Operator under a new contract at the expiry or termination of this Agreement;
 - 2.1.2 that there is continuity of service;
 - 2.1.3 that there is no undue favour to the Operator in any future procurement for the Services (in whole or in part); and
 - 2.1.4 that the responsibilities of both parties to this Agreement are clearly defined in the event of expiry or termination

3. GENERAL

- 3.1 Where the Authority or a Crown Body or any other Government department intends (and for the purposes of this Schedule, references to the Authority shall be deemed references to either the Authority or any other Government body) to continue services broadly equivalent in whole or in part to the Services after expiry or termination, either by performing them itself or by means of a New Operator, the Operator shall use all reasonable endeavours to ensure the smooth and orderly transition of the Services and shall co-operate with the Authority or the New Operator, as the case may be, in order to achieve such transition.
- 3.2 The Operator shall comply with any reasonable request of the Authority for information relating to Sub-Contracts or prospective sub-contractors and shall be allowed a reasonable period of time in which to respond to the Authority.

4. **EXIT PLANNING**

- 4.1 The Operator shall in conjunction with the Authority maintain, and as necessary update, the Exit Plan throughout the period of this Agreement so that it can be implemented immediately, if required. From time-to-time either the Authority or the Operator can instigate a review of the Exit Plan. Any revision following such review shall be implemented via the Change Control Procedure.
- 4.2 The Exit Plan shall include at a minimum:
- 4.2.1 The summary of staff numbers and roles;
 - 4.2.2 The Asset Register;
 - 4.2.3 Business process models, schemas and other documents relating to the delivery of the Operational Services;
 - 4.2.4 Summary of all Authority Data held in relation to this agreement;
 - 4.2.5 Any other items relevant to or necessary for the continuation of the Scheme by the Authority or an alternative supplier appointed by the Authority; and
 - 4.2.6 The operator's view of the IPR ownership of each of the items listed in paragraphs 4.2.2 to 4.2.4 of this Schedule 8.
- 4.3 The Operator shall co-operate with all reasonable requests made by either the Authority or a New Operator relating to exit transition arrangements.

5. **INVOCATION**

- 5.1 The Operator shall co-operate fully with a New Operator or the Authority, as the case may be, including but not limited to permitting access to its premises where necessary and to relevant Staff upon reasonable notice in order to prepare for the transfer of responsibility for the Services, and to achieve familiarisation with the systems delivering the Services and understanding of the business processes where these are transferring or are relevant to delivery of the Services.
- 5.2 For the avoidance of doubt, the Operator shall be responsible for providing the Services and achieving the Service Levels until the date of expiry or termination of this Agreement (as appropriate). The Operator shall not be liable for failure to meet such Service Levels during the Exit Period where this is directly due to any materially adverse interference by a New Operator and provided always that the Operator has notified the Authority of the interference and used its reasonable endeavours to mitigate the effect of such interference.
- 5.3 The Operator shall use all reasonable endeavours to ensure that a transition of responsibility for the Services to a New Operator or the Authority, as the case may be, minimises any detrimental effect on the Services and the Authority shall use all reasonable endeavours to co-operate in such transfer.
- 5.4 The Operator on request shall offer to provide on-going support and other ancillary assistance for up to six (6) months after transfer of the Services to a New Operator or the Authority, as the case may be, so as to assist with continuity of the Services. If such offer is accepted, any reasonable charges associated with providing such on-going support and other ancillary assistance shall be charged at the Operator's then prevailing market rates.

6. **SUB-CONTRACTORS**

The Operator will not restrain or hinder its Sub-Contractors from entering into agreements with other prospective service providers for the delivery of supplies or services to a New Operator or to the Authority.

7. **ASSETS REGISTER**

7.1 The Operator shall maintain throughout the period of this Agreement an asset register comprising:

7.1.1 a list of all assets required for the provision of the Services which are eligible for transfer under this Agreement to the Authority (where not already owned by the Authority) or otherwise owned by the Authority;

7.1.2 a list identifying all other assets, if any, other than human resources, skills and know-how, that are ineligible for transfer under this Agreement but which are essential to the provision of the Services. The purpose of each component and the reason for ineligibility for transfer shall be included in the list.

(an "**Asset Register**" and "**Assets**")

7.2 For each Asset listed on the Asset Register in accordance with Paragraph 7.1, the Operator shall ensure that the following details are included on the Asset Register for each Asset:

7.2.1 a general description of the Asset;

7.2.2 the status of each Asset as agreed by the Authority in terms of its use in the Services (i.e. predominantly used or non-exclusively used);

7.2.3 the current value of the Asset;

7.2.4 the location of the Asset;

7.2.5 its serial number (or any other unique identifier);

7.2.6 the nature of possession (owned, licensed or leased);

7.2.7 date of purchase, licence or lease;

7.2.8 the Operator's view of the IPR ownership (Operator, Authority, Third Party or Project Specific) of the asset where applicable; and

7.2.9 details of leasing arrangements (if appropriate) including, but not limited to, the type of lease, expiry date and any option to purchase after expiry.

7.3 The Operator shall deliver such Asset Register to the Authority either six months prior to expiry, and as reasonably requested thereafter up to the expiry date or within one month of service of a notice of termination (as appropriate).

8. **TRANSFER OF ASSETS**

The Operator shall comply with the Authority's directions in relation to the transfer of assets (if any) on expiry or termination.

9. **TRANSFER OF THE AUTHORITY'S DATA**

In addition to complying with the provisions of Clause 28, the Operator shall, upon reasonable written request by the Authority or in any event, within one month of service of notice of termination, deliver to the Authority the Authority's Data and this will include:

9.1 an inventory of the Authority's Data plus any other data available for transfer;

9.2 a data structure definition (where relevant) covering all available Authority Data; and

9.3 a proposed method for testing the integrity and completeness of the Authority's Data transferred.

10. TRANSFER OF ANY WORK IN PROGRESS

Six months prior to expiry of or within one month of the service of notice of termination the Operator shall deliver to the Authority a plan detailing when and how the work in progress will be transferred from the Operator to either the Authority or a New Operator. The Authority's agreement to this plan shall not be unreasonably withheld or delayed.

11. DOCUMENTATION AND ACCESS

11.1 The Operator shall provide the Authority on request with information and documentation reasonably necessary to assist with a transfer of the Services back to the Authority or to a New Operator, including any documentation required to support an invitation to tender for the provision of the Services. This includes full details of:

11.1.1 the Services and Service Levels achieved by the Operator;

11.1.2 any Software (including all Operator Software and Third Party Software) and any hardware used to provide the Services;

11.1.3 software and supply agreements used to provide the Services, including the agreements relating to Third Party Software identified by name of supplier, term of contract, and charges payable under the contract);

11.1.4 any employees used by the Operator to provide the Services who are essential for the provision of the Services; this information shall be provided under conditions of confidentiality reasonably acceptable to the Operator.

11.2 The Authority may make the documentation available to suppliers who wish to tender for the provision of the services similar to the Services. The Operator shall respond expediently and in full to any reasonable questions by the Authority or the suppliers and shall co-operate with any reasonable due diligence activities carried out by suppliers.

12. TRANSFER SUPPORT ACTIVITIES

12.1 The Operator shall co-operate with all reasonable requests made by either the Authority or a New Operator relating to transition arrangements. The Authority and the Operator shall discuss the plan for the transition of the service provision to either the Authority or a New Operator.

12.2 If requested, the Operator shall deliver to the Authority for its approval, by a date agreed by both parties an Interfaces Document. This shall be a detailed functional specification of the interfaces between the Services and all other services or systems, either provided by the Operator or any sub-contractor or a third party. This specification shall accord to Good Industry Practice and be kept up to date throughout the duration of this Agreement in order to at all times be sufficient to allow the Authority or a New Operator to provide an equivalent service provision to the Services provided under this Agreement;

12.3 The Operator shall provide the Authority or a New Operator with a full and complete copy of the incident log book, service records, service reports and all associated documentation recorded by the Operator during the twelve months prior to the expiry or termination.

13. COMMUNICATION PROGRAMME

13.1 The Authority and Operator shall jointly agree a strategy for communication with all stakeholders, the Authority Personnel and the Staff during the Exit Period as a part of the Exit Plan. The strategy shall set out the most effective vehicles for such communications and the assignment of responsibility to the party best placed to manage such communications. For the avoidance of doubt, the Operator shall only be permitted to charge the Authority for effecting such communications where the Operator can demonstrate that it will incur additional cost, over and above that deemed by the Authority as reasonable in such circumstance, and that such

communications fall outside its obligations under this agreement and provided always that it does not relate to communications with the Staff.

- 13.2 Arrangements for communication with all stakeholders, the Authority Personnel and the Staff shall be made so as to avoid any detrimental impact upon the parties' respective business as a result of undertaking any transfer contemplated by the Exit Plan. The parties shall share the responsibility for release of information in connection therewith.

Schedule 9

EMPLOYEES

DEFINITIONS USED IN THIS SCHEDULE

In this Schedule, the following words and phrases shall have the meanings set out below:-

Regulations	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations enacted for the purpose of implementing the Acquired Rights Directive (Council Directive 23/2001/EEC) into English law;
Relevant Transfer	a relevant transfer of an undertaking for the purposes of the Regulations;
Transferring Staff	the meaning ascribed in Paragraph 1.1;
Subsequent Transfer Date	each date on which there is a transfer of responsibility for the provision of the Services between the Operator and the Authority and/or a New Operator;

1. EMPLOYEE PROVISIONS DURING EXIT

- 1.1 The Parties agree that where the Services or any part of the Services ceases to be provided by the Operator for any reason and/or where the Services or any part of the Services are to be provided by the Authority or by a New Operator, it is desirable that there should be a transfer of those Staff wholly or mainly engaged in the Services or that part of the Services which shall cease to be provided by the Operator immediately before the Subsequent Transfer Date (the "**Transferring Staff**") the terms set out in this Schedule shall apply.
- 1.2 The Operator shall not later than six (6) months prior to the expiry of this Agreement (or, if earlier, within twenty eight (28) Working Days from and including the date of notice being given of termination of this Agreement), provide the Authority with:
 - 1.2.1 a list of the Transferring Staff, including details of their job titles, age, length of continuous service, current remuneration, benefits and notice, but not identifying the Transferring Staff by name;
 - 1.2.2 a list of agency workers, agents and independent contractors engaged by the Operator and any Sub-Contractor;
 - 1.2.3 the total payroll bill of the Transferring Staff;
 - 1.2.4 the terms and conditions of the Transferring Staff;
 - 1.2.5 details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings in respect of the Transferring Staff;
 - 1.2.6 details of any claims, current or threatened, brought by the Transferring Staff or their representatives;
 - 1.2.7 details of all death, disability benefit or permanent health insurance schemes and other similar arrangements with or in respect of the Transferring Staff including the identities of any such employees in receipt of benefits under any such scheme;

- 1.2.8 details of all collective agreements relating to or affecting the Transferring Staff, with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes or claims for recognition by any trade union.
- 1.3 The Operator shall and shall procure that any Sub-Contractor shall maintain current adequate and suitable records regarding the service of each of the Transferring Staff including without limitation details of terms of employment, payments of statutory sick pay and statutory and non-statutory maternity pay, disciplinary grievance and health and safety matters, income tax and social security contributions and any enhanced redundancy entitlement in excess of statutory redundancy pay and (save to the extent prohibited by law) shall transfer the same or a complete copy of the same to the Authority or any New Operator within fourteen (14) Working Days from and including the date of the transfer by operation of the Regulations of each Transferring Staff member to whom the records refer.
- 1.4 Save where the Operator reasonably believes that there will be no relevant transfer for the purpose of the Regulations the Operator shall co-operate in seeking to ensure the orderly transfer of the Transferring Staff to the Authority and/or the New Operator.
- 1.5 The Operator undertakes to the Authority that, with effect from the date falling twelve (12) months prior to the Subsequent Transfer Date or following the date of receipt of notice to terminate this Agreement or any part of the Services, the Operator shall not and shall procure that Sub-Contractors shall not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):
- 1.5.1 amend or vary (or purport or promise to amend or vary the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Transferring Staff member;
 - 1.5.2 terminate or give notice to terminate the employment or engagement of any Transferring Staff member (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
 - 1.5.3 transfer away, remove, reduce or vary the involvement of any Transferring Staff member from or in the provision of the Services; and/or
 - 1.5.4 recruit or bring in any new or additional individuals to provide the Services who are not already involved in providing the Services.
- 1.6 The Operator shall indemnify the Authority and/or any New Operator against any Losses arising out of or in connection with:
- 1.6.1 the termination of employment of any of the Transferring Staff by the Operator or a Sub-Contractor up to and including the relevant Subsequent Transfer Date;
 - 1.6.2 all emoluments and other benefits of the Transferring Staff arising in respect of the period prior to the relevant Subsequent Transfer Date regardless of when they fall due for payment;
 - 1.6.3 any act or omission of the Operator or a Sub-Contractor up to and including the relevant Subsequent Transfer Date in respect of the employment of the Transferring Staff; and
 - 1.6.4 any claim by any person other than a Transferring Staff member relating to that person's employment or its termination by the Operator or a Sub-Contractor whether before, on or after the relevant Subsequent Transfer Date.

- 1.7 The Operator shall comply and procure that Sub-Contractors shall comply with Regulation 10 and Regulation 10A of the Regulations in relation to any transfer as contemplated in Paragraph 1.1 and shall indemnify the Authority and the New Operator against any Losses caused by any failure by it to so comply except where such failure is occasioned by the default of the Authority or the New Operator.
- 1.8 On the cessation of all or part of the Services, payments of any appropriate redundancy and relocation compensation are the responsibility of the Operator.
- 1.9 The Authority may in its discretion assign the benefit of the indemnities set out in this Schedule to the New Operator.

Schedule 10

DISASTER RECOVERY

DEFINITIONS USED IN THIS SCHEDULE

In this Schedule, the following words and phrases shall have the meanings set out below:-

Business Continuity Plan	shall have the meaning ascribed in Paragraph 3.1;
Business As Usual Notice	shall have the meaning ascribed in Paragraph 7.2
Disaster	means an event having a serious impact on the provision of the Services and/or the Scheme, which is either: (a) agreed to be such by the Parties from time to time (such agreement not to be unreasonably withheld); or (b) identified as such in the Disaster Recovery Plan.
Disaster Recovery Plan	the plan prepared and maintained by the Operator in accordance with Paragraph 3 setting out its plans for dealing with and recovering from a Disaster;

1. PURPOSE

The purpose of this Schedule is to set out the obligations of the Operator in relation to business continuity and disaster recovery.

2. PRINCIPLES

The Operator shall be responsible for providing Disaster recovery Services in accordance with this Schedule and the Disaster Recovery Plan from and including the relevant Service Commencement Date.

3. PLANNING

3.1 The Operator shall, by no later than the Service Commencement Date, prepare and maintain throughout the Term plans which describe the arrangements required to:

3.1.1 ensure continuity of the Scheme; and

3.1.2 minimise the adverse impact of a Disaster on the Authority and/or the Authorised Users and/or the Scheme,

(a "**Business Continuity Plan**").

3.2 As part of the Business Continuity Plan, the Operator shall:-

3.2.1 prepare a Disaster Recovery Plan by no later than the Service Commencement Date;

3.2.2 maintain and, as necessary including to comply with any principles or provisions set out in a Business Continuity Plan, update the Disaster Recovery Plan throughout the Term.

- 3.3 The Business Continuity Plan and the Disaster Recovery Plan shall be prepared and maintained in accordance with Good Industry Practice.
- 3.4 The Operator shall submit detailed drafts of the Business Continuity Plan and the Disaster Recovery Plan to the Authority no later than twenty (20) Working Days prior to but excluding the Service Commencement Date. The Authority may respond with comments on the draft plans which shall be taken into account by the Operator when finalising the Plans.
- 3.5 The Disaster Recovery Plan must clearly define:
- 3.5.1 the type of event to which the plan applies;
 - 3.5.2 a risk and impact assessment for each potential type of Disaster situation;
 - 3.5.3 detailed technical processes and action plans for managing each potential type of Disaster situation and for enabling system and data recovery as well as subsequent re-instatement of business processes;
 - 3.5.4 provision and maintenance of a disaster recovery site equipped with sufficient hardware, software and services required to provide the Services in accordance with the Service Levels specified in Schedule 4 (Performance Management);
 - 3.5.5 actions required and timeframes for the reinstatement of full normal Services as described in Paragraph 7.1;
 - 3.5.6 details of the human resources required to implement the Disaster recovery Services including identification of the skills and experience of the relevant Staff;
 - 3.5.7 identification of the key roles, responsibilities and decision-making authority limits including the names and contact details of relevant individuals and the nominated points of contact for the Operator and Authority in accordance with Paragraph 6.1.3;
 - 3.5.8 identification of third parties who will need to be informed and the events that will trigger such contact;
 - 3.5.9 identification of third parties (including Sub-Contractors) whose services will be required or impacted in the event of each potential type of Disaster;
 - 3.5.10 definition of time-related triggers and checkpoint events including the timeframes for the Operator to investigate the likely scope and duration of the Disaster and begin to migrate the provision of the Services to the Disaster recovery Services infrastructure;
 - 3.5.11 escalation and decision-making events;
 - 3.5.12 provision for conducting Disaster recovery testing in accordance with Paragraph 10;
 - 3.5.13 provision for periodic review of the Disaster Recovery Plan as required by Paragraph 11.1.1;
 - 3.5.14 all other services to be provided by the Operator in respect of a Disaster; and
 - 3.5.15 the process for demonstrating that the provisions of this Schedule are fully met.

4. **DISASTER RECOVERY SERVICES**

- 4.1 The Operator shall ensure that the Services are available within twenty four (24) hours after the declaration of a Disaster in accordance with Paragraph 5.

- 4.2 The Operator shall provide and maintain (at appropriate levels of standby readiness) such infrastructure, equipment, hardware, software (including appropriate licences), documents, personnel and any other goods and services as is necessary to fulfil its obligations under this Schedule and provide the Disaster recovery Services (including, for the avoidance of doubt, to ensure it is able to comply with its obligations in the Disaster Recovery Plan in the event of a Disaster).
- 4.3 In the event of any change to the Disaster Recovery Plan, the Operator shall ensure that it implements such changes as may be necessary to ensure it continues to comply with the requirement in Paragraph 4.2.
- 4.4 The Operator shall ensure that any third parties whose services would be required in the event of a Disaster are approved by the Authority as Material Sub-Contractors in accordance with Clause 35 and, unless otherwise agreed by the Authority, are contracted to provide the relevant services throughout the Term of this Agreement.

5. **DECLARATION OF A DISASTER**

Where a Party becomes aware that a Disaster has occurred or that its occurrence can reasonably be expected to take place imminently, that Party shall declare a Disaster by informing (by the most rapid method of communication reasonably practicable) the other Party and the Operator shall formally declare a Disaster and invoke the relevant Disaster Recovery Plan.

6. **OCCURRENCE OF A DISASTER**

- 6.1 In the event of a Disaster being declared the Operator shall:
- 6.1.1 carry out the activities and procedures described in the Disaster Recovery Plan and otherwise comply with all obligations in the Disaster Recovery Plan in order to restore provision of the Services and minimise impact on Authorised Users and the Scheme;
 - 6.1.2 ensure that all relevant disaster recovery reference material is made available to the appropriate personnel;
 - 6.1.3 ensure that a nominated Operator point of contact is provided as required in the Disaster Recovery Plan during the period until acceptance of a Business As Usual Notice (served in accordance with Paragraph 7.2) in respect of the relevant Disaster;
 - 6.1.4 ensure that the Authority Contract Manager as the prime contact receives appropriate levels of communication regarding the Disaster, actions taken, recovery status and recovery times through communications channels as agreed in the Disaster Recovery Plan;
 - 6.1.5 provide reasonable input and assistance in the event that press releases are to be issued in relation to the Disaster or its consequences;
 - 6.1.6 with the assistance of the Authority, use reasonable endeavours to resolve any Disaster-related issues not adequately provided for in the Disaster Recovery Plan or which are not resolved by the implementation of those plans and use reasonable endeavours to achieve the Authority's mitigation and Service recovery objectives;
 - 6.1.7 take such further steps as may reasonably be expected of the Operator acting in accordance with Good Industry Practice (including mitigation of and risk minimisation in respect of all impacts of the Disaster and alerting the Authority in respect of any related issues or concerns which should reasonably be brought to the Authority's attention);

- 6.1.8 be relieved from the application of Service Credits in the event it fails to achieve a Service Level (other than a Service Level applicable to the Disaster recovery Services), to the extent that:
- (a) the Operator has not caused or contributed to the Disaster;
 - (b) the Operator can demonstrate to the Authority that the Disaster directly caused the failure to meet the relevant Service Level;
 - (c) such failure to achieve the relevant Service Level is not in breach of the Disaster Recovery Plan; and
 - (d) such failure takes place during the period that the Operator is required to implement the Disaster Recovery Plan in accordance with this Agreement.

7. RETURN TO BUSINESS AS USUAL

- 7.1 The Operator shall ensure that all Services are reinstated to normal operation in accordance with the Disaster Recovery Plan but in any event, as soon as is reasonably practicable in the circumstances.
- 7.2 Once all Services affected by the Disaster have returned to normal operation in that the Services are:
- 7.2.1 operating in line with the applicable Services Levels (or in the absence of Service Levels for the particular components of the Services to the standard otherwise required under the terms of this Agreement presuming the absence of any Disaster); and
 - 7.2.2 being provided in the same manner as the relevant Services were being provided on the Working Day prior to the declaration of the Disaster,

the Operator shall issue to the Authority a notice indicating that the Services have returned to normal operation (a "**Business As Usual Notice**").

8. POST-DISASTER REVIEW

- 8.1 Within a reasonable period (being, in any event, no longer than twenty (20) Working Days from and including the date of issue of the Business As Usual Notice) after a Business As Usual Notice has been issued in accordance with Paragraph 7.2, the Operator shall carry out a review (a "**Post-Disaster Review**") of the causes of the Disaster, the operation and effectiveness of Disaster Recovery Plan and any necessary modifications to the Disaster Recovery Plan. The Operator shall provide the Authority with a draft copy of its Post-Disaster Review findings and offer the Authority the opportunity to provide its comments on the findings and any recommendations associated therewith. The Operator shall have due regard to the Authority's comments and shall issue a Post-Disaster Review report to the Authority. The Operator shall update the Disaster Recovery Plan by incorporating such modifications within twenty (20) Working Days from and including the date of the issue of such Post-Disaster Review report for acceptance by the Authority.
- 8.2 In the event of long term continuing Disaster the Authority may require that an initial review takes place no later than twenty (20) Working Days from and including the date of the occurrence of the Disaster with a further Post-Disaster Review taking place within a reasonable period (being, in any event, no longer than twenty (20) Working Days from and including the date of issue of the Business As Usual Notice) after the Business As Usual Notice has been issued in accordance with Paragraph 7.2.

9. FAILURE TO IMPLEMENT THE DISASTER RECOVERY PLAN

9.1 In the event that the Operator fails to successfully implement the Disaster Recovery Plan:

9.1.1 the Authority may claim payment for, or set off against future invoices, all costs and expenses incurred by the Authority that relate to such failure; and

9.1.2 such failure shall constitute a Deemed Material Default for which the Authority may terminate this Agreement and/or part of the Services in accordance with Clause 30.1 (provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority).

10. DISASTER RECOVERY TESTING

10.1 The Operator shall execute a Disaster Recovery test as soon as reasonably practical within nine (9) months of the Effective Date and annually thereafter to assess and demonstrate the proper operation and effectiveness of the Disaster Recovery Plan and the Disaster recovery Services through such combination of desk reviews, simulation and live testing as set out in the Disaster Recovery Plan.

10.2 Disaster Recovery tests shall be planned and executed as a planned withdrawal of service in accordance.

10.3 The Authority shall be entitled to witness and attend such testing and the Operator shall give the Authority all relevant information relating to the tests in order to assist the Authority to arrange attendance by Authority personnel.

10.4 The Operator shall provide a report on the results of the Disaster Recovery testing conducted in accordance with this Paragraph 10 within two (2) Working Days from and including the date of completion of any such testing.

10.5 The Operator shall update the Disaster Recovery Plan to incorporate any modifications demonstrated to be necessary by the Disaster Recovery testing within twenty (20) Working Days of the completion of Disaster Recovery testing for Acceptance by the Authority.

11. CHANGES TO THE DISASTER RECOVERY PLAN

11.1 The Operator shall review the Disaster Recovery Plan:

11.1.1 on a periodic basis as set out in the Disaster Recovery Plan; and

11.1.2 as required by Paragraph 11.3.

11.2 The Authority shall use reasonable endeavours to advise the Operator of any changes which are made or proposed to be made to a Business Continuity Plan.

11.3 In the event that changes are made or proposed to be made:

11.3.1 to any Business Continuity Plan; and/or

11.3.2 to the Agreement and/or to the Services (including a Change agreed or to be agreed in accordance with the Change Control Procedure);

and such changes impact or may impact on the operation of the Disaster Recovery Plan or otherwise reasonably require the extension, variation or review of the Disaster Recovery Plan, this shall be notified to the Authority by the Operator. As soon as reasonably practicable following such

notification, the Operator shall issue an updated Disaster Recovery Plan for Acceptance by the Authority.

11.4 The Operator shall provide copies of the Disaster Recovery Plans to the Authority on request.

Schedule 11

KEY PERSONNEL

1. PURPOSE

The purpose of this Schedule is to set out the obligations of the Operator in relation to specific requirements for Key Personnel.

2. KEY PERSONNEL

2.1 The Operator shall be responsible for ensuring that the list of Key Personnel is kept up-to-date and re-issued to the Authority during the Agreement upon any changes being made to the list in accordance with this Paragraph 2. The Operator shall ensure that the Key Personnel shall remain suitably skilled and experienced to carry out their roles during the Term of the Agreement.

2.2 The Operator shall obtain the prior written consent of the Authority, which shall not be unreasonably withheld, before the replacement of any Key Personnel, and the Operator shall use all reasonable endeavours to ensure that Key Personnel remain in office. The Operator shall ensure that a process of skill and knowledge transfer occurs prior to any Key Personnel ceasing to be involved in relation to the Services suitable to ensure continuity of Services and to ensure that the change does not have an adverse impact on the performance of the Services.

ANNEX TO SCHEDULE 11

Role	Skills and Experience	Key Personnel
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[Text Redacted: Table]

Schedule 12

POLICIES AND STANDARDS

1. PURPOSE

- 1.1 This Schedule details the policies, Standards and regulations, (international, European, British, HM Government, Authority or otherwise) which the Operator is required to observe in delivering the Services pursuant to this Agreement. The provisions of this Schedule are without prejudice to the general obligations of the Operator, as set out in this Agreement, to comply with Laws and Standards.
- 1.2 Throughout the Term, the Parties shall notify each other of any new or emergent Standards which could affect the Operator's provision, or the Authority's receipt, of the Services.
- 1.3 Where this Schedule makes reference to a specific standard, that reference shall be deemed to include reference to any equivalent UK or internationally recognised standard unless indicated to the contrary.

2. GENERAL STANDARDS

- 2.1 The Operator shall (and shall procure that Material Sub-Contractors shall) comply with:-
 - 2.1.1 EN 45000 standards;
 - 2.1.2 BS15000, ISO9000:2000 standards.
- 2.2 Further the Operator shall by no later than twelve (12) months of the Service Commencement Date, obtain ISO9000:2000 certification in respect of the Services and shall thereafter renew such certification annually.
- 2.3 The Operator shall operate within the project and programme management philosophies and methodologies which are consistent with the HM Government standards and methodologies (for example, PRINCE 2).
- 2.4 The Operator shall (and shall procure that Material Sub-Contractors shall) be accredited by UKAS or another appropriate national accreditation body in relation to the above standards.

3. DATA STANDARDS

The Operator shall (and shall procure that Material Sub-Contractors shall) comply with the following data standards:

- 3.1 Data standards should follow the UK Government Data Standards Catalogue within the eGIF Interoperability framework (<http://www.govtalk.gov.uk/>). In particular:
 - 3.1.1 Property data: <http://www.govtalk.gov.uk/gdsc/html/frames/default.htm>
 - 3.1.2 For property data that has not yet been defined and published, the Authority is a member of PISCES (see www.pisces.co.uk) which is in the process of developing the eCommerce standard for real estate. In order to enable the electronic transfer of information directly from one system to another, the Authority will be working towards defining and publishing data standards that the Operator will be expected to use.
 - 3.1.3 Any business conducted through the internet should follow the ebXML standard.

4. INFORMATION TECHNOLOGY STANDARDS AND REGULATIONS

- 4.1 Information Technology:

- 4.1.1 The Operator shall manage the environmental conditions for computer systems and hardware in manner that is consistent with ISO 14001.
- 4.1.2 Any new hardware for the delivery of the services shall conform to one of the following safety standards: EN 60950, IEC 950
- 4.1.3 Any new domestic mains powered electronic equipment required for the delivery of the Services shall conform to the following safety standard: BS EN 60065
- 4.1.4 Any new apparatus connecting to any telecommunications network, and required for the delivery of the service shall conform to the following safety standard: BS EN 41 003
- 4.1.5 All data processing equipment and other electrical equipment shall conform to EN 60950
- 4.1.6 Local area networks shall conform to EMI/EMC EN 55022 or EN50082 Standards.
- 4.1.7 Please refer to BSI Standards Catalogue (<http://www.bsonline.bsi-global.com/server/index.jsp>) for relevant and appropriate standards that we have not outlined above.

Schedule 13

SECURITY

1. PRINCIPLES

1.1 Subject to Paragraph 1.11, the Operator shall be responsible for ensuring the physical and technological security of:

1.1.1 the Operator systems;

1.1.2 Authority Data and the Database; and

and shall implement all appropriate security measures, investigate all actual or suspected security weaknesses, breaches and/or incidents and take any remedial action found to be necessary.

2. SECURITY STANDARDS

2.1 Throughout the Term and in relation to all security issues, the Operator shall (and shall procure that all Material Sub-Contractors shall) comply with ISO 17799 (BS 7799) for Information Security Management and guidance in initiating, implementing or maintaining security within an organisation.

2.2 Any failure by the Operator to comply with the provisions of this Schedule shall be a Deemed Material Default whereupon the Authority may terminate this Agreement in accordance with Clause 30.1.

2.3 Upon request by the Authority at any time during the Term, the Operator shall demonstrate to the Authority that the technical and non-technical security controls are implemented and operating in accordance with this Agreement.

2.4 The Authority shall retain the right to inspect and examine at any time the implementation of security measures proposed or put in place by the Operator and, at the Authority's absolute discretion, to require the Operator to amend, suspend or remove any such security measures.

2.5 In all matters of security, the Operator shall provide the Authority with full details of any products, systems or processes proposed by the Operator in connection with the Services.

3. SECURITY MANAGEMENT

3.1 The Operator shall operate a security management function in relation to the Operator Systems. This shall include having:

3.1.1 a single named point of contact within the Operator organisation for security management;

3.1.2 board-level responsibility for security within the Operator organisation;

3.1.3 an appropriate process within the Operator for escalation and resolution of security issues;

3.1.4 security specialists with the necessary skills and experience (including risk assessment, technical design, security testing, vulnerability assessment and contingency planning) to fulfil the requirements of this Agreement;

3.1.5 administrators with the necessary skills and experience to perform required security administration activities (including setting up new users, Malicious Software clean-up, data back-up, system monitoring, the investigation of security incidents); and

3.1.6 a person or team responsible for assessing the security implications of new technology or evaluating the opportunities presented by new security products and services.

- 3.2 The Operator shall implement and maintain a detailed security management process for the Operator systems, which shall be agreed with the Authority during the Implementation Phase.
- 3.3 The Authority may, on the provision of notice which is reasonable in the circumstances, convene such meetings as it considers necessary to deal with any security-related issues. The Operator shall ensure that the Staff nominated by the Authority are available to attend any such meeting.
- 3.4 Without prejudice to any obligations of the Operator under the Agreement, the Operator shall provide the Staff with appropriate training on security functions and procedures.

4. **SECURITY TEST PLANS AND THEIR IMPLEMENTATION**

- 4.1 During the Implementation Phase, the Operator shall ensure that its Testing includes Tests of the security of its systems.
- 4.2 Upon request by the Authority, the Operator shall document the findings of any security testing and provide a security test report for Acceptance by the Authority.
- 4.3 The Operator shall not use live Authority Data for test purposes (unless otherwise agreed by the Authority).

5. **ACCESS TO THE SYSTEM**

- 5.1 The Operator shall:
- 5.1.1 implement the system on dedicated hardware and have dedicated hardware for system standby no later than 30 September 2007;
 - 5.1.2 restrict physical access to the dedicated Energy Performance Certificate Register Operations Systems staff only and shall control physical access via a physical access system (e.g. swipe and/or key-code door access). The Energy Performance Certificate Register Systems Team will comprise of named authorised individuals;
 - 5.1.3 ensure that external logical access to all systems is controlled and restricted via industry, standard packet inspection firewalls, again managed by the Energy Performance Certificate Register Operations Systems staff;
 - 5.1.4 ensure test and production networks are physically segmented;
 - 5.1.5 ensure data held within test will be sample in nature and has no relations Home Information Pack to 'real-world' data unless the Authority authorises the extraction of data via an agreed 'scrambling' process;
 - 5.1.6 ensure levels of access are restricted to those permission levels which are appropriate to the relevant business needs, e.g. Development staff, do not have access to Production Data and Infrastructure;
 - 5.1.7 ensure data backups will be securely held both on-site and off-site at a secure data storage facility. Only authorised access to backup media shall be available;
 - 5.1.8 The Home Information Pack Regulations 2006 (SI 206/1503) state that all operational data held by the Operator belongs to the Secretary of State and cannot be passed to any other party without express consent. To avoid any doubt this includes but is not limited to the electronic and physical copies of;
 - 5.1.9 ensure Energy Performance Certificates are in Portable Document Format (PDF) representing the human-readable, printed copy of the Energy Performance Certificate;
 - 5.1.10 ensure Energy Performance Certificates are in 'raw data' format (XML);

- 5.1.11 ensure security of address and property data including the Energy Assessor Confirmed Unique Property Reference Numbers and the associated Address data for each Property;
- 5.1.12 ensure the security of data on Energy Assessors as contained in the Energy Assessor Register;
- 5.1.13 ensure the security of all authentication data (User Identifiers, security information such as passwords or digital certificates, and contact details) for Registered Users; and
- 5.1.14 ensure the security of any indexes on the above.

6. **AUDIT**

- 6.1 The Operator shall implement, operate and maintain records of the security of its systems and/or the Authority Data and/or the Database and any security related incident.
- 6.2 The Operator shall document the findings of audit control testing to confirm the effectiveness of the security controls and provide an audit control security test report for acceptance by the Authority.]
- 6.3 The Operator shall ensure that all data, logs, documents and other relevant information relating to any security incident are kept securely. Such data, logs, documents and information shall not be destroyed unless the Operator has first obtained the written approval of the Authority.
- 6.4 The Operator shall produce, maintain and implement an agreed strategy for protection against, detection of and removal of Malicious Software.
- 6.5 The Operator shall have in place appropriate monitoring systems to detect security-related issues. The Operator shall notify the Authority immediately upon detection of any such issue.

7. **CHANGE CONTROL**

- 7.1 Each Impact Assessment conducted in accordance with the Change Control Procedure shall also include details of the impact of any proposed Change upon security including an assessment of the impact of the change on:
 - 7.1.1 existing technical security arrangements;
 - 7.1.2 the then current versions of the security policies and documentation referred to in this Security Schedule; and
 - 7.1.3 physical/administrative/personnel security arrangements required.
- 7.2 The Operator shall ensure that no Change is implemented unless a security risk assessment has been performed in accordance with the Change Control Procedure.

8. **LEGAL AND REGULATORY**

- 8.1 The provisions of this Paragraph are without prejudice to the requirements elsewhere in this Agreement for the Operator to comply with all applicable Laws and Standards in providing the Services.
- 8.2 The Operator shall ensure that:
 - 8.2.1 it does not contravene the provisions of the Computer Misuse Act 1990; and
 - 8.2.2 that it applies suitable controls in the provision of the Services so that the Authority (should it wish to do so) shall be able to seek appropriate redress under the Computer Misuse Act 1990 in the event of a detected or suspected misuse of the Services or the Authority Systems.

9. **DOCUMENTATION**

9.1 The Operator shall maintain security documentation including:

9.1.1 an overall security strategy (defining the Operator's approach to maintaining a secure environment); and

9.1.2 the technical security strategy (outlining the technical measures implemented by the Operator to maintain a secure environment).

9.2 In respect of the documents described in Paragraph 9.1, the Operator shall implement and maintain a document management / version control system which enables clear identification of each document's history and revision trail.

9.3 The Operator shall implement and maintain a security strategy and a technical security strategy for the Operator system.

9.4 The Operator shall comply with its established security operating procedures and ensure that those security operating procedures are distributed to relevant Staff.

Schedule 14

SUB-CONTRACTS AND SUB-CONTRACTORS

1. PURPOSE

This Schedule contains provisions relating to the engagement and management of Sub-Contractors.

2. COMPLIANCE WITH POLICIES AND PROCEDURES

2.1 The Operator shall ensure that all Sub-Contractors comply with:

2.1.1 the security policies, Standards, regulations and requirements referred to in Schedule 13 (Security) and Schedule 12 (Policies and Standards) as they apply to the Operator; and

2.1.2 the Authority's rules, guidelines, policies and procedures (including IT policies) that are relevant to the provision of the Services or the Sub-Contractor's access to or use of Confidential Information, Authority Data or resources or facilities provided by the Authority from time to time.

2.2 The Operator shall ensure that when seeking to appoint or in awarding a contract to a proposed Sub-Contractor it does not discriminate on the grounds of:

2.2.1 nationality; or

2.2.2 that the goods to be supplied under the contract originate in another state.

3. IDENTITY OF SUB-CONTRACTORS

3.1 Notwithstanding the criteria for qualification as a Material Sub-Contractor, the Operator shall not enter into any arrangement with a Sub-Contractor which is likely, in the opinion of the Authority:

3.1.1 to bring the Authority into disrepute or otherwise to affect adversely the reputation or commercial standing of the Authority, the Crown, any Crown Body or the Government; or

3.1.2 to be a threat to the health, safety and/or security of any of the bodies referred to in Paragraph 3.1.1 or any of their personnel.

3.2 In the event that the Operator, in accordance with the terms of this Agreement, enters into a Sub-Contract, the Operator shall ensure that a term is included in the Sub-Contract which requires the Operator to pay all sums due to the Sub-Contractor within a specified period, not to exceed thirty (30) days, from the date of receipt of a valid and undisputed invoice, as defined by the terms of the Sub-Contract.

4. PERFORMANCE OF SUB-CONTRACTORS

4.1 If the Authority has concerns about the performance of any Sub-Contractor:

4.1.1 the Authority shall notify the Operator of such concerns;

4.1.2 the Operator shall take appropriate action to address the Authority's concerns within five (5) Working Days from and including the date of notification by the Authority of its concerns (or such other timeframe as the Authority may specify); and

4.1.3 if the Authority is not satisfied with the action taken by the Operator, the Authority may require replacement of the Sub-Contractor.

4.2 If the Authority requires replacement of the Sub-Contractor under Paragraph 4.1.3, the Operator shall (in accordance with a plan and reasonable timetable agreed between the Parties) cease using such Sub-Contractor to provide the relevant goods and/or services and make alternative arrangements to ensure that the Services continue to be provided (other than by such Sub-Contractor) without any disruption or interruption to the Authority or any Authorised User.

5. TERMS OF SUB-CONTRACTS

5.1 The Operator shall use its reasonable endeavours to procure that its arrangements with Sub-Contractors are appropriately documented and contain the following terms:

5.1.1 rights enforceable under the Contracts (Rights of Third Parties) Act 1999 for the Authority, a New Operator or a third party of the Authority's choice to take an assignment or novation of the sub-contract (or part of the sub-contract where relevant), during the period when the Operator is implementing the Exit Plan;

5.1.2 commercial terms which allow for the smooth transfer of services to the Authority or a New Operator during the during the period when the Operator is implementing the Exit Plan so as to facilitate the Operator's and its Sub-Contractors' compliance with the obligations in Schedule 8 (Exit Plan);

5.1.3 payment terms that will not unfairly prejudice the Authority after expiry or termination;

5.1.4 appropriate obligations in respect of Confidential Information, the protection of Authority Data and security, policies, Standards and regulations;

5.1.5 to the extent that a Deliverable is or comprises bespoke Intellectual Property, an assignment to the Authority of all title to, and Intellectual Property Rights in, any Deliverable created by the Sub-Contractor (or its employees, contractors or agents) in the course of supplying services under the relevant sub-contract;

5.1.6 no prohibition or restriction on the Sub-Contractor entering into any contract directly with the Authority; and

5.1.7 an indemnity in favour of the Authority in respect of any claim or demand by any employee, worker or agent of the Sub-Contractor that he or she has an employment relationship with the Authority.

6. MATERIAL SUB-CONTRACTORS

6.1 An existing Sub-Contractor who, at the time that it entered into an agreement with the Operator during the Term did not qualify as a Material Sub-Contractor shall be treated as such when the value attributable to its obligations under such sub-contract (or related sub-contracts) with the Operator is in excess of [**Text Redacted**] or its obligations include the Processing of Personal Data or whose services would be required in the event of a Disaster.

6.2 In relation to Material Sub-Contractors, the Operator shall notify the Authority of any change affecting a Material Sub-Contractor which may have a material impact on the provision of the Services, together with all reasonable information to enable the Authority to consider the likely impact of the change, and the Parties shall discuss and seek to agree ways in which any adverse impact may be minimised.

6.3 For the purposes of Clause 15, the list of approved Material Sub-Contractors is set out in the Annex to this Schedule.

- 6.4 The Operator shall maintain and, at the commencement of the relevant Exit Period, make available to the Authority, on request and at no cost, full and accurate copies of the terms of all sub-contracts separately entered into with Material Sub-Contractors.

ANNEX TO SCHEDULE 14

APPROVED MATERIAL SUB-CONTRACTORS

There are no approved Material Sub-Contractors at the date of this Agreement.

Schedule 15

NOT USED

Schedule 16

REVIEW PROCESS

1. INTRODUCTION

1.1 The agreed Baseline Financial Model is attached at the Annex to Schedule 6 (Finance). A summary page of the Baseline Financial Model for the Review Process is attached at Annex 1 to this Schedule 16 (Review Process). A working model of the full Baseline Financial Model is held by the Authority and Operator and will form the basis for agreeing any changes to the Lodgement Fee in accordance with this Schedule 16 (Review Process).

1.2 The Baseline Financial Model shows the cash flows of income versus expenses for the remainder of the Term. Derived from those cash flows will be an Agreed Rate of Return (ARR) of **[Text Redacted]**. This will include the cash expense of purchase of capital assets since all reusable capital assets are handed over to the Authority or a New Operator on termination or expiry of this Agreement.

2. DEFINITIONS

2.1 In this Schedule, the following words shall have the following meanings:

"IRR"	the internal rate of return of the project on a cash flow basis. Calculated on a 12 monthly period basis (i.e. not on the basis of monthly cash flows);
"ROI"	Return on Investment (ROI) is the ratio of money gained or lost (whether realised or unrealised) on an investment/project relative to the amount of money invested/expensed. ROI is expressed as a percentage;
"ARR" or "Agreed Rate of Return"	this is the ROI agreed between the parties and set out in the Baseline Financial Model;
"NPV"	the net present value at any point of review. Actual cash flows will, of course, deviate from those agreed at the outset and there may be agreed changes implemented (see below). Future transaction volumes might also need revision in the light of actual volumes to date. Therefore at any review point there will be a deviation in IRR from the ARR. The net present value of the Scheme is defined as an amount of cash flow in the present year, which, if it existed, would set the IRR equal to the ARR;
"Basic Review"	Is a Review carried out in accordance with paragraph 4;
"Detailed Review"	Is a Review carried out in accordance with paragraph 5;
"Expenses"	Includes items in the Financial Model and includes necessary capital expenditures which are expensed for future review purposes in the Year of payment.

“Settlement Monies”

Is the sum of [**Text Redacted**]

3. REVIEW PERIOD AND APPROACH

- 3.1 A Review shall be undertaken annually, to be concluded in time for any changes to the fees to be implemented via statutory instrument in line with the common commencement dates (an “Annual Review”).
- 3.2 Interim Reviews may be undertaken, at any time, at the election of the Authority:
- 3.2.1 if the Authority considers a situation has arisen which is outside the scope of this Agreement and/or the reasonable contemplation of the Parties or which will have a material impact on the delivery of the Operational Services;
 - 3.2.2 to enable the Authority to determine whether the Settlement Monies should be recovered through the Lodgement Fee in accordance with paragraph 13; or
 - 3.2.3 in the circumstances set out in paragraph 5.1.1 to 5.1.5.
- 3.3 An Annual Review will take the form set out in paragraph 4 below (Basic Review) unless one or more of the circumstances referred to in sub-paragraphs 5.1.1 to 5.1.5 apply, in which case, it shall take the form set out in paragraph 5 (Detailed Review).
- 3.4 An Interim Review will take the form set out in paragraph 4 below (Basic Review) unless one or more of the circumstances referred to in sub-paragraphs 5.1.1 to 5.1.5 apply, in which case, it shall take the form set out in paragraph 5 (Detailed Review).
- 3.5 The Final Review shall be undertaken not less than one year prior to the date on which this Agreement expires unless the circumstances set out in paragraph 5.1.1 to 5.1.5 apply, in which case, a Review may be undertaken within the year prior to the date on which this Agreement expires.
- 3.6 The Authority will agree with the Operator the identity of the Review Panel to conduct the Review.
- 3.7 The costs of such a Review will be borne by the Operator. The Review Panel will act as expert and not as arbitrator. The Operator shall afford such access to the Operator's books and records and personnel as shall be requested to enable the Review to be conducted expeditiously.

4. SCOPE OF THE BASIC REVIEW

- 4.1 Except where a Review is to be carried out in accordance with paragraph 5, the Review Panel will:
- 4.1.1 assess actual income from the date the last Review was concluded against the Operator’s expenses as set out in the previously agreed Financial Model;
 - 4.1.2 determine whether the actual rate of return achieved was higher or lower than the Agreed Rate of Return; and
 - 4.1.3 ascertain the level of the Lodgement Fee to be recommended to achieve the Agreed Rate of Return.
- 4.2 The Operator shall provide an updated summary of the Financial Model (including actual income) in the form as set out at Annex 1 to this Schedule to enable the Basic Review to be completed.
- 4.3 Without prejudice to the above, the Review will consider the following (without limitation):
- 4.3.1 volumes and associated revenues received over the Term to date;

- 4.3.2 the Financial Model for preceding years and the year to date;
- 4.3.3 estimate the number of lodgements anticipated from the date of the Review until the end of the Term;
- 4.3.4 the Operator's returns when compared to expected ARR; and
- 4.3.5 the actual costs of Change to date agreed through the Change Control Procedure and to be met from the Operating Reserve which will be entered into the Financial Model.

5. SCOPE OF DETAILED REVIEW

- 5.1 A Detailed Review is to be carried out in accordance with this paragraph in the following circumstances:
 - 5.1.1 there has been, or the Authority anticipates there will be, a Change agreed through the Change Control Procedure, the costs of which cannot be met through the Operating Reserve;
 - 5.1.2 the Operator has ceased to provide, or the Authority anticipates the Operator will cease to provide (whether or not at the Authority's request) some or any of the Operational Services;
 - 5.1.3 the Operator's costs have increased or reduced as a result of Authority Specific Changes in Law and/or Authority Specific Changes in Standards;
 - 5.1.4 where a Review is triggered by substantial fluctuations in lodgement volumes as in the circumstances set out in sub-paragraph 5.2 below; or
 - 5.1.5 where the Operator and Authority agree that such a Review should be carried out.
- 5.2 A baseline of lodgement volumes has been set out in the Baseline Financial Model at Annex 1 to Schedule 6 (Baseline Lodgement Volumes). The cumulative 12-month volume figure will be calculated on a monthly basis, based on the lodgements made in last month added to the lodgements in the previous eleven months. When, for two consecutive months, this cumulative 12-month figure varies by more than 40% as compared with the Baseline Lodgement Volumes, a Detailed Review shall be triggered. This shall apply whether there has been a fall of more than 40% or an increase of more than 40%. An example of a situation in which a Detailed Review will be triggered due to substantial fluctuations in lodgement volumes is set out at paragraph 14 for illustrative purposes only.
- 5.3 Where a Detailed Review is to be carried out, the Review Panel will:
 - 5.3.1 assess actual income and actual Eligible Expenditure from the date the last Review was concluded against the previously agreed Financial Model;
 - 5.3.2 determine whether the actual rate of return achieved was higher or lower than the Agreed Rate of Return; and
 - 5.3.3 ascertain the level of the Lodgement Fee to be recommended to achieve the Agreed Rate of Return.
- 5.4 The Operator shall provide updated Project Accounts for preceding years and the year to date in the form as set out at Schedule 6 (Financial Model) to enable the Detailed Review to be completed.
- 5.5 Without prejudice to the above, a Detailed Review will consider the following (without limitation):
 - 5.5.1 volumes and associated revenues received over the Term to date;
 - 5.5.2 the Project Account for preceding years and the year to date;

- 5.5.3 estimate the number of lodgements anticipated from the date of the Review until the end of the Term;
- 5.5.4 the Operator's returns when compared to expected ARR;
- 5.5.5 additional or reduced costs as a result of Changes;
- 5.5.6 additional or reduced costs as a result of Authority Specific Changes in Law and Authority Specific Changes in Standards;
- 5.5.7 review of Operator's underlying costs, costs model and service levels including by reference to comparable schemes;
- 5.5.8 (as necessary) review of the pro forma project account (and the Eligible Expenditure for inclusion therein); and
- 5.5.9 the actual costs of Change to date agreed through the Change Control Procedure and to be met from the Operating Reserve which will be entered into the Financial Model.

5.6 Any changes in costs as a result of Changes, Authority Specific Changes in Law and Authority Specific Changes in Standards shall be adjusted to take into account the obligation of the Operator to mitigate the effects of such Changes, Authority Specific Changes in Law or Authority Specific Changes in Standards (as the case may be) and shall be further reduced by any savings in costs achieved by the Operator as a result of the Change, Authority Specific Change in Law or Authority Specific Change in Standards (as the case may be).

6. **DEFINITION OF 'EXPECTED PROFIT' AND RE-BASING FINANCIAL MODEL**

6.1 Where a Review is carried out in accordance with paragraph 4 (Basic Review), actual revenues will be used to re-baseline the Financial Model as per the agreed ARR.

6.2 Where a Review is carried out in accordance with paragraph 5 (Detailed Review), actual revenues and expenses will be analysed against those submitted in the previous Financial Model. The Review Panel will assess the reasons for the variations, taking into account agreed Changes and other factors outside the control of the Operator. These factors will be used to re-baseline the Financial Model as per the agreed ARR.

6.3 If the NPV is positive, then the Operator will be deemed to have made excess positive net cashflows over those expected. If the NPV is negative, then the Operator will be deemed to have made less profit than that expected.

7. **TREATMENT OF INCOME**

The profile of actual versus expected transaction volumes (and, at the Authority's discretion, additional income) will be entered into the Financial Model as part of the assessment in any Review.

8. **TREATMENT OF SERVICE CREDITS**

8.1 The Service Rectification Plans will be implemented at the Operator's cost.

8.2 The spend against these Service Rectification Plans must be auditable as any other Domestic Energy Performance Certificate Register project related costs.

9. **OPERATOR'S COSTS**

9.1 'Fixed Operating Expenses' (as set out in the Financial Model) will not be varied except where agreed by the Operator and Authority following a Review carried out in accordance with paragraph 5 of this Schedule (Detailed Review).

9.2 Accordingly, a Review will not take into account the actual outcomes in 'direct costs' such as salaries of full-time staff (as set out in the Financial Model) unless it is carried out in accordance with paragraph 5 of this Schedule (Detailed Review).

9.3 Actual outcomes in 'indirect costs' such as office support or corporate overheads (as set out in the Financial Model) will not be taken into account by the Review unless the Review is to be carried out in accordance with paragraph 5 of this Schedule (Detailed Review).

9.4 The Operator's set up costs and capital expenses up until 6th April 2013 are agreed as set out in the Financial Model and shall not be subject to Review in any circumstances.

10. **THE PROJECT OPERATING RESERVE**

10.1 This is a budget which can be used to cater for Change agreed in accordance with the Change Control Procedure ("Operating Reserve"). This will be included as a distinct budget line within the Financial Model and as such will not attract overhead or margin.

10.2 The actual direct costs of Change will be added into the Re-baselined Financial Model under the line for Change Requests, and considered as part of the Review.

10.3 On expiry of this Agreement, any amount of the Operating Reserve that has not been used for Change agreed in accordance with the Change Control Procedure shall be removed from the Financial Model and shall not be included in the final Project Account submitted to the Authority under Schedule 20.

11. **THE OUTCOME OF THE REVIEW**

11.1 The Review Panel will recommend a new Lodgement Fee that sets the IRR to the end of the project equal to that agreed in the contract (the ARR) by use of the Re-baselined Financial Model for the remainder of the Term.

11.2 Where a Review is carried out in accordance with paragraph 5 (Detailed Review):

11.2.1 The Review Panel may recommend adjustments to the Operator's costs in the Financial Model to reflect changes in costs or the substantially higher or lower volumes in lodgements; and

11.2.2 The Review Panel may recommend changes to the Lodgement Fee to reflect these changes in the costs base.

11.3 Following a recommendation made under paragraph 11.2, the Operator and the Authority may agree changes to costs to be reflected in the Re-baselined Financial Model. Where no agreement is reached no changes will be made to fixed costs in the Financial Model. The Operator and the Authority must not unreasonably withhold their agreement to such changes.

11.4 Any alteration to the Lodgement Fee will be subject to decision by the Secretary of State and implementation of an appropriate statutory instrument in accordance with and subject to the usual parliamentary process.

11.5 Disputes under the review process will be governed by the Dispute Resolution Process (with any amendments that the Authority considers appropriate).

12. **OPERATING RESERVES, OVERHEADS AND EXPENSES**

12.1 To ensure that costs are specified and transparent wherever possible—

12.1.1 [Text Redacted].

12.1.2 [Text Redacted]

12.1.3 [Text Redacted]

12.1.4 [Text Redacted]

13. **SETTLEMENT MONIES**

13.1 The Authority may, at any time during the Term, elect that an Interim Review be undertaken to enable it to determine whether the Settlement Monies (in whole or in part) should be recovered through the Lodgement Fee or elect that this be ascertained as part of an Annual Review.

13.2 The provisions of this Schedule 16 are to apply in relation to any such Review, however, the Review Panel will ascertain the level of Lodgement Fee to be recommended to achieve both the Agreed Rate of Return and recovery of the Settlement Monies in whole or in part, as specified by the Authority.

13.3 The Review Panel shall then recommend a new Lodgement Fee that sets the IRR to the end of the project equal to that agreed in the contract (the ARR) and which will recover the Settlement Monies in whole or in part (as specified by the Authority) by use of the Re-baselined Financial Model.

13.4 If the Secretary of State decides to alter the Lodgement Fee to recover the Settlement Monies in whole or in part and a statutory instrument is made to give effect to this decision:

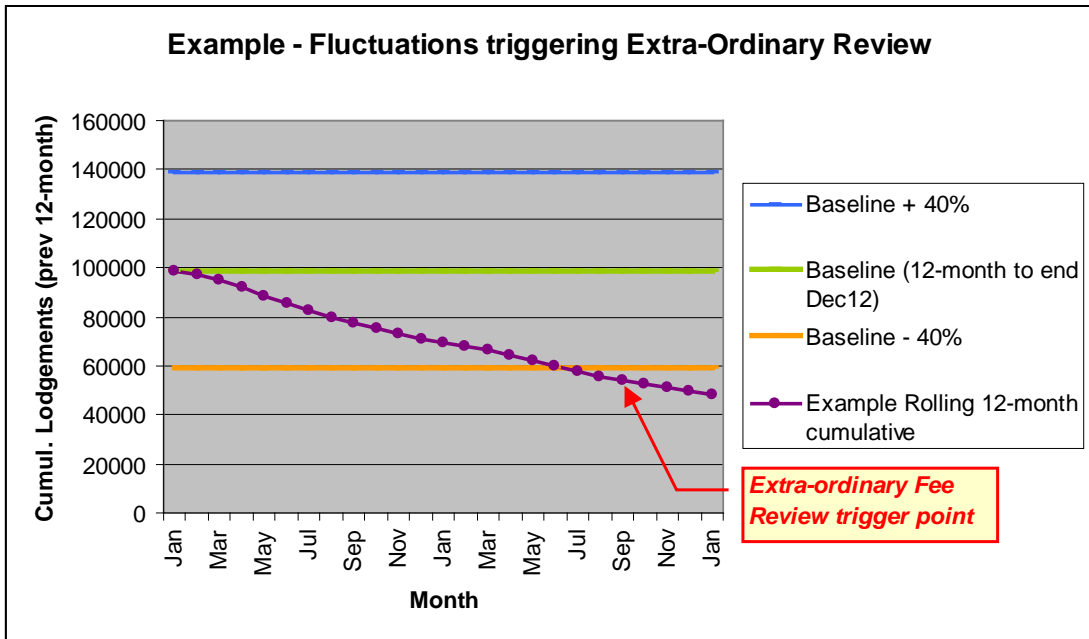
13.4.1 income received in respect of the Settlement Monies is to be separately identified on the Re-baselined Financial Model;

13.4.2 the Operator shall repay the Settlement Monies to the Authority in quarterly instalments starting from the date on which the statutory instrument implementing the revised Lodgement Fee comes into force and ending on the date on which the contract expires or the Settlement Monies are recovered in whole or in part (as specified by the Authority), whichever is the sooner.

14. **EXAMPLE OF A SITUATION IN WHICH FLUCTUATIONS IN LODGEMENTS TRIGGER DETAILED REVIEW**

14.1 An example of a situation in which a Detailed Review will be triggered under paragraph 5.2 is set out below for illustrative purposes only.

14.2 For example, if the baseline 12-month Volume figure is 100,000 lodgements. Should the cumulative volume of lodgements in any consecutive 12-month period fall below 60,000 lodgements for two months in a row, a Detailed Review will be triggered.



Annex 1 to Schedule 16 is replaced with the following:

ANNEX 1 TO SCHEDULE 16 – REVIEW PROCESS

BASELINE FINANCIAL MODEL FOR REVIEW (ILLUSTRATIVE PURPOSES ONLY)

[Text Redacted: Financial Table]

Schedule 17

SOFTWARE

PART 1 – Software

THIRD PARTY SOFTWARE – SOLUTION

- [Text Redacted]

THIRD PARTY SOFTWARE – DEVELOPMENT AND MANAGEMENT

- [Text Redacted]

PART 2 – Standard Licence Terms

1. SCOPE OF THE STANDARD LICENCE TERMS

This Schedule sets out the Standard Licence Terms granted by the Operator to the Authority in respect of the circumstances set out in the Agreement.

2. STANDARD LICENCE TERMS

2.1 A licence granted under the Standard Licence Terms pursuant to Clauses 21.1, 21.2, 21.3 and 21.4 shall:

2.1.1 be perpetual, irrevocable, worldwide, non-exclusive, assignable and royalty free;

2.1.2 allow the Authority to Use the Operator Software and Third Party Software;

2.1.3 allow the Authority to Use the Documentation and any Operator Background IPRs;

2.1.4 where source code relating to the Operator Software and / or Third Party Software is released from escrow, the Authority shall in addition to the rights specified above, have the right to modify, amend, adapt and enhance the Operator Software and Third Party Software.

2.2 The Authority may sub-licence its rights granted pursuant to paragraph 2.1 to a third party on the same terms set out in this Schedule subject to the third party entering into a confidentiality undertaking with the Authority on the terms that are substantially the same as those set out in the Agreement.

2.3 Any change in the legal status of the Authority which means that it ceases to be a Contracting Authority shall not affect the validity of any licence granted under the Standard Licence Terms. If the Authority ceases to be Contracting Authority, the Standard Licence Terms shall be binding on any successor body to the Authority.

PART 3 – Enhanced Licence Terms

1. ENHANCED LICENCE TERMS

1.1 A licence granted under the Enhanced Licence Terms pursuant to Clause 24.6 shall:

1.1.1 be perpetual, irrevocable, worldwide, exclusive, assignable and royalty free;

1.1.2 allow the Authority to Use the Specially Written Software;

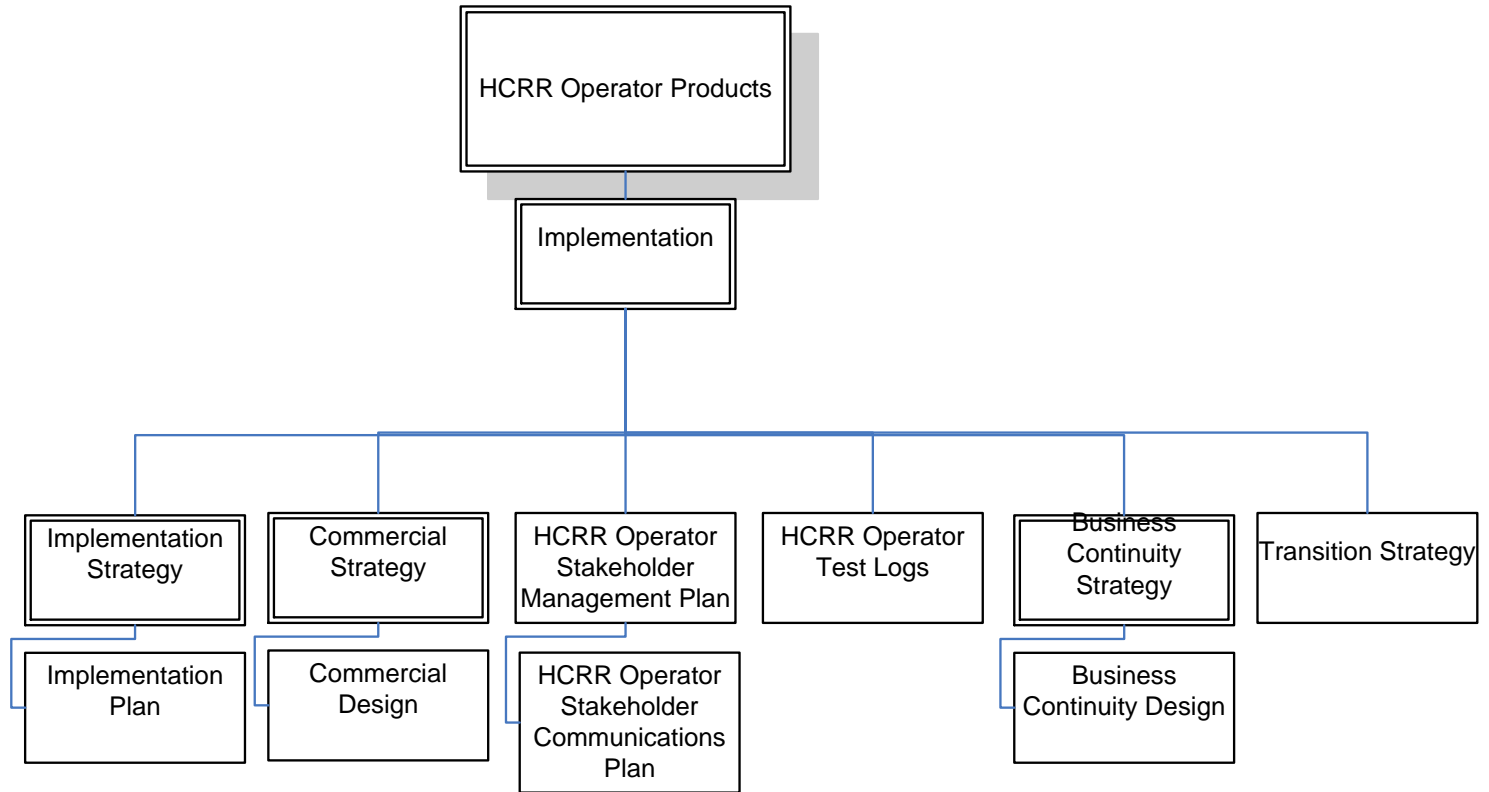
- 1.1.3 allow the Authority to Use the Project Specific IPRs; and
- 1.1.4 allow the Authority to integrate with other software the Specially Written Software.
- 1.2 The Authority may sub-licence its rights granted pursuant to paragraph 1.1 to a third party on the same terms set out in this Schedule subject to the third party entering into a confidentiality undertaking with the Authority on the terms that are substantially the same as those set out in the Agreement.
- 1.3 Any change in the legal status of the Authority which means that it ceases to be a Contracting Authority shall not affect the validity of any licence granted under the Enhanced Licence Terms. If the Authority ceases to be Contracting Authority, the Enhanced Licence Terms shall be binding on any successor body to the Authority.

DOCUMENTATION DELIVERABLES

Technical Deliverables – Document Breakdown Structure

The diagram below outlines the non-management documents that the Operator implementation may produce:

Figure 1: Document Breakdown Structure: Suggested Technical Documents For Implementation Stage



Document Flow Diagram

[Text Redacted]

Appendix – Document Descriptions

This appendix describes of some of the major technical documents that the EPC Operator may deliver and for each one gives details of:

- (a) Document reference number
- (b) Document Title
- (c) Owner
- (d) Format
- (e) Purpose
- (f) Quality Criteria
- (g) Review Process
- (h) Reviewers
- (i) Sign-off Process
- (j) Sign-off Authority
- (k) Dependencies

[Text Redacted: Tables - Ten Pages]

Schedule 19

PAYMENT ON TERMINATION

1. PURPOSE OF THE SCHEDULE

- 1.1 This Schedule sets out the calculation of the Termination Payment that may be paid by the Authority to Operator.
- 1.2 The relevant extract from the Baseline Financial Model is set out as Annex 1 to this Schedule 19. If there is an inconsistency between such Annex and the provisions of this Schedule, the provisions of this Schedule shall have precedence.
- 1.3 If the Agreement is terminated for any reason other than pursuant to Clause 38.2, no payment shall be due to the Operator and the remainder of this Schedule shall not be applicable.

2. TERMINATION PAYMENT

- 2.1 The amount of the Termination Payment payable to the Operator shall be calculated depending on whether the Authority exercised its right to terminate for convenience pursuant to Clause 38.2 prior to the Final Preparations Commitment Date or post the Final Preparations Commitment Date.
- 2.2 If the Authority exercises its right to terminate for convenience pursuant to Clause 38.2 prior to the Final Preparations Commitment Date, the provisions set out in paragraph 3 below shall apply.
- 2.3 If the Authority exercises its right to terminate for convenience pursuant to Clause 38.2 post the Final Preparations Commitment Date, the provisions set out in paragraph 4 below shall apply.

3. PAYMENT ON TERMINATION FOR CONVENIENCE BY THE AUTHORITY PRIOR TO THE FINAL PREPARATIONS COMMITMENT DATE

- 3.1 Subject to paragraph 3.3, if the Authority exercises its right to terminate for convenience pursuant to Clause 38.2 prior to the Final Preparations Commitment Date, it shall pay to the Operator:
 - 3.1.1 the Prior Financial Preparations Commitment Data Cancellation Fee; and
 - 3.1.2 the Unrecovered Costs which, in relation to any Sub-Contract, are reasonably and properly payable by the Operator under the terms of the relevant Sub-Contract as a direct result of termination of this Agreement provided that such Unrecovered Costs shall be reduced to the extent that the Operator fails to use all reasonable endeavours to mitigate such costs in accordance with paragraph 6 below:
- 3.2 For the avoidance of doubt, Unrecovered Costs do not include and no payment shall be made by the Authority in respect of any liabilities and obligations of the Operator arising out of:
 - 3.2.1 any agreements or arrangements entered into by the Operator to the extent that such agreements or arrangements were not entered into in connection with its obligations under the Agreement; and / or
 - 3.2.2 contracts, agreements or arrangements entered into by the Operator to the extent that such contracts, agreements or arrangements were not entered into in the ordinary course of business and on commercial arms length terms; and/or
 - 3.2.3 any period of engagement prior to the relevant Sub-Contractor being engaged in the provision of the Services.

3.3 Any payment which becomes due and payable by the Authority pursuant to paragraph 3 of this Schedule shall be limited as follows;

3.3.1 Unrecovered Costs shall under no circumstances exceed the sum of [**Text Redacted**] and;

3.3.2 the maximum amount payable is aggregate by the Authority pursuant to this paragraph 3 (including the Prior Final Preparations Commitment Date Cancellation Fee) shall under no circumstance exceed the sum of [**Text Redacted**], which shall be the maximum amount payable in aggregate by the Authority pursuant to this paragraph 3.

4. **PAYMENT ON TERMINATION FOR CONVENIENCE BY THE AUTHORITY POST THE FINAL PREPARATIONS COMMITMENT DATE**

4.1 Subject to paragraph 4.3, if the Authority exercises its right to terminate for convenience pursuant to Clause 38.2 post the Final Preparations Commitment Date, it shall pay to the Operator:

4.1.1 the Post Final Preparations Commitment Date Cancellation Fee; and

4.1.2 the Unrecovered Costs and Breakage Costs which are reasonably and properly incurred by the Operator arising as a direct result of the termination of this Agreement to the extent that such Unrecovered Costs and Breakage Costs exceed income received or receivable by the Operator up to date of termination provided that such Unrecovered Costs and Breakage Costs shall be reduced to the extent that the Operator fails to use all reasonable endeavours to mitigate such costs in accordance with paragraphs 6 and 4.5.1 below respectively.

4.2 For the avoidance of doubt, Unrecovered Costs and Breakage Costs do not include and no payment shall be made by the Authority in respect of any liabilities and obligations of the Operator arising out of the matters and items described in paragraph 3.2 above and Breakage Costs do not include and no payment shall be made by the Authority in respect of any liabilities and obligations of the Operator arising out of:

4.2.1 any contracts of employment or other agreements or arrangements entered into by the Operator to the extent that such contracts of employment, agreements or arrangements were not entered into in connection with this Agreement;

4.2.2 contracts of employment or other agreements or arrangements entered into by the Operator to the extent that such contracts of employment, agreement or arrangements were not entered into in the ordinary course of business and on commercial arms length terms; and / or

4.2.3 any period of employment prior to a relevant employee being wholly or mainly engaged in the provision of the Services.

4.3 Any payment which becomes due and payable by the Authority pursuant to paragraph 4 of this Schedule shall be limited as follows;

4.3.1 (if termination occurs on or after the Final Preparations Commitment Date but before 1 June 2007):

a) Unrecovered Costs and Breakage Costs shall under no circumstances exceed the sum of [**Text Redacted**]; and

b) The maximum amount payable in aggregate by the Authority pursuant to paragraph 4.1 above (including the Post Final Preparations Commitment Date Cancellation Fee) shall under no

circumstances exceed the sum of [**Text Redacted**] which shall be the maximum amount payable in aggregate by the Authority pursuant to paragraph 4.1 above; and

4.3.2 (if termination occurs on or after 1 June 2007):

- a) Uncovered Costs and Breakage Costs shall under no circumstances exceed the sum of [**Text Redacted**]; and
- b) The maximum amount payable in aggregate by the Authority pursuant to paragraph 4.1 above (including the Post Final Preparations Commitment Date Cancellation Fee) shall under no circumstances exceed the sum of [**Text Redacted**] which shall be the maximum amount payable in aggregate by the Authority pursuant to paragraph 4.1 above.

4.4 If Unrecovered Costs and Breakage Costs are less than income received or receivable by the Operator up to the date of termination then the Authority shall not be obliged to make payment to the Operator in respect of Unrecovered Costs and Breakage Costs under the paragraph 4.1 above

4.5 The following provisions shall apply in respect of employees and assets wholly or mainly engaged by the Operator in the provision of the Services as at the date of notice to terminate being given;

4.5.1 the Operator shall use all reasonable endeavours to seek to redeploy the relevant employees by offering them alternative employment if possible to reduce Breakage Costs; and

4.5.2 used assets will remain the property of the Operator. Unused assets or assets which are committed for delivery will become the property of the Authority and the Operator will take such steps and execute such documents as are required by the Authority to give effect to this.

5. **FULL AND FINAL SETTLEMENT**

Any Termination Payment shall be in full and final settlement of any claim, demand and / or proceedings of the Operator in relation to any termination by the Authority pursuant to Clause 38.2 and the Operator shall be excluded from all other rights and remedies it would otherwise have in respect of any such termination.

6. **MITIGATION OF UNRECOVERED COSTS**

6.1 The Contractor agrees to take all reasonable steps to minimise and mitigate the Unrecovered Costs by:

6.1.1 the appropriation of assets, employees and resources for other purposes. If such assets, employees and resources can be used for other purposes then there shall be an equitable reduction in the Unrecovered Costs payable by the Authority to the Operator; and

6.1.2 in relation to contracts entered into with third parties, termination by the Operator of those contracts at the earliest possible date without breach or where contractually permitted, and where required by the Authority, assigning such contracts to the Authority or a third party acting on behalf of the Authority.

7. **NO DOUBLE RECOVERY**

The value of any Termination Payment shall be reduced or extinguished to the extent that the Operator has already received the charges or the financial benefit of any other remedy given under this Agreement so that there is no double counting in calculating the relevant Termination Payment.

Schedule 20

PAYMENT ON EXPIRY

1. PURPOSE

This Schedule sets out the calculation of any payment that is to be paid by the Authority to the Operator or by the Operator to the Authority upon expiry of this Agreement.

2. DEFINITIONS

In this Schedule, the following words and phrases shall have the meanings set out below:-

“**Project Account**” means the account maintained in accordance with paragraph 4 of Schedule 6.

“**ARR**” or “**Agreed Rate of Return**” has the meaning given in paragraph 2.1 of Schedule 16.

3. FINAL ACCOUNTS

3.1 The Operator shall submit a completed final Project Account to the Authority not more than 10 working days after the Original Expiry Date or where the term of this Agreement has been extended in accordance with clause 2.3 and/or 2.4, the final day of any period of extension.

3.2 Unless agreed by the Authority prior to expiry of this Agreement, the costs incurred by the Operator in final Project Account must not exceed the costs that were taken into consideration in the Final Review carried out under Schedule 16.

3.3 The Authority shall review the final Project Account within 15 working days of the Operator having provided such an Account.

3.4 Following this review, the Authority will confirm Provisional Agreement or rejection of the final Project Account.

3.5 The Authority may reject the final Project Account if it considers expenditure incurred by the Operator in the final Project Account to be unexpected or unreasonable.

3.6 If the Authority rejects the Project Account, the Operator must produce a revised final Project Account which is acceptable to the Authority.

3.7 Upon Provisional Agreement of the final Project Account, the Operator and the Authority shall calculate the profit that has been made and determine:

3.7.1 whether it is a surplus (i.e. the profit is greater than the Agreed Rate of Return) or deficit (i.e. the profit is lower than the Agreed Rate of Return); and

3.7.2 whether this sum falls within a tolerance of plus or minus [**Text Redacted**] of the Agreed Rate of Return.

3.8 Where the profit amount is in surplus, and exceeds the Agreed Rate of Return (ARR) by a tolerance amount of [**Text Redacted**] or more, Landmark shall pay to the Authority any sum in excess of that tolerance amount.

3.9 Where the profit amount is in deficit and is less than the ARR by a tolerance amount of [**Text Redacted**] or more, the Authority shall pay to the Operator any sum in excess of that tolerance amount.

3.10 Once agreed, this position, along with the Final Project Accounts, shall be documented as the final Statement of Account within 5 working days from the Provisional Agreement of the Final Project accounts.

3.11 Where a payment is to be made by the Authority to the Operator, or by the Operator to the Authority, the relevant party shall invoice the other within 10 working days of the final Statement of Account being documented and payment shall be made within the parties usual payment terms.

3.12 Disputes relating to the final Project Account or the calculation of payment on expiry will be governed by the Dispute Resolution Process.

THE CORPORATE SEAL of the **SECRETARY OF)**
STATE FOR COMMUNITIES AND LOCAL)
GOVERNMENT hereunto affixed is authenticated by duly)
authorised civil servant in the Department for)
Communities and Local Government:

Name:

Title:

Date:

EXECUTED AS A DEED by **LANDMARK)**
INFORMATION GROUP LIMITED:)
)

Name:

Title: Director

Name:

Title: Director/Secretary

Date:

APPENDIX 2
TECHNICAL SOLUTION