

**THE SECRETARY OF STATE FOR
WORK AND PENSIONS**

- and -

ATOS ORIGIN IT SERVICES UK LIMITED

MEDICAL SERVICES AGREEMENT

**Bird & Bird
90 Fetter Lane
London EC4A 1JP
Ref: HRS/PYS/DEPSS-31**

**Tel: 020 7415 6000
Fax: 020 7415 6111
www.twobirds.com**

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THIS AGREEMENT is made the 15 March 2005

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR WORK AND PENSIONS** ("the AUTHORITY"); and
- (2) **ATOS ORIGIN IT SERVICES UK LIMITED** a company incorporated in England and Wales under registration number 01245534, whose registered office is at 4 Triton Square, London NW1 3HG ("the CONTRACTOR").

WHEREAS:

- (a) On 10 September 2003 the AUTHORITY placed an advertisement in the Official Journal of European Communities for the supply of services;
- (b) By the required deadline the CONTRACTOR responded to that advert and expressed an interest in supplying the services;
- (c) On 21 October 2003 the AUTHORITY issued the Questionnaire and the CONTRACTOR responded to that Questionnaire by the required deadline;
- (d) On 12 January 2004 the AUTHORITY issued the Operational Requirements ("the OR") to potential service providers (including the CONTRACTOR) setting out the requirements for the provision of certain services to the AUTHORITY;
- (e) On 1 March 2004 the AUTHORITY issued the Statement of Service Requirements ("the SSR") to potential service providers (including the CONTRACTOR) setting out the requirements for the provision of Services to the AUTHORITY;
- (f) On 25 May 2004 the AUTHORITY issued a Revised Statement of Service Requirements ("the Revised SSR") to potential service providers (including the CONTRACTOR) setting out revised requirements for the provision of Services to the AUTHORITY;
- (g) The CONTRACTOR submitted the Proposal by the required deadline in response to the Revised SSR and submitted a Final Proposal on 2 August 2004;
- (h) The AUTHORITY then invited potential service providers (including the CONTRACTOR) to engage in further discussions in connection with their respective Proposals and the AUTHORITY's needs for the provision of the required services and accordingly such discussions took place;
- (i) On 19 October 2004 the AUTHORITY invited potential service providers (including the CONTRACTOR) to submit Best and Final Offers in respect of the provision of the required services;
- (j) The CONTRACTOR submitted a Best and Final Offer in respect of the provision of the required services on 29 November 2004;
- (k) On 17 December 2004 the AUTHORITY invited potential service providers (including the CONTRACTOR) to submit revised Best and Final Offers in respect of the provision of the required services;
- (l) The CONTRACTOR submitted a revised Best and Final Offer in respect of the provision of the required services on 4 January 2005, as clarified by subsequent discussions relating thereto;
- (m) During the period 11 March 2004 to 24 November 2004, the CONTRACTOR was afforded full access to the AUTHORITY'S relevant properties and assets and successfully carried out all due diligence exercises and/or performance audits sufficient in relation to such properties and assets to ensure that it shall be able to meet its obligations as set out in this Agreement;

- (n) On the basis of the CONTRACTOR's Proposal as further amplified by the above-referenced discussions and on the basis of the CONTRACTOR's revised Best and Final Offer, the AUTHORITY has selected the CONTRACTOR to provide the required services and the CONTRACTOR undertakes to supply the same on the terms set out below;

NOW THEREFORE IT IS HEREBY AGREED as follows:

1. INTRODUCTION

1.1 Interpretations

1.1.1 As used in this Agreement:

1.1.1.1 the terms and expressions set out in Schedule 1 shall have the meanings ascribed therein;

1.1.1.2 the masculine includes the feminine and the neuter and person shall mean corporation, partnership, firm, unincorporated association and natural person; and

1.1.1.3 the singular includes the plural and vice versa.

1.1.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

1.1.3 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

1.1.4 References in this Agreement to Recitals, Clauses, Parts, Sub-clauses and Schedules are, unless otherwise provided, references to the recitals, clauses, parts, sub-clauses and schedules of this Agreement.

1.1.5 In the event and to the extent only of any conflict or inconsistency between:

1.1.5.1 the provisions of the Clauses and Schedule 1 and the provisions of the Schedules (other than Schedule 1), the provisions of the Clauses and Schedule 1 shall prevail;

1.1.5.2 the provisions of the Schedules (other than Schedule 1), the provisions of Schedules 2 and 4 shall prevail over those of all other Schedules (other than Schedule 1);

1.1.5.3 the provisions of Schedules 3, 7 and 8 and any other Schedule, the other Schedule shall prevail;

1.1.5.4 the provisions of this Agreement and the provisions of any document referred to or referenced herein, the provisions of this Agreement shall prevail; and

1.1.5.5 the provisions of this Agreement and the provisions of any document agreed by the parties or submitted by the CONTRACTOR and approved by the AUTHORITY subsequent to the date hereof, the provisions of this Agreement shall prevail unless amended in accordance with Clause 8.4.

1.1.6 The party receiving the benefit of an indemnity under this Agreement shall use its reasonable endeavours to mitigate its loss covered by the indemnity.

1.1.7 The CONTRACTOR acknowledges that OGDs may receive the Services and the term "AUTHORITY" shall be construed (except in this Sub-Clause 1.1.7) to include OGDs where appropriate in this Agreement. Such OGDs shall be entitled to receive the benefit of the Services, but shall not be entitled to enforce their rights under the Services, inasmuch this Agreement shall only be enforceable by the AUTHORITY, acting on its own behalf and/or on behalf of the OGDs.

1.2 Severability

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the AUTHORITY and the CONTRACTOR shall immediately commence good faith negotiations to remedy such invalidity. However, if the AUTHORITY and the CONTRACTOR fail to complete such negotiations within a reasonable period of time, this Agreement shall terminate without further liability to either party.

1.3 Governing Law and Jurisdiction

1.3.1 This Agreement shall be considered as a contract made in England and according to English law, and shall be subject to the exclusive jurisdiction of the English courts, to which the parties hereby submit.

1.3.2 This Agreement is binding on the AUTHORITY and its successors and permitted assignees and on the CONTRACTOR and its successors and permitted assignees.

1.4 Entire Agreement

This Agreement together with the MSA Transition Agreement and all the Property Agreements, constitutes the entire agreement 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, agreements, negotiations or understandings with respect thereto, whether oral or in writing, except in respect of any fraudulent misrepresentation made by either party.

1.5 Relationship of the Parties

The parties acknowledge and agree that this Agreement shall not constitute, create or otherwise give effect to a joint venture or a partnership of any kind and neither party shall have the right to bind the other without the other's prior written consent.

1.6 Co-operation

In the provision of the Services the CONTRACTOR shall co-operate with the AUTHORITY and any other relevant contractors engaged by the AUTHORITY to provide services relevant to this Agreement.

1.7 Scope of Agreement

The CONTRACTOR shall be responsible for meeting the requirements specified in Schedule 2 (Statement of Service Requirements) in the manner specified in Schedule 3 (Proposal) by providing the Services more particularly described in Schedule 4 (Service Descriptions), in the Service Specification agreed pursuant to Clause 2.4 and in accordance with all other applicable provisions of this Agreement.

1.8 Subcontractors

1.8.1 The CONTRACTOR shall remain primarily responsible for the acts and omissions of its Subcontractors as though they were its own and shall procure that its Subcontractors comply with all applicable provisions of this Agreement.

1.8.2 For the avoidance of doubt, the CONTRACTOR's Subcontractors shall include the Fee Paid Registered Medical Practitioners subject to the AUTHORITY having the right to approve and/or appoint those Fee Paid Registered Medical Practitioners in accordance with the procedure set out in Schedule 4.

1.9 Representation by the CONTRACTOR

The CONTRACTOR hereby represents that it has been given the opportunity to satisfy itself as to all matters concerning the suitability of any Assets or software provided by the AUTHORITY pursuant to this Agreement for the provision of the Services in accordance with this Agreement and that it has so satisfied itself of such suitability.

2. PROVISION OF SERVICES

2.1 Provision of Basic Services

2.1.1 The CONTRACTOR shall perform the Basic Services specified in Schedule 4 and Schedule 33 in accordance with all other applicable provisions hereof. The CONTRACTOR shall provide the Basic Services from the Cutover Date and shall, subject to the termination provisions herein, continue to provide the Basic Services during the term of this Agreement.

2.1.2 The CONTRACTOR shall perform the Pilot Services specified in Schedule 30 in accordance with all other applicable provisions hereof. The CONTRACTOR shall provide the Pilot Services from the Cutover Date and shall, subject to the termination provisions herein, continue to provide the Pilot Services unless such Pilot Services are terminated by the AUTHORITY on twenty (20) Working Days written notice to the CONTRACTOR (or such other period as the parties may agree or may be specified in Schedule 30).

2.1.3 The CONTRACTOR shall perform the Transition Services specified in Schedule 7 in accordance with all other applicable provisions hereof. The CONTRACTOR shall provide the Transition Services from the date of execution hereof and for the duration of the Transition Period.

2.1.4 The CONTRACTOR shall perform the Transformation Services specified in Schedule 8 in accordance with all other applicable provisions hereof. The CONTRACTOR shall provide the Transformation Services from the date of execution hereof in accordance with the Transformation Plan.

2.1.5 The CONTRACTOR shall perform the Termination Services specified in Schedule 26 in accordance with the MSA Transition Agreement appended thereto.

2.1.6 The CONTRACTOR shall perform the Business Continuity and Disaster Recovery Services as specified in Schedule 33 on the occurrence of an Incident.

2.2 Provision of Optional Services

2.2.1 The AUTHORITY shall have the option, exercisable on twenty (20) Working Days written notice to the CONTRACTOR (or such other period as the parties may agree or may be specified in Schedule 31) of obtaining all or any of the Optional Services specified in Schedule 31.

- 2.2.2 The CONTRACTOR shall commence delivery of such Optional Services on expiry of such notice. Such Optional Services shall be performed in accordance with all applicable provisions of this Agreement.

2.3 Provision of Additional Services

- 2.3.1 The CONTRACTOR undertakes to perform at any time during the term of this Agreement such Additional Services as may be agreed by it and the AUTHORITY pursuant to the Change Control Procedure. Such Additional Services shall be performed in accordance with all applicable provisions of this Agreement.
- 2.3.2 With effect from 27th June 2012, for a period of six months, the CONTRACTOR shall provide such of the IMDSC Services for the AUTHORITY on the Isle of Man as the IMDSC shall require.
- 2.3.3 The CONTRACTOR shall charge, and the AUTHORITY shall pay, the Charges for the IMDSC Services in accordance with Section 2 of Schedule 34 and all other terms of this Agreement.
- 2.3.4 Any liability incurred by the CONTRACTOR to the IMDSC shall be deemed to be a liability of the CONTRACTOR to the AUTHORITY for Default under this Agreement and subject to the terms of Clause 10.11 of this Agreement.
- 2.3.5 The CONTRACTOR shall provide to the Authority as an Additional Service Work Capability Assessments for Universal Credit in accordance with Part 2 of Schedule 34.
- 2.3.6 The CONTRACTOR shall charge, and the AUTHORITY shall pay, the Charges for the Universal Credit Pathfinder Work Capability Assessment clerical referral cases in accordance with Part 2 Section 2 of Schedule 34 and all other terms of this Agreement.

2.4 Service Specification

- 2.4.1 The CONTRACTOR shall develop a Service Specification in co-operation with the AUTHORITY in accordance with Transition Plan. The Service Specification shall be designed to specify the Basic Services and Optional Services and the method for delivery of them in a manner consistent with, but at a lower level of detail than, the Service Descriptions in Schedule 4 and shall be based on the Proposal detailed in Schedule 3 and all other appropriate provisions of this Agreement.
- 2.4.2 The Service Specification developed pursuant to Clause 2.4.1 shall be subject to approval by the AUTHORITY, such approval not to be unreasonably withheld or delayed. Once approved, the Service Specification may not be amended except with the agreement of both parties in accordance with the Change Control Procedure.
- 2.4.3 For the avoidance of doubt, and without limitation to the generality of Clause 1.1.5.4, the AUTHORITY's co-operation in developing and approval of the Service Specification pursuant to Clauses 2.4.1 and 2.4.2 shall not relieve the CONTRACTOR of the overriding obligation to meet the requirements specified in Schedule 2 (Statement of Service Requirements) and all other applicable provisions of this Agreement unless otherwise agreed in writing by the AUTHORITY.

2.5 Service Levels

Following the Cutover Date, and subject to the provisions of Schedule 5, the CONTRACTOR shall provide the Basic Services and thereafter shall continue to provide the Basic Services

and any Optional Services required by the AUTHORITY pursuant to Clause 2.2 or Additional Services agreed by the parties pursuant to Clause 2.3 in accordance with the Service Levels applicable thereto.

3. PROVISION OF PROPERTIES

3.1 Introduction

3.1.1 Subject to Clause 6.2 (and related provisions contained in this Clause 3), the CONTRACTOR shall be responsible for providing at its own cost and expense all of the accommodation necessary to perform the Services in accordance herewith. For these purposes the CONTRACTOR may (but shall not be required to) use the Transferring Properties subject to the further provisions of this Clause 3 and to any conditions or constraints imposed on the AUTHORITY or any OGD by any superior landlord or superior interest in the Transferring Properties (or third party to whom an OGD has outsourced the management of its property portfolio) which prevent the use of the Transferring Properties by the CONTRACTOR.

3.1.2 Where the CONTRACTOR provides its own accommodation for purposes of performing the Services, the CONTRACTOR shall inform the AUTHORITY of the address of such accommodation and all other relevant details thereof as may be reasonably requested by the AUTHORITY and shall ensure that such accommodation shall be fit for the purpose of providing the Services in accordance with all applicable provisions hereof.

3.2 Transferring Properties' Lease Costs

Subject to the provisions of Clause 6.2, the CONTRACTOR shall bear any costs due under the provisions of the relevant Property Agreement or otherwise relating to the occupation by the CONTRACTOR of Transferring Properties unless such costs were attributable to the period prior to the Cutover Date.

3.3 Transfer of AUTHORITY Properties

3.3.1 In relation to the AUTHORITY Properties which the CONTRACTOR chooses to use pursuant to Clause 3.1 with effect from the Cutover Date or with effect from such date as any consents as are required to be lawfully granted are received (whichever is the later), the AUTHORITY shall grant and the CONTRACTOR shall accept a Sublease in form set out in Schedule 10 which will include the relevant Site Services Schedule set out in Appendix 5 to Schedule 10 with such amendments as are necessary to evidence the Parties, the rent term and other conditions applying to each specific Transferring Property.

3.3.2 In a situation where the AUTHORITY holds a Transferring Property under a lease permitting a subletting with the consent of the superior landlord but a licence to underlet or other relevant consent required for such subletting to lawfully proceed has not been obtained by the AUTHORITY on or before the Cutover Date, the AUTHORITY shall grant and the CONTRACTOR shall accept a Tenancy at Will in respect of such AUTHORITY Property.

3.3.3 The AUTHORITY shall use its reasonable endeavours to obtain a licence to underlet from each relevant superior landlord prior to the Cutover Date but shall not be obliged to incur any expenditure in order to obtain such consent other than the payment of the superior landlord's proper and reasonable legal and surveyors' costs (and shall not (for the avoidance of doubt) be obliged to pay a premium to any superior landlord) and shall not be obliged to seek a declaration from the Court that such consent is being unreasonably withheld or delayed or be required to act as guarantor of the CONTRACTOR's obligations in the Sublease.

- 3.3.4 The CONTRACTOR shall provide without undue delay all references and information, financial and otherwise, as are reasonably requested by any superior landlords of the relevant Transferring Properties in support of the AUTHORITY's application for a licence to underlet and the CONTRACTOR shall execute a licence to underlet in such form as the relevant superior landlord may require. If any superior landlord acting reasonably in the opinion of the AUTHORITY properly requests that the CONTRACTOR procures a suitable surety then the CONTRACTOR shall use its reasonable endeavours to comply with such request.

3.4 **Transfer of OGD Properties**

- 3.4.1 In relation to the OGD Properties the AUTHORITY shall use its reasonable endeavours (which will not include incurring the payment of any premiums or other expense other than the payment of the reasonable and proper legal and surveyors' costs and expenses incurred by that OGD) to procure that the relevant OGD shall

3.4.1.1 permit the CONTRACTOR to occupy with effect from the Cutover Date the OGD Properties; and

3.4.1.2 subject to the provision of Clause 3.6 below enter into a lease or sublease with the CONTRACTOR in such form as the relevant OGD Property may require.

- 3.4.2 For the avoidance of doubt the CONTRACTOR shall in respect of each of the OGD Properties, with effect from the Cutover Date or (if later) with effect from such date as any consents as are requisite for the relevant document to be lawfully entered into are received from the OGD's landlord, enter into such form of document as is required by the relevant OGD to evidence the terms of the CONTRACTOR's occupation.

- 3.4.3 In relation to any application by an OGD for a licence to underlet in relation to any OGD Property the CONTRACTOR shall provide without undue delay all references and information, financial and otherwise, as are reasonably requested by any superior landlords of the relevant OGD Properties in support of the OGD's application for a licence to underlet and the CONTRACTOR shall execute a licence to underlet in such form as the relevant superior landlord may require. If any superior landlord acting reasonably in the opinion of the OGD properly requests that the CONTRACTOR procures a suitable surety then the CONTRACTOR shall use its reasonable endeavours to comply with such request.

3.5 **Site Services at OGD Properties**

When the CONTRACTOR enters into a Property Agreement or other documentation to evidence the terms of its occupation of an OGD Property if the AUTHORITY so requires, the AUTHORITY and the CONTRACTOR shall at the same time enter into a Services Deed PROVIDED THAT (i) the AUTHORITY shall not be obliged to provide any services which will be provided to the CONTRACTOR by the relevant OGD or third party to whom the OGD has outsourced its property management under the terms of the CONTRACTOR's occupation of the relevant OGD Property and (ii) the cost of the Core Services incurred by the CONTRACTOR shall be invoiced to the AUTHORITY in accordance with Paragraph 3.4 of Schedule 13.

3.6 **Relocation in Special Circumstances**

- 3.6.1 The provisions of this Clause 3.6 shall apply if any one or more of the circumstances referred to in Clauses 3.6.1.1 to 3.6.1.4 occur:

- 3.6.1.1 by the Cutover Date the AUTHORITY or an OGD has not been able to grant to the CONTRACTOR a Tenancy at Will or other permission to occupy in respect of a Transferring Property; or
- 3.6.1.2 a Tenancy at Will or other permission to occupy in respect of a Transferring Property is terminated other than as the result of an act or default of the Contractor or the grant of a Sublease; or
- 3.6.1.3 the determination of a Short Sublease (as defined below in Clause 3.6.5) other than as a result of an act or default of the CONTRACTOR; or
- 3.6.1.4 the terms of any lease sublease required by any OGD in accordance with Clause 3.4.1.2 contains obligations upon the CONTRACTOR which are more onerous than those contained in the Property Agreement set out Appendix 4 of Schedule 10.
- 3.6.2 The CONTRACTOR shall (without prejudice to its obligations contained in this Agreement relating to the provision of the Services) immediately consider whether it is able to provide the relevant Services from any other property which it then occupies (and shall use reasonable endeavours to do so) and shall inform the AUTHORITY as soon as reasonably practicable whether it is able to provide the relevant Services from such property together with any additional costs of providing such accommodation.
- 3.6.3 The AUTHORITY shall consider the proposal from the CONTRACTOR provided pursuant to Clause 3.6.2 and shall either:
- 3.6.3.1 request that the CONTRACTOR provides the Services from the other properties specified in its proposal; or
- 3.6.3.2 use reasonable endeavours to procure that the PRIME Contractor, under the terms of the PRIME Agreement, shall provide alternative premises to the AUTHORITY (known as the "Alternative Premises" for the purposes of this Clause 3.7 and Clause 3.8) in accordance with the PRIME Agreement for occupation by the CONTRACTOR for the purpose of carrying out the Services.
- 3.6.4 For the avoidance of doubt, the CONTRACTOR shall not refuse to enter into the documents in respect of the Alternative Premises referred to in Clause 3.6.3.2.
- 3.6.5 For the purposes of this Clause 3 the term "Short Sublease" shall mean a Sublease which is granted for a term shorter than the term of this Agreement as a result only of (a) the remainder of the term of the lease under which the relevant Transferring Property is held by the AUTHORITY or an OGD being shorter than the term of this Agreement or (b) the requirement of the AUTHORITY or an OGD that the term of such Sublease is shorter than the term of this Agreement.

3.7 Transferring Properties and the Change Control Procedure

- 3.7.1 If the AUTHORITY in relation to any Transferring Properties referred to in Clause 3.7. is unable to procure that the PRIME Contractor provides Alternative Premises, then:
- 3.7.1.1 the AUTHORITY shall have no further liability to the CONTRACTOR in relation to such Transferring Property and shall be under no obligation to provide alternative accommodation for the CONTRACTOR;

- 3.7.1.2 the CONTRACTOR shall at its own cost and expense search for a suitable alternative property in order to allow the CONTRACTOR to perform its obligations under this Agreement (known as the "New Property" for the purposes of this Clause 3.8);
- 3.7.1.3 the CONTRACTOR shall procure that the charges payable for the New Property (including, without prejudice to the generality of the foregoing, rent and any service charge payable) shall be fair and reasonable;
- 3.7.1.4 conditional upon the AUTHORITY approving (such approval not to be unreasonably withheld or delayed) charges payable and other terms of occupation in respect of the New Property and subject to Clause 3.1.3, the CONTRACTOR or the AUTHORITY shall be entitled to invoke the Change Control Procedure and the CONTRACTOR shall enter into the necessary documentation (and the CONTRACTOR is to use reasonable endeavours to ensure that such documentation contains obligations upon the CONTRACTOR which are no more onerous than those contained in the Property Agreements set out in Appendix 4 of Schedule 10) to procure the occupation of the New Property by the CONTRACTOR in order for the CONTRACTOR to perform its obligations under this Agreement.
- 3.7.2 For the avoidance of doubt, only those charges for the New Property that relate to that part of the New Property from which the CONTRACTOR delivers the Services will be charged to the AUTHORITY under the Fixed Charges as described in Schedule 12.
- 3.8 CONTRACTOR Default**
- 3.8.1 Upon the termination of a Sublease resulting from the act or default of the CONTRACTOR then:
- 3.8.1.1 the AUTHORITY shall (a) have no further liability to the CONTRACTOR in relation to such property and (b) be under no obligation to provide alternative accommodation for the CONTRACTOR; and
- 3.8.1.2 the Contractor shall be responsible at its own cost and expense for finding alternative accommodation to enable it to perform the Services in accordance with the terms of this Agreement and shall not be permitted to recover the cost of such alternative accommodation either as a Fixed Charge or a Notifiable Cost.
- 3.9 Service Disruption due to Relocation**
- 3.9.1 If the CONTRACTOR is relocated by the AUTHORITY to alternative premises under the terms of the Property Agreements granted by the AUTHORITY and the CONTRACTOR does not meet the Service Levels as a direct result of such relocation the AUTHORITY shall waive the application of Service Credits to the extent that it deems in its reasonable discretion fair for the period of disruption caused by the relocation.
- 3.9.2 Notwithstanding the provisions of Clause 3.9.1 above, the CONTRACTOR shall in such circumstances use all reasonable endeavours to perform, or resume performance of, the Services to the Service Levels specified in Schedule 5 as soon as practicable.

3.10 Warranties by the AUTHORITY

The AUTHORITY does not provide any warranties or representations in relation to the Transferring Properties or other properties and except as expressly stated in this Agreement, all warranties, representations, assurances, undertakings and conditions by the AUTHORITY in relation to the Transferring Properties or other properties (including without limitation, warranties and conditions as to title, quiet enjoyment, fitness for purpose and description) whether express or implied by statute, common law or otherwise, are hereby excluded to the extent permitted by law.

3.11 Warranties by the CONTRACTOR

3.11.1 The CONTRACTOR hereby warrants and represents that:

3.11.1.1 it has been given the opportunity to inspect and carry out surveys and other relevant investigations at Transferring Properties and to satisfy itself as to all matters concerning the suitability of the Transferring Properties and OGD Properties for the provision of the Services in accordance with this Agreement and that it has so satisfied itself;

3.11.1.2 the accommodation from which the Services are to be provided shall be fit for the purposes of providing the Services.

3.12 Use of Transferring Properties for services to other Customers

Subject to the prior written approval of the AUTHORITY but not otherwise, the CONTRACTOR shall be entitled in the case of Transferring Properties held by the AUTHORITY under a lease so allowing to use or exploit such Transferring Properties in the provision of services to any third party customer, provided that such use or exploitation does not adversely affect the provision of the Services to the AUTHORITY in accordance herewith. In the event that a change to the requirement results in an increased volume of work in those sites where the CONTRACTOR is also delivering services to third party customers, the CONTRACTOR shall acknowledge that delivery of services under this Agreement shall prevail. For the avoidance of doubt, where such a situation occurs, any costs which accrue to the CONTRACTOR can continue to provide services to third party customers shall be borne entirely by the CONTRACTOR.

3.13 Scottish Properties

With effect from the Cutover Date or (if later) with effect from such date as any consents as are requisite for the relevant Property Agreement to be lawfully granted are received, the AUTHORITY shall grant (and shall use its reasonable endeavours to procure that any OGD shall grant) and the CONTRACTOR shall accept the relevant Property Agreement in respect of the Transferring Properties located in Scotland modified to give effect to Scottish Law.

4. PROVISION OF ASSETS AND INTELLECTUAL PROPERTY RIGHTS

ASSETS

4.1 Introduction

4.1.1 The CONTRACTOR shall be responsible for providing at its own cost and expense all the assets necessary to perform the Services in accordance herewith.

4.1.2 Where the CONTRACTOR replaces any of the Assets or introduces additional assets or where it uses assets other than the Assets in the provision of the Services to the AUTHORITY it shall ensure that all such replacement, additional assets or other assets are of a standard which is at least industry standard and are fit for the purpose of providing the Services and remain fit for such purpose for the

term of the Agreement unless and until such assets are themselves replaced in accordance with this Agreement.

4.1.3 The CONTRACTOR shall not use any IT assets other than those detailed in Schedules 6 in the provision of the Services and shall be responsible for maintaining Schedule 6 in line with any changes to the Assets used. For the avoidance of doubt any change to Schedule 6 (including to reflect any removal, replacement or addition of IT assets) shall be subject to the process outlined in the Service Specification but shall not entitle the CONTRACTOR to any variation of the Charges.

4.1.4 The CONTRACTOR shall provide the AUTHORITY with an updated copy of Schedule 6:

4.1.4.1 on each anniversary of the Cutover Date; and/or

4.1.4.2 within fifteen (15) Working Days of any request to do so by the AUTHORITY; and/or

4.1.4.3 within fifteen (15) Working Days of any notice to terminate this Agreement or twelve (12) Months prior to expiry of this Agreement.

4.2 **Transfer of Assets**

The parties do not anticipate that there will be any transfer of Assets from the AUTHORITY to the CONTRACTOR at the Cutover Date; however the provisions of Clauses 4.3, 4.4 and 4.6 below shall apply to any future transfer of assets from the AUTHORITY to the CONTRACTOR during the term of this Agreement.

4.3 **Title and Risk**

Title and risk in any Assets transferred from the AUTHORITY to the CONTRACTOR shall pass to the CONTRACTOR on the date of such transfer.

4.4 **Warranties by the AUTHORITY**

4.4.1 For any Assets transferred from the AUTHORITY to the CONTRACTOR, the AUTHORITY shall warrant and represent to the CONTRACTOR as follows:

4.4.1.1 no consents or agreements of third parties are required for the transfer of any Asset to the CONTRACTOR;

4.4.1.2 each of the Assets is (or will be at the date upon which title in such Asset is to be transferred hereunder) owned legally and beneficially by the AUTHORITY or the AUTHORITY will be able to procure its sale to the CONTRACTOR free from any third party right, option, right to acquire, mortgage, charge, pledge, lien or other form of security or encumbrance or equity other than:

(a) provisions in contracts for the purchase of goods providing for the retention of title by the seller pending payment as detailed in Schedule 6 (if any); and

(b) Assets which are held under Equipment Leases as detailed in Schedule 6;

- 4.4.1.3 except to the extent to which any of the Assets is subject to matters set out in Clause 4.4.1.2(a) and/or Clause 4.4.1.2(b), the AUTHORITY shall undertake to procure the sale of such Assets free from the third party right;
- 4.4.1.4 each of the Assets capable of possession is in the possession of the AUTHORITY or subject to its control; and
- 4.4.1.5 with respect to the AUTHORITY Software, Use of the AUTHORITY Software by the CONTRACTOR or its Subcontractors in the provision of the Services shall not infringe any third party's Intellectual Property Rights provided that no warranty is given with respect to any Use outside the provision of the Services.

4.5 Use of Assets for services to Other Customers

- 4.5.1 The AUTHORITY hereby approves the use or exploitation of the Shared Use Assets for the benefit of any third party customer provided that such use or exploitation does not adversely affect the provision of the Services to the AUTHORITY in accordance herewith.
- 4.5.2 The CONTRACTOR shall not be entitled to use or exploit any Sole Use Assets for the benefit of third parties unless the AUTHORITY consents in accordance with the provisions of Clause 6.8.2 and provided that such use or exploitation does not adversely affect the provision of the Services to the AUTHORITY in accordance herewith.

4.6 Indemnities by the AUTHORITY

The AUTHORITY shall indemnify and hold harmless the CONTRACTOR from and against all claims, actions, costs, expenses (including reasonable legal fees) and demands arising out of or in connection with any liabilities of the AUTHORITY under the Equipment Leases, the AUTHORITY Third Party Software, the AUTHORITY Software, the AUTHORITY Data, the Third Party Agreements or otherwise with respect to any Assets transferred from the AUTHORITY to the CONTRACTOR which accrued or arose from facts existing during the period prior to the date of transfer.

INTELLECTUAL PROPERTY RIGHTS

4.7 AUTHORITY Software

- 4.7.1 Ownership of all Intellectual Property Rights in the AUTHORITY Software shall remain with the AUTHORITY and the CONTRACTOR shall not acquire title to the Intellectual Property Rights in the AUTHORITY Software.
- 4.7.2 Any modifications to any AUTHORITY Software shall be considered to be Specially Written Software.
- 4.7.3 The AUTHORITY hereby grants to the CONTRACTOR and the CONTRACTOR hereby accepts a non-exclusive, royalty-free, non-transferable licence for the duration of this Agreement solely for the performance of this Agreement:
 - 4.7.3.1 to Use, copy and modify the AUTHORITY Software (including any modifications or enhancements thereof) identified in Appendix 4 of Schedule 6 as being subject to this Clause 4.7.3.1; and
 - 4.7.3.2 to Use the AUTHORITY Software (including any modifications or enhancements thereof) identified in Appendix 4 of Schedule 6 as being subject to this Clause 4.7.3.2 .

- 4.7.4 The licences granted hereunder to the CONTRACTOR shall inure to the benefit of its Subcontractors solely for the purposes of providing the Services.
- 4.7.5 The AUTHORITY shall have exclusive ownership of and hereby reserves all Intellectual Property Rights which may subsist in its own technology, information, data, know how, ideas, designs, software, inventions, documentation and all other tangible and intangible items of the AUTHORITY which exist as at the date of this Agreement or are otherwise outside the scope of this Agreement.
- 4.7.6 The CONTRACTOR shall not be entitled to use or exploit the AUTHORITY Software for the benefit of third parties unless the AUTHORITY consents to such use or exploitation in accordance with the provisions of Clause 6.8.2.
- 4.8 AUTHORITY Third Party Software**
- 4.8.1 The CONTRACTOR shall not acquire title to the Intellectual Property Rights in the AUTHORITY Third Party Software which is supplied hereunder.
- 4.8.2 The AUTHORITY shall, in respect of the AUTHORITY Third Party Software, grant to the CONTRACTOR or procure that the licensor of the AUTHORITY Third Party Software grants to the CONTRACTOR, the benefit of the right to Use such AUTHORITY Third Party Software under the relevant licence agreement between the AUTHORITY and such licensor listed in Appendix 5 of Schedule 6.
- 4.8.2A The CONTRACTOR shall comply with the terms and conditions of the relevant license agreements between the AUTHORITY and such licensors listed in Appendix 5 of Schedule 6. In particular, the CONTRACTOR agrees to comply with the terms of the Customer License and Support Services Agreement ("CL&SSA") between the AUTHORITY and Actian Europe Limited dated 28 November 2012. The CONTRACTOR shall indemnify the AUTHORITY against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any breach of the terms of such license agreements.
- 4.8.3 The licences granted to the CONTRACTOR hereunder shall inure to the benefit of its Subcontractors solely for the purposes of providing the Services.
- 4.8.4 Subject to Clause 4.8.6 below, the CONTRACTOR shall be responsible for the cost and expense of procuring the use of the AUTHORITY Third Party Software for the purposes of providing the Services.
- 4.8.5 Save in respect of the Ingres AUTHORITY Third Party Software, where, in respect of AUTHORITY Third Party Software, a licence fee has been paid by the AUTHORITY to the relevant licensor which relates to any period after the Cutover Date, the CONTRACTOR shall reimburse the AUTHORITY on the Cutover Date for that part of the licence fee which relates to such period.
- 4.8.6 The AUTHORITY shall be responsible for any licence fees or support and maintenance fees payable to the licensor in respect of the Ingres AUTHORITY Third Party Software until 23 February 2015. Any licence fees or support and maintenance fees incurred after such date, or earlier if charged by the licensor for additional licences only (as requested by the CONTRACTOR), shall be the responsibility of the CONTRACTOR in accordance with clause 4.8.4 above.
- 4.9 CONTRACTOR Software**
- 4.9.1 Ownership of all Intellectual Property Rights in the CONTRACTOR Software shall remain with the CONTRACTOR and the AUTHORITY shall not

acquire title to the Intellectual Property Rights in the CONTRACTOR Software. The CONTRACTOR shall retain all Intellectual Property Rights in any modifications or enhancements to the CONTRACTOR Software.

- 4.9.2 The CONTRACTOR hereby grants to the AUTHORITY a non-exclusive, royalty free, non-transferable and irrevocable licence to Use the CONTRACTOR Software for the purposes of receiving the Services during the term of this Agreement.
- 4.9.3 The CONTRACTOR acknowledges that certain CONTRACTOR Software is essential to the provision of the Services and as such shall be either:
- 4.9.3.1 specified in Schedule 6; or
- 4.9.3.2 agreed by the parties via the Change Control Procedures,
- as being Essential Contractor Software.
- 4.9.4 During the term of the Agreement the CONTRACTOR shall provide the AUTHORITY with a non-exclusive, royalty fee, non-transferable and irrevocable licence to Use, copy and modify the Essential CONTRACTOR Software to the extent necessary to enable the AUTHORITY to receive the benefit of the Services. Following the expiry or early termination of this Agreement, the CONTRACTOR shall provide a licence to the Authority for the Essential CONTRACTOR Software in accordance with Clause 4.16.2.
- 4.9.5 For the avoidance of doubt, any newly-created Software (excluding any modifications or enhancements to the CONTRACTOR Software) which is proposed by the CONTRACTOR and which is, following agreement in accordance with the Change Control Procedures, developed by the CONTRACTOR (or its employees, agents or subcontractors) during the term of this Agreement for the benefit of the AUTHORITY and other customers of the CONTRACTOR shall be deemed to be Essential CONTRACTOR Software unless otherwise agreed by the parties.
- 4.9.6 The AUTHORITY shall be entitled to engage a third party to Use the CONTRACTOR Software to the extent that it is necessary to enable the AUTHORITY to receive the benefit of the Services subject to and in accordance with this Agreement on behalf of the AUTHORITY provided that such third party shall have entered into a confidentiality undertaking substantially in the form as set out in Clause 12.5 for the benefit of the CONTRACTOR and any of its Subcontractors.
- 4.9.7 The CONTRACTOR (and including where appropriate, its Subcontractors) shall have exclusive ownership of and hereby reserves all Intellectual Property Rights which may subsist in its own technology, information, data, know how, ideas, designs, software, inventions, documentation and all other tangible and intangible items of the CONTRACTOR (or Subcontractor) which exist as at the date of this Agreement or are otherwise outside the scope of this Agreement.
- 4.9.8 Nothing in this Agreement shall prevent the CONTRACTOR or any of its Subcontractors from using data processing techniques, ideas and know-how gained during the performance of this Agreement in the furtherance of its normal business to the extent that it does not relate to a disclosure of Confidential Information of the AUTHORITY or any infringement by the CONTRACTOR or its Subcontractors of any Intellectual Property Rights of the AUTHORITY.

4.10 **CONTRACTOR Third Party Software**

- 4.10.1 The AUTHORITY shall not acquire title to the Intellectual Property Rights in any CONTRACTOR Third Party Software which is supplied hereunder.
- 4.10.2 The CONTRACTOR shall, in respect of any CONTRACTOR Third Party Software provided by the CONTRACTOR and necessary for the receipt of the Services, grant to the AUTHORITY, or shall procure that the licensor of the CONTRACTOR Third Party Software grants to the AUTHORITY, the benefit of the right to Use such CONTRACTOR Third Party Software for the purposes of the receipt of the Services.
- 4.10.3 For the avoidance of doubt, the CONTRACTOR shall be responsible for the cost and expense of procuring the Use of the CONTRACTOR Third Party Software for the purposes of providing the Services.
- 4.10.4 The CONTRACTOR shall procure that the AUTHORITY be entitled to engage a third party to Use the CONTRACTOR Third Party Software to the extent that it is necessary to enable the AUTHORITY to receive the benefit of the Services subject to and in accordance with this Agreement on behalf of the AUTHORITY provided that such third party shall have entered into a confidentiality undertaking for the benefit of the CONTRACTOR or its relevant Subcontractors substantially in the form set out in Clause 12.5.

4.11 **Specially Written Software**

- 4.11.1 Specially Written Software shall be any newly-created software (excluding any modifications or enhancements to the CONTRACTOR Software, CONTRACTOR Third Party Software or AUTHORITY Third Party Software) which is:
- 4.11.1.1 requested by the AUTHORITY and which is, following agreement in accordance with the Change Control Procedures, developed by or on behalf of the CONTRACTOR during the term of this Agreement for the provision of the Services; or
- 4.11.1.2 proposed by the CONTRACTOR and which is, following agreement in accordance with the Change Control Procedures, developed by or on behalf of the CONTRACTOR during the term of this Agreement uniquely for the provision of the Services.
- 4.11.2 Any modifications to AUTHORITY Software or Specially Written Software shall be considered Specially Written Software.
- 4.11.3 The CONTRACTOR:
- 4.11.3.1 hereby assigns, or shall procure that any owner of Intellectual Property Rights in the Specially Written Software assigns, to the AUTHORITY with full title guarantee, where appropriate by way of present assignment of future rights, all rights, title and interest in the Intellectual Property Rights in the Specially Written Software. Such assignment shall take effect from the date of this Agreement or if later the date on which such Intellectual Property Rights come into existence; and
- 4.11.3.2 shall, to the extent permitted by law, procure a waiver in favour of the AUTHORITY of any moral rights in the Intellectual Property Rights in the Specially Written Software.
- 4.11.4 The CONTRACTOR shall execute any and all deeds and documents and do all such further acts as the AUTHORITY may reasonably require to perfect the

assignment of the Intellectual Property Rights referred to in Clause 4.11.3.1 and/or to vest or register such Intellectual Property Rights in the name of the AUTHORITY and which may be required under the laws of any country in which any of such Intellectual Property Rights may subsist.

4.11.5 The CONTRACTOR shall ensure that the CONTRACTOR's employees, agents or Subcontractors (and the employees and agents of its Subcontractors) shall assign any Intellectual Property Rights in the Specially Written Software owned by them either direct to the AUTHORITY or to the CONTRACTOR to enable the CONTRACTOR to comply with its obligations hereunder.

4.11.6 The AUTHORITY hereby agrees to, and shall grant, to the CONTRACTOR a royalty-free, worldwide, non-transferable, non-exclusive licence to Use, copy and modify such Specially Written Software for the purpose of the performance of this Agreement.

4.11.7 The licences granted to the CONTRACTOR hereunder shall inure to the benefit of its Subcontractors solely for the purposes of providing the Services.

4.11.8 The CONTRACTOR shall not be entitled to use or exploit the Specially Written Software for the benefit of third parties unless the AUTHORITY consents to such use or exploitation in accordance with the provisions of Clause 6.8.2.

4.12 **Deposited Software**

4.12.1 The CONTRACTOR shall:

4.12.1.1 place the Source Code of any CONTRACTOR Software or CONTRACTOR Third Party Software identified in Schedule 6 as Deposited Software in escrow with the NCC on the basis of the appropriate standard agreement or on such other terms as the AUTHORITY, the CONTRACTOR and the NCC shall agree. Such escrow agreements are to be entered into within thirty (30) days of the Cutover Date; and

4.12.1.2 during the term of the Agreement, place the Source Code of any CONTRACTOR Software nominated by the AUTHORITY in escrow with the NCC and shall, subject to Clause 4.12.2, use its reasonable endeavours to place any CONTRACTOR Third Party Software nominated by the AUTHORITY in escrow with the NCC on the basis of the appropriate standard agreement or on such other terms as the AUTHORITY, the CONTRACTOR and the NCC shall agree. Such escrow agreements are to be entered into within thirty (30) days of such request.

4.12.2 The parties agree that Clause 4.12.1.2 shall not apply to any CONTRACTOR Third Party Software identified in Schedule 6 as not available to be deposited in escrow.

4.12.3 The parties agree that, in addition to the trigger events contained in the standard NCC escrow agreement, the AUTHORITY shall have the right to request the source code of any Deposited Software from the NCC if the AUTHORITY exercises its rights to take Step-In Action pursuant to Clause 10.15.

4.12.4 The CONTRACTOR and the AUTHORITY hereby agree that both parties shall each pay their respective fees as set out in any escrow agreement entered into pursuant to Clauses 4.12.1 .

4.12.5 Subject to any specific licence terms specified in Schedule 6, the CONTRACTOR hereby grants to the AUTHORITY a perpetual, non-transferable

and non-exclusive licence to Use, reproduce, modify, adapt and enhance (and to authorise a third party to Use, reproduce, modify, adapt and enhance) the source code and object code versions of the Deposited Software. However, the foregoing licence shall only become effective if the AUTHORITY becomes entitled to obtain access to the Source Code version of the Software pursuant to the source code escrow agreement referred to in Clause 4.12.1 and the licence shall be subject to any restrictions contained herein in respect of the object code version of the Deposited Software provided that such restrictions shall not detract from the rights granted hereunder.

4.13 **Documentation**

4.13.1 Ownership of all Intellectual Property Rights in the Documentation shall remain with the AUTHORITY and the CONTRACTOR shall not acquire title to the Intellectual Property Rights in the Documentation.

4.13.2 The AUTHORITY hereby grants, in respect of the Documentation, to the CONTRACTOR and its Subcontractors a non-exclusive, royalty free licence to use, copy and, subject to the prior approval of the AUTHORITY, modify the Documentation solely for the performance of this Agreement and shall provide a copy of the Documentation listed in Schedule 28 to the CONTRACTOR on the Cutover Date.

4.13.3 For the avoidance of doubt the licence granted to the CONTRACTOR in Clause 4.13.2 shall inure to the benefit of its Subcontractors solely for the purposes of providing the Services.

4.14 **AUTHORITY Forms and Consumables**

4.14.1 The AUTHORITY shall grant to the CONTRACTOR and its Subcontractors a royalty free, non-exclusive, non-transferable licence for the duration of this Agreement to:

4.14.1.1 use the AUTHORITY Forms listed in Schedule 29 for the purposes of performing the Services; and

4.14.1.2 reproduce and distribute the AUTHORITY Forms listed in Appendix 1 of Schedule 29 for the purposes of performing the Services, but not otherwise.

4.14.2 The AUTHORITY shall provide the CONTRACTOR with a master copy of each of the AUTHORITY Forms listed in Appendix 1 of Schedule 29 by the Cutover Date to facilitate the reproduction of the same.

4.14.3 Ownership of all Intellectual Property rights in the AUTHORITY Forms shall remain with the AUTHORITY.

4.14.4 The CONTRACTOR shall at its own expense provide all other consumables which are required for its performance of the Services.

4.15 **AUTHORITY Data**

4.15.1 The CONTRACTOR:

4.15.1.1 claims no rights (other than a right to use for the purposes of proving the Services) in the AUTHORITY Data and the AUTHORITY hereby reserves all Intellectual Property Rights which may subsist in AUTHORITY Data. The CONTRACTOR shall not delete or remove any copyright notices contained within or relating to AUTHORITY Data; and

4.15.1.2 claims no rights (other than a right to use for the purposes of providing the Services) in any Third Party Data. The CONTRACTOR shall not delete or remove any copyright notices contained within or relating to Third Party Data.

4.16 Licences on Expiry or Termination of the Agreement

4.16.1 In the event of the termination of this Agreement for whatever reason, the following licences shall be terminated automatically:

4.16.1.1 the licence to Use, or Use, copy and modify the AUTHORITY Software pursuant to Clause 4.7.3;

4.16.1.2 the licence to Use the AUTHORITY Third Party Software pursuant to Clause 4.8.2; and

4.16.1.3 the licence to Use, copy and modify the Specially Written Software pursuant to Clause 4.11.6,

and the CONTRACTOR shall provide the AUTHORITY with all copies of the source code and object code of all AUTHORITY Software, AUTHORITY Third Party Software and Specially Written Software in its possession in accordance with the provisions of Schedule 26.

4.16.2 In the event of the termination of this Agreement for whatever reason the CONTRACTOR shall grant to the AUTHORITY or a Replacement Contractor a non-exclusive, royalty free, non-transferable, perpetual and irrevocable licence to:

4.16.2.1 Use, copy and modify the Essential CONTRACTOR Software (including any modifications or enhancements thereof which are made after the termination hereof) as identified in Appendix 6 of Schedule 6; and

4.16.2.2 to Use all other CONTRACTOR Software (including any modification or enhancements thereof which are made after the termination hereof) listed in Appendix 6 of Schedule 6,

for the purpose of providing or receiving any Replacement Services.

4.16.3 The CONTRACTOR shall, subject to Clause 4.16.6, provide the AUTHORITY or a Replacement Contractor (as appropriate) with a copy of the source code and object code of all such Essential CONTRACTOR Software in accordance with the provisions of Schedule 26.

4.16.4 Subject to the licences in Clause 4.16.2, the CONTRACTOR shall retain all Intellectual Property Rights in any modifications or enhancements to the Essential CONTRACTOR Software and the AUTHORITY and Replacement Contractor shall upon request assign back to the CONTRACTOR all right, title and interest in the Intellectual Property Rights in such modifications or enhancements.

4.16.5 In the event of the termination of this Agreement the CONTRACTOR shall, if so required by the AUTHORITY, use all reasonable endeavours to assign or novate in favour of and at no cost to (except for any charges payable thereunder) to the AUTHORITY or the Replacement Contractor any licence granted pursuant to Clause 4.10.2 relating to CONTRACTOR Third Party Software in accordance with the provisions of Schedule 26.

4.16.6 The CONTRACTOR shall be entitled to retain copies of source code and object code in its possession which relate to any AUTHORITY Software or Specially Written Software for which the CONTRACTOR has a licence to exploit pursuant to Clause 6.9.2.

5. PROVISION OF PERSONNEL

5.1 Introduction

The CONTRACTOR shall be responsible for providing at its own cost and expense all the personnel necessary to perform the Services in accordance herewith.

5.2 Application of the Transfer Regulations

5.2.1 The parties acknowledge that the Transfer Regulations are not anticipated to apply to any independent contractor (including the Fee Paid Registered Medical Practitioners) whose services may be engaged by the CONTRACTOR as at the Cutover Date.

5.2.2 The parties do not anticipate that the Transfer Regulations will apply to any employee of the AUTHORITY at the Cutover Date; however Clauses 5.5 to 5.10 inclusive shall apply to any future transfers from the AUTHORITY to the CONTRACTOR during the term of the Agreement.

5.3 CONTRACTOR Obligations

If the Transfer Regulations apply to any employee of the AUTHORITY at the Cutover Date or anytime during the term of the Agreement:

5.3.1 the CONTRACTOR shall employ the Transferring Authority Employees on terms and conditions of employment which are the same as (except in relation to rights to old age, invalidity or survivors' benefits under occupational pension arrangements which are governed by Clause 5.10 of this Agreement) those which apply to them immediately prior to the relevant Transfer Date. For the avoidance of doubt, such terms shall include the right to injury benefits and the right to such severance benefits on redundancy or early retirement which are the same as those which, had the employment of the Transferring Authority Employees by the AUTHORITY continued, would have been provided at the relevant Transfer Date to the Transferring Authority Employees; and

5.3.2 where at the relevant Transfer Date there exists a collective agreement made by or on behalf of the AUTHORITY with a trade union recognised by the AUTHORITY in respect of any Transferring Authority Employee, the CONTRACTOR will treat such collective agreement as if made with it in accordance with Regulation 6 of the Transfer Regulations. On the relevant Transfer Date, the CONTRACTOR will recognise any trade union recognised by the AUTHORITY immediately prior to the relevant Transfer Date, in accordance with Regulation 9 of the Transfer Regulations.

5.4 Charges Change Request

5.4.1 The CONTRACTOR shall be entitled to request a change to the Charges under the Agreement in accordance with the Change Control Procedures set out therein in respect of costs expenses or claims arising from the transfer of any Transferring Authority Employee;

5.4.2 A Charges Change Request may be requested where:

5.4.2.1 the Charges Change Request is made within six (6) months of the relevant Transfer Date;

5.4.2.2 the CONTRACTOR making the Charges Change Request adduces reasonable evidence in support of such Charges Change Request;

5.4.2.3 the Charges Change Request is made with respect to any costs or claims arising out of or in connection with or as a result of any claim or demand by any employees of the AUTHORITY claiming that they should have been transferred to the CONTRACTOR, whether in contract or in tort or under statute (including the Treaty of Rome and any Directives made under the authority of the Treaty of Rome) for any remedy including, without limitation, pursuant to the Employment Rights Act 1996; and

5.4.2.4 the total cost of the changes for the Charges Change Request exceeds five thousand pounds (£5,000) subject to the provisions contained in Schedule 12 of this Agreement.

5.5 Indemnities by the AUTHORITY

The AUTHORITY shall indemnify and hold harmless the CONTRACTOR from and against all losses, costs, awards, liabilities and expenses (including reasonable legal fees) and demands arising out of or in connection with or as a result of any claim or demand by or on behalf of any Transferring Authority Employees for sex, race or disability discrimination or discrimination on the basis of sexual orientation, religion or belief or pursuant to the Working Time or National Minimum Wage Regulations, statutory redundancy, unfair dismissal and/or wrongful dismissal, Trade Union claims or otherwise arising from any act, faults or omission of the AUTHORITY during the period prior to the relevant Transfer Date.

5.6 Indemnities by the CONTRACTOR

5.6.1 The CONTRACTOR shall indemnify and hold harmless the AUTHORITY from and against all losses, costs, awards, liabilities and expenses (including reasonable legal fees) and demands arising out of or in connection with:

5.6.1.1 any change or prospective change to the terms and conditions of any Transferring Authority Employees or any of them to his or her detriment by the CONTRACTOR or any Subcontractor which occurs or will occur on or after the relevant Transfer Date;

5.6.1.2 the employment by the CONTRACTOR or any subcontractor on or after the Transfer Date of any of the Transferring Authority Employees other than on terms comparable with those enjoyed immediately prior to the relevant Transfer Date or termination of the employment of any of them on or after the Transfer Date; or

5.6.1.3 any claim or demand by or on behalf of any Transferring Authority Employees whether in contract or in tort or under statute (including the Treaty of Rome and any Directives made under the authority of that Treaty) for any remedy including, without limitation, pursuant to the Employment Rights Act 1996 or for sex, race or disability discrimination or discrimination on the basis of sexual orientation, religion or belief or pursuant to the Working Time or National Minimum Wage Regulations, statutory redundancy, unfair dismissal, and/or wrongful dismissal or otherwise arising from any act, fault or omission by the CONTRACTOR or any Subcontractor on or after the Transfer Date.

5.7 Indemnities – General

The obligations of indemnity accepted by each party in Clauses 5.5 and 5.6 are conditional upon the indemnifying party being allowed the exclusive right to control the investigation, defence and settlement of each such claim and the reasonable assistance of the other party in the defence thereof. The liability of each party under the obligations of indemnity accepted in this Clause 5 shall not be subject to any financial limit.

5.8 Information and Consultation

- 5.8.1 Before any anticipated relevant Transfer Date the AUTHORITY shall inform and consult the Trade Unions in accordance with Regulation 10 of the Transfer Regulations.
- 5.8.2 For the purposes of enabling the AUTHORITY to comply with its obligations pursuant to Regulation 10 of the Transfer Regulations, the CONTRACTOR shall, (and shall procure that the Subcontractor as appropriate shall not later than fourteen (14) days after service of notice in writing, give such information in writing as the AUTHORITY may reasonably request and shall provide such copies of documents as the AUTHORITY may reasonably require.
- 5.8.3 If and when reasonably required by the AUTHORITY during the period from the date hereof until the relevant Transfer Date upon the provision of reasonable prior notice, the CONTRACTOR shall and shall procure as appropriate that the Subcontractor shall procure that a representative of the CONTRACTOR and as appropriate the Subcontractor will attend meetings between the AUTHORITY and the Trade Unions to the CONTRACTOR convened for the purposes of providing information to and consultation in accordance with the requirements of Regulation 10 of the Transfer Regulations and between the AUTHORITY and Transferring Authority Employees and shall provide such further information as any reasonably be required. The CONTRACTOR shall be liable only for such failures to consult as they would be for any such failures under Regulation 10 of the Transfer Regulations.
- 5.8.4 The CONTRACTOR shall indemnify the AUTHORITY in respect of any costs or claims arising from any failure by it or as appropriate the Subcontractor to provide the information which it is obliged to provide to the AUTHORITY in accordance with Regulation 10 of the Transfer Regulations and the provisions of this Clause except insofar as any such costs or claims arise from the failure by the AUTHORITY to inform the Trade Unions of the matters referred to it by the CONTRACTOR or as appropriate the Subcontractor.

5.9 Guidance

The CONTRACTOR shall comply (and shall procure that its Subcontractors comply) with its obligations under the Transfer Regulations and any then current applicable Government guidance (including but not limited to the Cabinet Office Guidance on Staff Transfers in the Public Sector – Statement of Practice (January 2000) as amended from time to time) in relation to any of the Transferring Authority Employees.

5.10 Pensions

- 5.10.1 The CONTRACTOR shall (and shall procure that its Subcontractors shall), with effect from any Transfer Date, provide pension schemes to any Transferring Authority Employees which are certified by the Government Actuary's Department (GAD) as providing Broadly Comparable benefits to those provided by the AUTHORITY's Pension Scheme as appropriate and offer to each Transferring Authority Employee, with effect from the Transfer Date, membership of such pension schemes.
- 5.10.2 For any employees engaged by the CONTRACTOR in the provision of the Services who are not Transferring Authority Employees the CONTRACTOR shall (and shall procure that its Subcontractors shall), with effect from the date of such engagement, provide a pension scheme which is to at least the standard of the following:
- 5.10.2.1 a good quality employer pension scheme (as determined in the reasonable opinion of the AUTHORITY), either being a contracted out,

final-salary based defined pension scheme, or a defined contribution scheme. For defined contribution schemes the CONTRACTOR must match the employee contributions up to 6%, although either may pay more if they wish; or

5.10.2.2 a stakeholder pension scheme, under which the CONTRACTOR will match any employee contributions up to 6%, although either may pay more if they wish.

5.10.3 The CONTRACTOR shall be responsible for maintaining adequate funding of the CONTRACTOR's Pension Scheme (as determined in accordance with the CONTRACTOR's Actuarial Assumptions set out in Appendix 8 of Schedule 12) throughout the term of this Agreement.

6. CHARGES, PRICES AND OTHER FINANCIAL PROVISIONS

6.1 Charges to the AUTHORITY

6.1.1 Basic Services

The Charges for the Basic Services and Pilot Services shall be calculated in accordance with the provisions of Schedule 12. For the avoidance of doubt, it is agreed that there shall be no additional charges for the Transition Services, the Transformation Services and the Termination Services; all charges for such Services shall be deemed to be included within the Charges for the Basic Services.

6.1.2 Optional Services

The Charges for the Optional Services shall be as set out for each Optional Service in Schedule 31.

6.1.3 Additional Services

The Charges for any Additional Services shall be calculated in accordance with the charging mechanism as set out in Schedule 12 or as otherwise agreed by the parties.

6.1.4 Annual Review

6.1.4.1 The Charges and other provisions of Schedule 12 shall be subject to Annual Review in accordance with the procedures set out therein, and such Annual Review shall take account of the provision of this Clause 6.

6.1.4.2 The Service Levels in Schedule 5 and the related provisions of Schedule 25 shall be subject to annual review in accordance with the procedures set out in Schedule 5.

6.1.4.3 Except as specified in Schedules 5, 12 and 25, the matters referred to in Clauses 6.1.4.1 and 6.1.4.2 shall not be subject to review at any other time.

6.1.4.4 For the avoidance of doubt, the rent payable under any Leases, Subleases, Licence Agreements or Licences to Occupy shall be subject to review as specified in Clause 6.2.1.1 and 6.2.1.3 and shall not be subject to annual review under Clause 6.1.4.1.

6.2 Charges to the CONTRACTOR

6.2.1 Rents

6.2.1.1 The rent notifiable to the CONTRACTOR by the AUTHORITY under any Subleases, granted pursuant to Clause 3 shall be as specified therein and shall be subject to review in accordance with the terms thereof.

6.2.1.2 Any changes in the rents following a review as detailed in the Subleases shall be notified to the CONTRACTOR by the AUTHORITY. The change in rents shall form part of the Notifiable Costs and shall be effected on the next due date for payment.

6.2.1.3 The rent notifiable to the CONTRACTOR by an OGD shall be in accordance with the terms of the documentation entered into between that OGD and the CONTRACTOR and shall be subject to review in accordance with the terms thereof.

6.2.1.4 Any change in the rents following a review as detailed in the documentation pursuant to Clause 6.2.1.3 shall be notified to the CONTRACTOR by the AUTHORITY. The change in rents shall form part of the Notifiable Costs and shall be effected on the next due date for payment.

6.2.2 **Site Services**

6.2.2.1 The charges to the CONTRACTOR for Core Services provided to the CONTRACTOR under the Site Services Schedules shall be in accordance with the terms of the relevant Property Agreement in respect of the AUTHORITY Properties.

6.2.2.2 The charges to the CONTRACTOR for Site Services provided to the CONTRACTOR by an OGD shall be in accordance with the terms of the documentation entered into between the OGD and the CONTRACTOR.

6.2.2.3 The charges to the CONTRACTOR for the Core Services provided to the CONTRACTOR by the AUTHORITY shall be in accordance with the terms of the relevant Services Deed.

6.2.2.4 Any changes in the charges for the Core Services referred to in Clauses 6.2.2.1 and 6.2.2.3 shall be notified to the CONTRACTOR by the AUTHORITY. The changes in such charges shall form part of the Notifiable Costs and shall be effected on the next due date for payment.

6.2.2.5 Any changes in the charges for the Site Services referred to in Clause 6.2.2.2 shall be notified to the CONTRACTOR by the AUTHORITY. The changes of such charges shall form part of the Notifiable Costs and shall be effected on the next due date for payment.

6.2.3 **Notifiable Costs**

For the avoidance of doubt, any changes to the Notifiable Costs under the terms of the Property Agreements in respect of the AUTHORITY Properties and Transferring Properties shall be notified to the CONTRACTOR by the AUTHORITY and effected on the next due date for payment.

6.2.4 **Telecoms Charging**

6.2.4.1 The AUTHORITY shall charge the CONTRACTOR as detailed in Schedule 12, for the use of telecoms services as specified in Schedule

11 as being subject to Notifiable Costs.

6.2.4.2 For the avoidance of doubt, the telephone charges in respect of Direct Exchange Lines will be payable by the CONTRACTOR direct to the applicable third party.

6.2.5 **Courier Charging**

The AUTHORITY shall provide to the CONTRACTOR free of charge access to and use of its national courier service in accordance with the provisions of Schedule 11 as currently provided to the Transferring Properties and the Casual Hire Properties solely for the purpose of performing the Services.

6.2.6 **Postal Services**

For the avoidance of doubt, the CONTRACTOR shall be responsible at its own cost and expense for procuring all postal services which it requires in connection with this Agreement.

6.3 **Compensation for Break Option**

In the event of the AUTHORITY exercising the Break Option in accordance with Clause 11.2 the AUTHORITY shall pay to the CONTRACTOR the Termination Charge as specified in Part 7 of Schedule 12 on or before the date specified in the notice for the Break Option to take effect.

6.4 **Payment**

6.4.1 **Charges**

In consideration of the provision of the Services in accordance with the terms of this Agreement the AUTHORITY shall pay the Charges in accordance with the invoicing and payment procedure specified in Schedule 13. The AUTHORITY shall not be liable for any charges levied by the CONTRACTOR or its representatives for any work carried out, or purchases made, by the CONTRACTOR or its representatives, except where the work, or purchases, have been formally ordered in writing or approval in advance by an authorised representative of the AUTHORITY in accordance with Clause 8.3.

6.4.2 **Subcontractors**

In the event that the CONTRACTOR, in accordance with the terms of this Agreement, enters into a supply contract or a Subcontract in connection with this Agreement, the CONTRACTOR shall ensure that a term is included in the supply contract or Subcontract which requires the CONTRACTOR to pay all sums due thereunder to the relevant supplier or Subcontractor within a specified period, not to exceed thirty (30) days, from the date of receipt of a valid invoice as defined by the terms of the supply contract or Subcontract (as appropriate).

6.4.3 **Interest on late Payment**

Interest shall be payable on any late payments under this Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

6.5 **VAT**

6.5.1 The provision of the Services is subject to VAT and the Charges are stated exclusive of VAT.

- 6.5.2 The AUTHORITY shall pay the VAT on the relevant Charges at the rate and in the manner prescribed by law from time to time subject to the production by the CONTRACTOR of a valid tax invoice giving the requisite details of the taxable supply.
- 6.5.3 The Notifiable Costs are stated exclusive of VAT. Where applicable VAT shall be added to the Notifiable Costs at the rate and in the manner prescribed by law from time to time for payment by the CONTRACTOR in accordance with Schedule 13.
- 6.5.4 The CONTRACTOR shall indemnify the AUTHORITY on a continuing basis against any liability, including any interest, penalties or costs incurred, which is properly levied, demanded or assessed on the AUTHORITY in accordance with Section 77A of the Value Added Tax Act 1974 at any time in respect of the CONTRACTOR's failure to account for or to pay any VAT relating to payments made to the CONTRACTOR under this Agreement.
- 6.5.5 The AUTHORITY shall promptly notify the CONTRACTOR if any claim or demand is made or action brought against the AUTHORITY to which Clause 6.5.4 may apply. The CONTRACTOR shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and the AUTHORITY hereby agrees to grant to the CONTRACTOR exclusive control of any such litigation and such negotiations.
- 6.5.6 The AUTHORITY shall at the request of the CONTRACTOR afford to the CONTRACTOR all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the AUTHORITY to which Clause 6.5.4 may apply.
- 6.5.7 The AUTHORITY shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action to which Clause 6.5.4 may apply.

6.6 Most Favoured Customer

- 6.6.1 From the date of this Agreement, if the CONTRACTOR enters into a substantially similar services agreement on substantially similar terms and conditions for the provision of medical services substantially similar to the Services provided under this Agreement with any other UK customer, whether a private or public body, at prices, payment terms, and/or other terms or conditions which, taken in the aggregate, are more favourable to the customer ("More Favourable Terms") than those provided by the CONTRACTOR to the AUTHORITY, the AUTHORITY shall be entitled to the More Favourable Terms under this Agreement.
- 6.6.2 The parties shall negotiate in good faith pursuant to Clause 6.1.4 (and not otherwise) to agree a fair and reasonable abatement of the Charges or amendments to other terms and conditions to reflect the More Favourable Terms. In negotiating the More Favourable Terms, the parties shall take account of an adjustment (to the extent it can be reasonably quantified) to reflect any material differences in the services or the terms and conditions thereto and the CONTRACTOR's costs in providing the services including (without limitation) the extent to which the services provided differ in size, complexity or term.
- 6.6.3 If the parties fail to agree an abatement of the Charges or amendments to other terms and conditions pursuant to Clause 6.6.2 the question between them shall be subject to expert determination pursuant to Clause 10.13.3. In reaching a determination, the expert shall be instructed to consider (amongst other relevant factors) the factors set out in Clause 6.6.2.

6.7 Maintaining Price Competitiveness

- 6.7.1 The AUTHORITY reserves the right at any stage during the term of this Agreement to benchmark the CONTRACTOR's prices, payment terms and/or other terms and conditions of this Agreement (together "the Terms") for all or part of the Services provided that the AUTHORITY shall not carry out such benchmarking during the period of three (3) years from the Cutover Date or thereafter benchmark the Services more than once in any twelve (12) month period.
- 6.7.2 In the event that the AUTHORITY proposes to exercise this right, the following provisions of this Sub-clause shall apply:
- 6.7.2.1 the AUTHORITY shall inform the CONTRACTOR in writing of its intent to benchmark the Terms and which aspects of the Services are to be benchmarked at least thirty (30) days prior to the carrying out of such benchmark;
- 6.7.2.2 the AUTHORITY shall produce evidence to support its proposal to market test the Services concerned;
- 6.7.2.3 the benchmark shall be designed to determine the competitiveness of the Terms in terms of their overall value for money for the relevant Services, and for those purposes such Terms shall be deemed to be less competitive than those available in the market place if they are less favourable than the Terms payable for substantially similar services on substantially similar terms and conditions on a national basis, having regard to all relevant factors. The cost of carrying out the benchmark shall be borne by the AUTHORITY and the AUTHORITY shall reimburse the CONTRACTOR for its reasonable costs in connection with the benchmarking exercise; and
- 6.7.2.4 the referenced Supplier(s) must currently be providing equivalent services at equivalent volumes on equivalent Terms to those Services being benchmarked.
- 6.7.3 If it is determined in the reasonable opinion of the AUTHORITY pursuant to the benchmarking exercise that the Terms for the relevant Services are less competitive than the Terms available in the market place, the parties shall negotiate in good faith pursuant to Clause 6.1.4 (and not otherwise) to agree a revision of the Terms to match or improve upon the Terms available in the market place. In default of agreement on such revision, the question shall be referred to expert determination pursuant to Clause 10.13.3. In order to give effect to this Clause, but subject to Clause 12.5, the CONTRACTOR shall furnish all information reasonably necessary to enable the parties to agree or, in default of agreement, to enable an expert under Clause 10.13.3 to determine a fair and reasonable revision of the Terms pursuant to this Clause.
- 6.7.4 The CONTRACTOR shall have the opportunity to match or improve upon the Terms which are determined in accordance with the expert determination procedure pursuant to Clause 10.13.3 to be available in the market place.
- 6.7.5 If the parties fail to agree a revision to the Terms for the relevant Services, and if the CONTRACTOR fails to match or improve upon the Terms determined by the expert within three (3) Months of the expert determination procedure being completed, the AUTHORITY shall have the right:
- 6.7.5.1 to procure the relevant services from third parties on terms equivalent to or better than those determined by the benchmarking exercise; and

6.7.5.2 to cancel the relevant Services without further liability to the CONTRACTOR (subject to the payment of any Termination Charge in accordance with Part 7 of Schedule 12) pursuant to Clause 11.4.4.

6.8 Benefit Sharing

6.8.1 Clawback on resale of Assets

6.8.1.1 The CONTRACTOR agrees that where the CONTRACTOR sells to a third party any of the Assets acquired from the AUTHORITY for a sum which is greater than the amount paid by the CONTRACTOR to the AUTHORITY for that Asset the CONTRACTOR shall pay to the AUTHORITY within thirty (30) days of such sale a sum equivalent to fifty percent (50%) of the difference between the amount paid by the CONTRACTOR for the Asset under this Agreement and the amount paid to the CONTRACTOR by the third party for that Asset.

6.8.1.2 In order to give effect to this Clause, the CONTRACTOR shall be under a duty to notify the AUTHORITY of any re-sale of the Assets as soon as such re-sale occurs and, subject to Clause 12.5, the CONTRACTOR shall furnish all information reasonably required by the AUTHORITY in respect of such re-sale.

6.8.2 Participation in commercial exploitation

6.8.2.1 The CONTRACTOR shall, subject to the prior written approval of the AUTHORITY, be entitled to:

- (a) exploit or use the Sole Use Assets and/or the Properties in the provision of services to any other customer or third party or exploit or use them for its own purposes and/or;
- (b) exploit or use any AUTHORITY Software or Specially Written Software in such a manner as the AUTHORITY (in its absolute discretion) sees fit.

6.8.2.2 The parties shall negotiate pursuant to Clause 6.1.4 (and not otherwise) to agree a fair and reasonable abatement of the Charges to reflect the value received by the CONTRACTOR from such exploitation or use where the CONTRACTOR provides services or exploits or uses the Sole Use Assets and/or the Properties pursuant to Clause 6.8.2.1(a). The AUTHORITY shall determine the form and manner but not the amount of such abatement to the Charges.

6.8.2.3 To the extent that any royalties have not been agreed between the parties as of the date hereof (such royalties to be specified in Schedule 12) the parties shall negotiate to agree a royalty to reflect the value received by the CONTRACTOR from such exploitation or use where the CONTRACTOR provides services or exploits or uses the AUTHORITY Software or Specially Written Software pursuant to Clause 6.8.2.1(b).

6.8.2.4 If the parties are unable to agree to a fair and reasonable abatement of the Charges or a fair and reasonable royalty rate pursuant to Clause 6.8.2.2 or 6.8.2.3, the question between them shall be subject to expert determination pursuant to Clause 10.14. In reaching a determination, the expert shall be instructed to consider (among other relevant factors) the degree of usage of the other customer of the Sole Use Assets and/or the demised Properties and/or the AUTHORITY Software and/or Specially Written Software and the

similarity between the Services provided to the other customer and the Services provided to the AUTHORITY hereunder.

6.8.2.5 In order to give effect to this Clause, but subject to Clause 12.5, the CONTRACTOR shall be under a duty to notify the AUTHORITY of all proposed exploitation to which Clause 6.8.2.2 applies and, subject to Clause 12.5, the CONTRACTOR shall furnish all information reasonably necessary to enable the parties to agree or, in default of agreement, to enable an expert to determine a fair and reasonable abatement of the Charges pursuant to this Clause.

6.8.2.6 The AUTHORITY shall be entitled to audit the CONTRACTOR's Records (as defined in and in accordance with Clause 10.1) in respect of all exploitation to which Clause 6.8.2.2 applies.

6.8.2.7 The AUTHORITY shall not unreasonably withhold consent to any exploitation of Sole Use Assets, Property, AUTHORITY Software or Specially Written Software by the CONTRACTOR at any time.

6.8.3 **Promotion of Other Goods or Services to Claimants**

The CONTRACTOR acknowledges that the scope of the Services is as set out in this Agreement. The CONTRACTOR undertakes that it shall not in the course of performing the Services make any attempt to encourage, persuade or coerce any Claimants into purchasing any other goods or services including but not limited to the purchase of private health care insurance policies and/or health screening programmes.

6.8.4 **Conflicts of Interest**

The CONTRACTOR must use all reasonable endeavours to avoid any actual or perceived conflicts of interests in the use of personnel to perform the Services under this Agreement and the use of such personnel to perform services for its other customers.

6.9 **Competitive Procurement**

In the event that, as part of the Services, the CONTRACTOR, at the request of the AUTHORITY, procures or conducts procurements for hardware, software, assets or services as agent for the AUTHORITY, the CONTRACTOR shall at all times comply with the provisions of the Public Services Contracts Regulations 1993 and the Public Supply Contracts Regulations 1991 as though the CONTRACTOR were itself a Contracting Authority subject to those provisions to the same extent as the AUTHORITY.

6.10 **Profit Sharing**

Any Additional Profit of the CONTRACTOR will be shared with the AUTHORITY in accordance with the provisions of Part 6 of Schedule 12.

7. **TRANSITION**

7.1 **Provision of the Detailed Transition Plan**

7.1.1 The CONTRACTOR shall, within two (2) weeks of the Commencement Date, prepare a plan for the Transition Services (the "**Detailed Transition Plan**") such that all of the obligations of the parties in relation to the Transition Services are completed by the expiry of the Transition Period. The Detailed Transition Plan shall also include full details of the Acceptance Criteria and the detail and timetable of the Transition Review Process. The Detailed Transition Plan shall be based on the Outline Transition Plan and shall be submitted to the AUTHORITY for approval.

7.1.2 The AUTHORITY shall provide reasonable assistance to the CONTRACTOR in the preparation of the Detailed Transition Plan.

7.2 Approval of the Detailed Transition Plan

7.2.1 The AUTHORITY shall, within ten (10) Working Days of receipt of the Detailed Transition Plan either:

7.2.1.1 approve the Detailed Transition Plan; or

7.2.1.2 reject the Detailed Transition Plan, giving reasons for such rejection.

7.2.2 The AUTHORITY may only reject the Detailed Transition Plan pursuant to Clause 7.2.1.2 if, in the reasonable opinion of the AUTHORITY, it is not consistent with the Outline Transition Plan and/or all provisions of the Replacement Agreement.

7.2.3 If the parties fail to agree the Detailed Transition Plan in accordance with this Clause 7.2, such dispute shall be resolved in accordance with the Alternative Dispute Resolution Procedure.

7.3 Transition Services

7.3.1 The parties shall perform the Transition Services and all other obligations in accordance with the Detailed Transition Plan and, unless otherwise specified herein, each party shall bear its own costs and expenses in carrying out its obligations hereunder.

7.3.2 The CONTRACTOR shall provide at no additional charge all additional assistance as is reasonably required by the AUTHORITY for the migration of the Services from the IMPACT Agreement to this Agreement.

7.3.3 The CONTRACTOR shall be responsible for developing new management information reports and changing existing management information reports to allow for the provision of the Services. For the avoidance of doubt any work undertaken by the CONTRACTOR in developing new management reports will be charged to the AUTHORITY by the CONTRACTOR in accordance with Paragraphs 8 and 9 of Schedule 12 of the IMPACT Agreement unless, and to the extent that, such work is completed within the three hundred (300) man days provided by the CONTRACTOR in accordance with Paragraph 9.41 of Schedule 12 of the IMPACT Agreement in which case the AUTHORITY shall not be charged for the work.

7.3.4 Subject to Clauses 7.3.5 and 7.3.6, the CONTRACTOR shall continue to provide to the AUTHORITY until the Cutover Date all of the services which it and its subcontractors are required to provide pursuant to the IMPACT Agreement. The parties acknowledge that the charges for the provision of such services shall be those applicable for year 7 of the IMPACT Agreement.

7.3.5 In the event that the Transition Review Process is not recorded as successful in respect of any of the Services and the AUTHORITY elects not to cut over such Services pursuant to Clause 7.4.5, the CONTRACTOR and its subcontractors shall continue to provide to the AUTHORITY services in accordance with the IMPACT Agreement which are equivalent to the Services it has elected not to cut over until the AUTHORITY elects to cut over such Services pursuant to Clause 7.4.1.

7.3.6 For the avoidance of doubt, the CONTRACTOR shall not be obliged to provide any services pursuant to the IMPACT Agreement after 31 August 2006

unless otherwise agreed by both parties pursuant to the change control procedures of the IMPACT Agreement.

7.4 Transition Review Process

7.4.1 The AUTHORITY shall permit the transition of the Services if the CONTRACTOR has either:

7.4.1.1 complied fully with the Transition Review Process pursuant to this Clause 7.4 and met all of the Acceptance Criteria; or

7.4.1.2 demonstrated to the satisfaction of the AUTHORITY (whose determination in such matter shall be final) its capacity to deliver the Services in accordance with the provisions of this Agreement.

7.4.2 The AUTHORITY shall undertake the Transition Review Process in order to determine whether the Acceptance Criteria have been met or satisfy itself in accordance with Clause 7.4.1.2 of the CONTRACTOR's capacity to deliver the Services in accordance with the provisions of this Agreement.

7.4.3 The Transition Review Process shall be recorded as successful in respect of any part of the Services and the CONTRACTOR notified by the AUTHORITY accordingly where all of the Acceptance Criteria are met in respect of such Services in accordance with the Transition Review Process and/or the AUTHORITY is satisfied that the CONTRACTOR is able to deliver the Services in accordance with the provisions of this Agreement.

7.4.4 The Transition Review Process shall be recorded as unsuccessful in respect of any of the Services and the CONTRACTOR notified by the AUTHORITY accordingly where any of the Acceptance Criteria are not met in respect of such Services and the CONTRACTOR has failed to satisfy the AUTHORITY that it is able to deliver the Services in accordance with the provisions of this Agreement.

7.4.5 If the Transition Review Process has not been recorded as successful in respect of any of the Services pursuant to Clause 7.4.3 by the Planned Cutover Date, the AUTHORITY shall have the right without prejudice to its other rights and remedies to extend the Transition Period for up to three (3) consecutive additional periods of the same duration or of such shorter duration as the AUTHORITY may notify to the CONTRACTOR, during which the CONTRACTOR shall use all reasonable endeavours to correct the deficiency which caused the Transition Review Process to be recorded as unsuccessful in respect of any of the Services.

7.4.6 In the event that the AUTHORITY extends the Planned Transition Period for a period pursuant to Clause 7.4.5 and the Transition Review Process has not been recorded as successful in respect of any of the Services by the end of that period, the AUTHORITY shall have the right without prejudice to its other rights and remedies:

7.4.6.1 to terminate, pursuant to Clause 11.9 any of the Services in respect of which the Transition Review Process has been recorded as unsuccessful; and/or

7.4.6.2 to terminate this Agreement pursuant to Clause 11.4.4.

7.5 Failure to Comply with the Detailed Transition Plan

7.5.1 If, due to the Default of the CONTRACTOR, the parties fail to achieve the Planned Cutover Date the CONTRACTOR shall, without prejudice to the parties' other rights and remedies:

7.5.1.1 pay to the AUTHORITY all actual additional costs which are incurred by the AUTHORITY for the provision of the Services by the CONTRACTOR pursuant to the IMPACT Agreement (to the extent that such costs are not also caused by a Default of the AUTHORITY); and

7.5.1.2 pay any reasonable additional costs of the AUTHORITY incurred as a direct result in the delay to the Planned Cutover Date to the extent that such reasonable additional costs have not already been recovered pursuant to Clause 7.5.1.1 (to the extent that such costs are not also caused by a Default of the AUTHORITY).

7.6 Work in Progress

7.6.1 The parties shall agree how the work-in-progress of the CONTRACTOR under the IMPACT Agreement is to be actioned, and the required activities shall be addressed in the Detailed Transition Plan.

7.6.2 The CONTRACTOR shall continue to be paid (in accordance with the terms of the IMPACT Agreement or as otherwise agreed in writing with the AUTHORITY) for any Fit for Purpose medical reports which are produced after the Cutover Date as a result of a medical examination or as a result of a scrutiny of documentary evidence, which is carried out by the CONTRACTOR before the Cutover Date. Where some residual administrative tasks are still required to clear the case, the CONTRACTOR will not be paid for the medical report or any residual work completed by the CONTRACTOR.

7.6.3 The CONTRACTOR will be paid for all Fit for Purpose written medical reports, produced by the CONTRACTOR, either as result of a medical examination or as a result of a Scrutiny of documentary evidence which is carried out by the CONTRACTOR after the Cutover Date in accordance with the terms of this Agreement.

8. CONTRACT MANAGEMENT

8.1 Contract Management

The parties shall establish the management interfaces specified in Schedule 16. All contract management of this Agreement shall be performed in accordance with the provisions of Schedule 16.

8.2 Provision of Information

8.2.1 Ad Hoc Information

Each party shall comply as soon as possible with all reasonable requests made by the other party for information relevant to this Agreement. All Confidential Information of either party made available to the other party under this Clause shall be treated as confidential under Clause 12.5.

8.2.2 Progress Reports

Where progress reports are to be submitted under this Agreement, the CONTRACTOR shall render reports as to the progress of the mutual obligations under this Agreement at such time and in such form as may be specified or as otherwise agreed between the AUTHORITY and the CONTRACTOR. The submission and receipt of these reports shall not prejudice the rights of either party under this Agreement.

8.2.3 Monitoring

The AUTHORITY shall be entitled to monitor the performance by the CONTRACTOR of its obligations under this Agreement in accordance with the procedures set out in Schedule 16.

8.2.4 **Medical Advances**

The parties agree that they shall share with each other all the latest medical advances which are relevant to the Services and of which they become aware from time to time during the term hereof.

8.3 **Communications**

8.3.1 Except as otherwise expressly provided herein, no communication from either party to the other shall have any validity under this Agreement unless made in writing by or on behalf of the AUTHORITY or the CONTRACTOR, as the case may be.

8.3.2 Any notice or other communication whatsoever which either party hereto is required or authorised by this Agreement to give or make to the other shall be given or made either by post in a prepaid letter, or by hand delivery, or by e-mail or by facsimile transmission confirmed by post in a prepaid letter, addressed to such other party in the manner referred to in Clause 8.3.3 and if that letter is not returned as being undelivered within seven (7) days that notice or communication shall be deemed for the purposes of this Agreement to have been given or made after two (2) days, for a letter, or four (4) hours, for a facsimile transmission or e-mail or on the day of delivery for hand delivery.

8.3.3 For the purposes of Clause 8.3.2 above the address for service of each party shall be as set out in Schedule 17.

8.3.4 Any party may change its address for service by notice as provided in this Clause 8.3.

8.4 **Amendments to the Agreement**

8.4.1 No change under this Agreement shall be effective unless made in accordance with this Clause 8.4. For these purposes, a "change" includes any proposed amendment to the Agreement (including any proposed additional or substituted Schedule), the Service Specification, any proposed Additional Services, any proposed assignment, novation or subcontracting of the Agreement and any variations of the charges or other changes arising out of the annual review under Clause 6.1.4. For each such change which is agreed by the parties the Agreement shall be amended to the extent necessary to give effect to that change.

8.4.2 The change must be approved on behalf of each party at the appropriate level of authorisation as specified in Schedule 16 and must be made in accordance with the Change Control Procedure by a written instrument which expressly purports to amend this Agreement and which expressly refers to the Clause(s) or Schedule(s) so amended.

8.4.3 However, unless and until such amendment is made in accordance with Clause 8.4.1, this Agreement shall not in any way be considered to have been amended.

8.5 **Transfer and Subcontracting**

8.5.1 This Agreement is personal to the CONTRACTOR. The CONTRACTOR shall not assign, novate or otherwise dispose of this Agreement or any part thereof without the previous consent in writing of the AUTHORITY.

- 8.5.2 The CONTRACTOR shall not subcontract this Agreement or any part thereof without the previous consent in writing of the AUTHORITY, such consent not to be unreasonably withheld or delayed. For the avoidance of doubt, the AUTHORITY hereby consents to the CONTRACTOR's subcontracting of its obligations specified in Schedule 18 to the respective Subcontractors specified therein.
- 8.5.3 The Fee Paid Registered Medical Practitioners approved and/or appointed pursuant to Clause 1.8.2 need not be listed in Schedule 18.
- 8.5.4 Subject to Clause 8.5.5, the AUTHORITY shall be entitled, upon reasonable notice to the CONTRACTOR, to:
- 8.5.4.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any Contracting Authority provided that any such assignment, novation or other disposal shall not increase the burden of the CONTRACTOR's obligations pursuant to this Agreement; or
- 8.5.4.2 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 provided that such novation shall not increase the burden of the CONTRACTOR's obligations pursuant to this Agreement.
- 8.5.5 Any change in the legal status of the AUTHORITY such that it ceases to be a Contracting Authority shall not, subject to 8.5.6, affect the validity of this Agreement. In such circumstances, this Agreement shall bind and inure to the benefit of any successor body to the AUTHORITY provided that such change in the legal status of the AUTHORITY shall not increase the burden of the CONTRACTOR's obligations pursuant to this Agreement.
- 8.5.6 If this Agreement is novated to a body which is not a Contracting Authority pursuant to Clause 8.5.4.2 or if a successor body which is not a Contracting Authority becomes the AUTHORITY pursuant to Clause 8.5.5 (in the remainder of this Clause 8.5.6 both such bodies are referred to as the "transferee"):
- 8.5.6.1 the rights of termination of the AUTHORITY in Clause 11.3.1, Clause 11.3.2 and 11.4 shall be available, mutatis mutandis, to the CONTRACTOR in the event of the bankruptcy, insolvency or Default of the transferee;
- 8.5.6.2 the transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof with the previous consent in writing of the CONTRACTOR;
- 8.5.6.3 any rights acquired by the transferee relating to any Use of the Intellectual Property Rights or the Software shall not extend beyond the activities previously performed by the AUTHORITY and, in particular, the transferee shall not be entitled to perform any service bureau or facilities management services utilising the Software or the Intellectual Property Rights for any third party;
- 8.5.6.4 the rights of the AUTHORITY under Clause 8.8.1 shall cease; and
- 8.5.6.5 the following Clauses shall be varied from the date of the novation or the date of the change of status (as appropriate) as set out below as if this Agreement had been amended by the parties in accordance with Clause 8.4:

- (a) in Clause 12.1.1.1, the words “acting for or on behalf of the Crown” in the second line shall be replaced with “employed by the AUTHORITY or acting on its behalf” and the words “the Crown” in the sixth line shall be replaced with “the AUTHORITY”; and
- (b) in Clause 12.1.1.2, the words “for or on behalf of the Crown” shall be replaced with “employed by the AUTHORITY or acting on its behalf”.

8.5.6.6 The AUTHORITY shall be entitled to disclose to any transferee any Confidential Information of the CONTRACTOR which relates to the performance of the Services by the CONTRACTOR and which the transferee needs to know in order to fulfil its obligations hereunder. In such circumstances the AUTHORITY shall authorise the transferee to use such Confidential Information only for purposes relating to the provision of the Services and for no other purposes and, for the avoidance of doubt, the AUTHORITY shall procure that the transferee enters into a confidentiality agreement in favour of the CONTRACTOR and shall procure that they shall be bound by confidentiality provisions no less onerous than those provisions of Clause 12.5 in relation to such Confidential Information.

8.5.7 **Legislative and Policy Change**

8.5.7.1 Any change to law or policy which requires an amendment to this Agreement (including but not limited to the standards listed in Schedules 4 and 23) or to the Service Specification to enable the CONTRACTOR to comply with such change shall be subject to the Change Control Procedure with the following exceptions:

- (a) neither party shall withhold or delay their agreement to the change;
- (b) any change will be implemented even if the parties cannot agree a variation to the Agreement (including the Charges) before the change is due to be implemented; and
- (c) any agreed variation to the Agreement shall apply retrospectively to the date of implementation of the change.

8.5.7.2 The CONTRACTOR shall use its reasonable endeavours to mitigate any increase in costs arising from a change in law or policy.

8.5.7.3 For the avoidance of doubt any change to the VAT status of the Services such that such Services are, in whole or in part, not subject to VAT shall be considered a change in law and subject to the provision of this Clause 8.5.7.

8.6 **Time**

8.6.1 **Extension of Time**

8.6.1.1 If the performance of this Agreement by the CONTRACTOR be delayed by reason of Default by the AUTHORITY or its employees or authorised agents, or by reason of any refusal by the AUTHORITY pursuant to Clause 8.8.1 without good cause to admit the CONTRACTOR's personnel to any premises occupied by or on behalf of the Crown or by rejection of the CONTRACTOR's personnel pursuant to Clause 8.7.10, the CONTRACTOR shall be entitled to a

reasonable extension of time and to any reasonable additional costs which it can show were directly incurred as a result of the delay, provided always that notwithstanding the AUTHORITY's Default the CONTRACTOR shall use all reasonable endeavours to continue to perform its obligations under this Agreement and it notifies the AUTHORITY in writing of the Default as soon as it becomes aware of such Default.

8.6.1.2 If the performance of this Agreement by either party be delayed by reason of any Force Majeure event (as defined in Clause 10.12.1), both parties shall be entitled to a reasonable extension of time subject to there being no entitlement to any additional costs incurred as a result of the delay and provided that the party so delayed notifies the other party in writing without undue delay.

8.6.2 Time of the Essence

Where there has been undue delay by the CONTRACTOR in the performance of the Services under this Agreement, other than where this has been caused by the Default of the AUTHORITY or its employees or authorised agents and provided always that such delay has been referred:

8.6.2.1 to the most senior level of the Contract Management Procedures and there has been no resolution of the matter in accordance with the Contract Management Procedures; and

8.6.2.2 by the Joint Body or the more senior representatives of the parties referred to in Clause 10.14.2 where applicable and there has been a failure to resolve the matter,

the AUTHORITY may notify the CONTRACTOR in writing that time is of the essence with respect to any Services which are subject to undue delay and if any such Services shall not have been performed by the CONTRACTOR by any reasonable date stated in the notice (such date having regard for all the surrounding circumstances), the AUTHORITY may terminate this Agreement in accordance with Clause 11.4.4.

8.7 Security

8.7.1 The CONTRACTOR shall comply with the Security Policy specified in Schedule 20.

8.7.2 The CONTRACTOR shall implement and maintain security standards, facilities and procedures which fully comply with the policies, standards and other obligations set out in the Security Policy insofar as such policies, standards and other obligations apply to the provision of the Services. The CONTRACTOR shall ensure that all its employees, agents or Subcontractors shall comply with the obligations upon them contained in the Security Policy.

8.7.3 The AUTHORITY shall notify the CONTRACTOR of any changes or proposed changes to the Security Policy or IT Security Manual and shall provide the CONTRACTOR with updates thereto in good time to enable the CONTRACTOR to continue to comply with its obligations under this Clause provided that any changes or proposed changes to the Security Policy or IT Security Manual shall be dealt with in accordance with Clause 8.5.7.

8.7.4 The CONTRACTOR shall nominate in writing an individual to take responsibility and be accountable for compliance with the Security Policy and/or IT Security Manual.

- 8.7.5 Subject to Clause 8.5.7, the CONTRACTOR shall comply with, and implement, all policies and standards issued from time to time by departments, offices or agencies of the Crown for the protection of Nationally Classified Information or information which is to be treated as if it were Nationally Classified Information.
- 8.7.6 The AUTHORITY shall inform the CONTRACTOR (in accordance with Clause 8.3) of the level of security clearance required to handle any items of Nationally Classified Information. The CONTRACTOR shall ensure that all employees, agents, representatives and Subcontractors of the CONTRACTOR who have access to Nationally Classified Information shall be security cleared to the appropriate level determined by the AUTHORITY.
- 8.7.7 Notwithstanding the CONTRACTOR's obligations under Clauses 8.7.1 to 8.7.6, the CONTRACTOR shall ensure that no person who is not security cleared to an appropriate level shall have access to Nationally Classified Information.
- 8.7.8 If any person is not given security clearance following security vetting, the CONTRACTOR may not disclose Nationally Classified Information to such person.
- 8.7.9 The CONTRACTOR shall process and store information protected hereunder (including, without limitation, Nationally Classified Information and Confidential Information) only at sites approved in writing by the AUTHORITY in accordance with Clause 8.3, and the AUTHORITY shall incur no liability in respect of any costs incurred by the CONTRACTOR as a result of the AUTHORITY's refusal to approve any sites for such purposes. For the purposes of this Clause all the AUTHORITY's sites are hereby deemed to be approved by the AUTHORITY.
- 8.7.10 The AUTHORITY shall have the right to require the CONTRACTOR not to use specified individuals employed or engaged by the CONTRACTOR, or by a Subcontractor, in the performance of specified elements of the Services. The AUTHORITY shall not be required to give a reason or explanation for the exercise of such rights. Further, the AUTHORITY warrants that it will not exercise such right unreasonably.
- 8.7.11 The CONTRACTOR shall, upon the Cutover Date, maintain the same levels of security protection as those specified in Schedule 20, and shall not vary the level of security protection afforded to any information protected hereunder (including, without limitation, Nationally Classified Information and Confidential Information) without the authority of the appropriate Data Guardian, and afforded to Nationally Classified Information without the additional authority of the Departmental Security Officer.
- 8.7.12 If requested to do so by the AUTHORITY's representatives, the CONTRACTOR shall initiate procedures requested under which the CONTRACTOR's staff or vehicles carrying the CONTRACTOR's staff shall be subject to search by the CONTRACTOR whilst on AUTHORITY premises. The results of any search shall be made known to the AUTHORITY's representative.
- 8.7.13 The AUTHORITY's decision on all matters in this Clause 8.7 requiring the exercise of the AUTHORITY's discretion shall be final and conclusive.
- 8.8 **Personnel**
- 8.8.1 **CONTRACTOR's Personnel**
- 8.8.1.1 The AUTHORITY reserves the right under this Agreement to refuse to admit to any premises occupied by or on behalf of the Crown any person employed or engaged by the CONTRACTOR, or by a Subcontractor, whose admission would be, in the opinion of the

AUTHORITY, undesirable.

- 8.8.1.2 If and when directed by the AUTHORITY, the CONTRACTOR shall provide a list, within a reasonable period of time, of the names and business addresses of all persons who it is expected may require admission in connection with the performance of this Agreement to any premises occupied by or on behalf of the Crown, specifying the capacities in which they are concerned with this Agreement and giving such other particulars as the AUTHORITY may reasonably require.
- 8.8.1.3 The CONTRACTOR shall comply with the provisions of Clause 12.6.1 when providing any information pursuant to Clause 8.8.1.2.
- 8.8.1.4 The CONTRACTOR shall comply with any directions issued by the designated representative of the AUTHORITY as to which persons may be admitted to such premises and at what times.
- 8.8.1.5 If and when directed by the AUTHORITY, the CONTRACTOR shall secure that any person employed or engaged by the CONTRACTOR or by a Subcontractor, who is specified in the direction or is one of a class of persons who may be so specified, shall sign a statement that he understands that the Official Secrets Acts 1911 to 1989 apply to him both during the term of and after the expiry or termination of this Agreement.
- 8.8.1.6 The CONTRACTOR's representatives, engaged within the boundaries of a Crown establishment, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.
- 8.8.1.7 The decision of the AUTHORITY as to whether any person is to be refused admission to any premises occupied by or on behalf of the Crown and as to whether the CONTRACTOR has failed to comply with Clause 8.8.1.2 shall be final and conclusive.
- 8.8.1.8 If the CONTRACTOR shall fail to comply with Clause 8.8.1.2 and if the AUTHORITY (whose decision shall be final and conclusive) shall decide that such failure is prejudicial to the interests of the state and if the CONTRACTOR does not comply with the provisions of Clause 8.8.1.5 and 8.8.1.5 within a reasonable time of written notice so to do then the AUTHORITY may terminate this Agreement pursuant to Clause 11.4.4.
- 8.8.1.9 The CONTRACTOR shall be responsible for ensuring that its employees and sub-contractors (and their respective employees) are not claiming any Benefit, where payment of that Benefit is precluded due to earnings. The CONTRACTOR shall further use all reasonable endeavours to ensure that its employees and sub-contractors (and their respective employees) who are not EC nationals are legally entitled to be resident in the United Kingdom and have a work permit, where applicable. The CONTRACTOR shall promptly take all reasonable steps to ensure compliance with this Clause 8.8.1.9.

8.8.2 **Key Personnel**

The parties acknowledge that the CONTRACTOR's Key Personnel specified in Schedule 21 are essential to the fulfilment of its obligations hereunder. The CONTRACTOR undertakes to use all reasonable endeavours to ensure that such

Key Personnel are not removed or replaced during the periods specified in Schedule 21. However, in the event that any of its Key Personnel becomes unavailable for any reason (including without limitation as a result of death, injury, sickness, promotion or resignation), the CONTRACTOR shall have the right subject to the prior written approval of the AUTHORITY (which shall not be unreasonably withheld or delayed) to replace such an individual with another individual whose abilities and qualifications equal or exceed those of the replaced individuals.

8.8.3 No Poaching

Both parties agree not to solicit, offer employment to, nor use the services of any employee of the other party who is involved in performing this Agreement (otherwise than by general advertising for the duration of this Agreement) and for a period of twelve (12) Months from the date of termination of this Agreement, except as expressly provided for in this Agreement or where the other party consents thereto in writing.

8.8.4 On-Going Secondment

During the term of this Agreement, the AUTHORITY and the CONTRACTOR shall consider opportunities for, and where necessary and appropriate, agree upon the secondment and/or exchange of agreed numbers of staff between each other. The terms upon which such secondment and/or exchange will take place will be as set out in Schedule 32.

8.9 Health & Safety Hazards

8.9.1 The CONTRACTOR shall notify the AUTHORITY of any health and safety hazards in relation to the AUTHORITY's Properties which may arise in connection with the performance of this Agreement.

8.9.2 The AUTHORITY shall notify the CONTRACTOR of any health and safety hazards which may exist or arise at any Properties occupied by the AUTHORITY and which may affect the CONTRACTOR provided that the AUTHORITY shall have no obligation to notify the CONTRACTOR of any health or safety hazards which the CONTRACTOR is obliged to rectify in accordance with the terms and conditions of any relevant Property Agreement entered into between the AUTHORITY and the CONTRACTOR. The CONTRACTOR shall draw these hazards to the attention of its employees and Subcontractors or any persons engaged by the CONTRACTOR in the performance of this Agreement at such Properties.

8.9.3 The CONTRACTOR shall inform all persons engaged in the performance of this Agreement at the AUTHORITY's Properties of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.

8.10 AUTHORITY Responsibilities

8.10.1 The AUTHORITY shall perform the AUTHORITY's Responsibilities as set out in Schedule 22.

8.10.2 The AUTHORITY shall provide telecoms and courier services as set out in Schedule 11.

8.11 Further Assurance

8.11.1 Both parties shall at their own expense promptly:

8.11.1.1 execute all documents and do all acts and things reasonably

required by the other party to give effect to the terms of this Agreement;
and

8.11.1.2 within such time limits as are reasonable within the circumstances, provide all accurate information, documentation and assistance reasonably requested by the other party to enable that other party to fulfil its obligations hereunder.

8.12 **Provision of Information relating to Claimants**

The AUTHORITY shall use all reasonable endeavours to notify information to the CONTRACTOR of any Claimants who have been classified by the AUTHORITY as potentially violent provided that the AUTHORITY cannot accept any liability for any claims arising out of such notification or by any failure by the AUTHORITY to provide such information to the CONTRACTOR.

8.13 **Consent**

The AUTHORITY shall use all reasonable endeavours to obtain the prior written consent of a Claimant where medical evidence in respect of that Claimant is to be obtained from a third party provided that the AUTHORITY cannot accept any liability for any claims arising out of a failure by the AUTHORITY to obtain such written consent.

9. **WARRANTIES AND STANDARDS**

9.1 **Provision of Services**

The CONTRACTOR warrants and represents that:

9.1.1 the Services shall be performed by appropriately experienced, qualified and trained personnel with all reasonable skill, care and diligence;

9.1.2 the CONTRACTOR shall discharge its obligations under this Agreement with all reasonable skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures;

9.1.3 the Services shall be performed in compliance with all applicable laws, enactments, orders, regulations, policies and other similar instruments in force at the date of this Agreement. Any changes to applicable laws, enactments, orders, regulations, policies and other similar instruments shall be dealt with in accordance with Clause 8.5.7;

9.1.4 the Services shall be performed in accordance with all applicable Service Levels in this Agreement;

9.1.5 the Services shall be performed in such a way as to cause a minimum of disruption to the business of the AUTHORITY.

9.2 **EMU**

9.2.1 The Contractor warrants that the Services will:

9.2.1.1 be capable of performing all functions set out in Schedule 2 and Schedule 4 for sterling and for the common currency adopted generally by members of the European Union (the "euro");

9.2.1.2 comply with all legal requirements applicable to the euro in the United Kingdom, including but without limitation, the rules on conversion and rounding set out in the EC Regulation number 1103/97;

and

9.2.1.3 be capable of displaying and printing and will incorporate in all relevant screen layouts, all symbols and codes adopted by the Government in relation to the euro.

9.3 Title and Non-Infringement of IPRs

9.3.1 The CONTRACTOR warrants and represents that:

9.3.1.1 the provision of the Services and the AUTHORITY's use thereof shall not infringe any Intellectual Property Rights of any third party;

9.3.1.2 in the event of the exercise of the AUTHORITY's or Replacement Contractor's rights under Schedule 26 to purchase any assets the AUTHORITY or Replacement Contractor shall acquire title to any equipment sold to the AUTHORITY or Replacement Contractor free from all encumbrances and the AUTHORITY or Replacement Contractor shall have the right to quiet possession of such equipment;

9.3.1.3 all equipment leases, maintenance agreements, support agreements and all other supply and services agreements which are relevant and necessary for the provision of the Services are assignable at no cost (except for any charges payable thereunder) to the AUTHORITY or the Replacement Contractor upon the termination of this Agreement;

9.3.1.4 the CONTRACTOR will use all reasonable endeavours to ensure that all licences and maintenance agreements relating to the Software and all other licences of Intellectual Property Rights to which the CONTRACTOR is a party and which are relevant and necessary to the provision of the Services, are assignable to the AUTHORITY or the Replacement Contractor upon the termination of this Agreement; and

9.3.1.5 all warranties, guarantees and other rights given to the CONTRACTOR or procured for the CONTRACTOR in respect of the equipment referred to in Clause 9.3.1.2, in respect of the maintenance agreements, support agreements and all other supply and services agreements referred to in Clause 9.3.1.3 and/or in respect of the licences and maintenance agreements referred to in Clause 9.3.1.4) will be assigned to the AUTHORITY upon the termination of this Agreement.

9.3.2 For the avoidance of doubt the indemnity in Clause 10.7 shall be the AUTHORITY's sole remedy for a breach of Clause 9.3.1.1.

9.4 Statements and Representations

The CONTRACTOR warrants and represents that all written statements and representations made to the AUTHORITY in connection with tendering for and entering into this Agreement are, to the best of its knowledge, information and belief, true and accurate and that it will advise the AUTHORITY of any fact, matter or circumstance of which it may become aware which would render any such written statement or representation to be false or misleading.

9.5 Standards and Policies

9.5.1 **Medical/Professional**

The CONTRACTOR warrants and represents that the Services shall comply with, and be provided in accordance with, the medical and professional standards specified in Schedule 4.

9.5.2 **Legislation/Policy**

9.5.2.1 Subject to Clause 8.5.7 the CONTRACTOR represents and warrants that the Services shall comply with and be provided in accordance with:

- (a) all laws (including any applicable case law), statutes, enactments, orders, regulations, policies or other similar instruments of general application applicable thereto as amended by any subsequent law, statute, enactment, order, regulation, policy or instrument or as contained in any subsequent re-enactment thereof; and
- (b) all policies and changes thereto affecting the AUTHORITY as may be notified to the CONTRACTOR from time to time, and for the purpose of the foregoing the AUTHORITY shall take all reasonable steps to advise the CONTRACTOR only of any changes to AUTHORITY policies which will affect the provision of the Services in accordance with this Agreement.

9.5.3 **IT/Technical/Other**

9.5.3.1 The CONTRACTOR warrants and represents that:

- (a) the Services shall comply with, and be provided in accordance with, the IT, technical and other standards specified in Schedule 23 and all components and equipment supplied and/or used in the course of the provision of the Services shall be operated and maintained in accordance with their technical specifications; and
- (b) the provision of the Services shall not cause electrical interference beyond the limits laid down in the relevant standard specified in Schedule 23, provided that for the purpose of this Clause the Services shall be deemed to include the operation of any testing and monitoring instruments used in connection with the provision of the Services.

9.6 **Authority and Approval**

9.6.1 The CONTRACTOR warrants and represents that:

9.6.1.1 it has full capacity and authority and all necessary licences, permits and consents (including but not limited to, where its circumstances and procedures so require, the consent of its Parent Company) to enter into and to perform this Agreement;

9.6.1.2 this Agreement is executed by a duly authorised representative of the CONTRACTOR; and

9.6.1.3 the execution and delivery of this Agreement, and the performance by the CONTRACTOR of its obligations under it, will not:

- (a) result in a breach of any provision of the Memorandum or Articles of Association or Partnership Deed, if applicable, of the CONTRACTOR; or

- (b) result in a breach of or constitute a default under any instrument or agreement to which the CONTRACTOR is a party to or by which the CONTRACTOR is bound; or
- (c) result in a breach of any order, judgement or decrees of any court or Governmental agency to which the CONTRACTOR is a party or by which the CONTRACTOR is bound.

9.6.2 The AUTHORITY warrants and represents that:

- 9.6.2.1 it has full capacity and authority and all necessary licences, permits and consents to enter into and to perform this Agreement; and
- 9.6.2.2 this Agreement is executed by a duly authorised representative of the AUTHORITY.

9.7 Exclusion of Warranties

Except as expressly stated in this Agreement, all warranties and conditions by either party (including without limitation, warranties and conditions as to fitness for purpose and description), whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

10. REMEDIES AND LIABILITIES

10.1 Audit Access

- 10.1.1 The CONTRACTOR shall keep or cause to be kept full and accurate records (including without limitation, financial documents detailing expenditure and income and including computerised records and data) on all Assets, Software, Transferring Properties, Transferring Authority Employees, materials used and Services performed in connection with this Agreement (“the Records.”)
- 10.1.2 For the avoidance of doubt, except where specifically provided for in this Clause 10.1, neither the CONTRACTOR nor its Subcontractors or other representatives shall be entitled to reimbursement by the AUTHORITY for any costs or expenses incurred as a result of compliance with their respective obligations hereunder.
- 10.1.3 The CONTRACTOR shall grant to the AUTHORITY, any statutory or regulatory auditors of the AUTHORITY and their respective authorised agents the right of reasonable access at all reasonable times and upon reasonable notice to inspect and take copies from the Records and/or any sites and/or materials and shall provide access to the CONTRACTOR’s personnel and provide all reasonable assistance at all times during the currency of this Agreement and for a period of six (6) years after the termination for whatever reason of this Agreement for the purposes of allowing the AUTHORITY to obtain such information as is necessary to:
 - 10.1.3.1 fulfil the AUTHORITY’s obligations to supply information relating to this Agreement for parliamentary, governmental, judicial or other external administrative purposes; and/or
 - 10.1.3.2 audit the CONTRACTOR’s compliance with its obligations under this Agreement; and/or
 - 10.1.3.3 audit all activities, security and integrity in connection with the provision of the Services.

- 10.1.4 Where the AUTHORITY exercises its right of access pursuant to Clause 10.1.3 through its authorised agents the AUTHORITY shall allow the CONTRACTOR to make representations to the AUTHORITY concerning the appropriateness of any such authorised agent and the AUTHORITY shall have due regard to such representations. The CONTRACTOR shall be repaid any reasonable expenses incurred in giving any such reasonable assistance for the purposes set out in Clause 10.1.3.2 and 10.1.3.3 unless the audit is exercised in accordance with the audit access requirements set out in Clause 10.1.5.
- 10.1.5 Without prejudice to the foregoing, in the event of an investigation by the AUTHORITY or its authorised agents into suspected fraudulent activity or other impropriety by the CONTRACTOR or any third party in connection with this Agreement or the provision of the Services the AUTHORITY reserves for itself, any statutory or regulatory auditors of the AUTHORITY and their respective authorised agents the right of immediate access to the Records described in Clause 10.1.1 above and/or any sites and/or materials and/or personnel and the CONTRACTOR agrees to render all necessary assistance to the conduct of such investigation at all times during the currency of this Agreement or at any time thereafter. The CONTRACTOR shall be repaid any reasonable expenses incurred in giving such assistance in the event that no fraud or other impropriety is discovered.
- 10.1.6 For the purposes of:
- 10.1.6.1 the examination and certification of the accounts of the AUTHORITY; and/or
- 10.1.6.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the AUTHORITY has used its resources,
- the Comptroller and Auditor General and/or his representatives ("C&AG") shall have the right to examine the Records and all such documents and other information owned, maintained or held by, or otherwise in the control of, the CONTRACTOR (including computerised records and data) as the C&AG may reasonably require or consider necessary. The CONTRACTOR shall provide access (and shall procure that any person acting on the CONTRACTOR's behalf who has such documents and/or other information shall also provide access) to such documents and/or further information for the C&AG for such purposes. Further, the CONTRACTOR shall furnish to the C&AG such oral or written explanations as he requires for such purposes. The C&AG shall bear the costs incurred by himself of such examination and clarification. The CONTRACTOR shall bear its own costs of complying with the requirements of this Clause 10.1.6.
- 10.1.7 For the avoidance of doubt, it is hereby declared that Clause 10.1.6 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the CONTRACTOR by the C&AG under Section 6(3)(d) of the National Audit Act 1983.
- 10.1.8 The CONTRACTOR shall take all steps necessary and possible to procure that any Subcontractor or other representative engaged by it during the term hereof in connection with the provision of the Services (and shall use its reasonable endeavours to procure that the Subcontractors existing on the date hereof) shall also keep or cause to be kept full and accurate Records and shall grant and allow the same rights of access and accept the same obligations to provide information as are granted, allowed and/or accepted under this Clause 10.1.
- 10.1.9 For the avoidance of doubt, but without prejudice to the AUTHORITY's audit rights under Clause 10.1.3, nothing in this Clause 10.1 shall require the CONTRACTOR to grant access to information relating to its profit margins.

- 10.1.10 Notwithstanding the provisions of Clause 10.2, the AUTHORITY shall use its reasonable endeavours to co-ordinate the application of its audit rights so as to ensure that the provision of any of the Services by the CONTRACTOR is not unreasonably disrupted or delayed.

10.2 Open Book Accounts

- 10.2.1 The CONTRACTOR shall annually provide to the AUTHORITY a statement of costs no later than one (1) month after Annual Review.
- 10.2.2 The statement of costs shall set out the CONTRACTOR's actual costs, expenses and profits in providing the Services since the date of the Agreement, or if it exists, any previous statement of costs:
- 10.2.2.1 the actual capital expenditure, including capital replacement costs (including details of expected assets lives);
 - 10.2.2.2 actual operating expenditure relating to the provision of the Services, with an analysis showing the costs of number of hours worked by referenced to timesheets or any other suitable evidence of time spent providing the Services;
 - 10.2.2.3 all interest, expenses and other third party financing costs;
 - 10.2.2.4 details of the overhead recoveries that have been made; and
 - 10.2.2.5 the profit before tax which the CONTRACTOR has achieved in the provision of the Services including any profit element forming any part of the overhead recoveries disclosed by reason of Clause 10.2.2.4 above.
- 10.2.3 The CONTRACTOR shall, prior to delivery of the statement of costs to the AUTHORITY:
- 10.2.3.1 ensure that the statement of costs is reviewed by its auditors who will verify the information contained in the statement of costs and that any allocation of overhead recoveries is fair and reasonable; and
 - 10.2.3.2 provide a written statement from its auditors confirming their review of the statement of costs in accordance with this Clause 10.2.

10.3 Service Credits and Liquidated Damages

- 10.3.1 In the event that due to a Default of the CONTRACTOR the Services fail to meet the Service Levels contained in Schedule 5, the CONTRACTOR shall, as an adjustment to the Charges credit the AUTHORITY with Service Credits calculated in accordance with Schedule 25.
- 10.3.2 In the event that due to its Default the CONTRACTOR fails to commence the Services on the Cutover Date the CONTRACTOR shall, pay to the AUTHORITY Liquidated Damages calculated in accordance with Schedule 25 of this Agreement for each day of delay up to a maximum of one hundred (100) days.
- 10.3.3 The parties acknowledge that the Service Credits and Liquidated Damages referred to in this Clause and specified in Schedule 25 are a genuine pre-estimate of the loss likely to be suffered by the AUTHORITY and that the figures therein are reasonable.
- 10.3.4 Without prejudice to any other non-financial rights or remedies of the AUTHORITY, the Service Credits and Liquidated Damages recoverable by the

AUTHORITY in accordance with this Clause 10.3 shall be the AUTHORITY's sole financial remedy in respect of any Default to which this Clause 10.3 applies, but only to the extent so specified in Schedule 25.

10.4 **Additional Resources**

In the event that the Services hereunder are not provided in accordance with all applicable provisions hereof as a result of a Default of the CONTRACTOR, the CONTRACTOR shall, at the request of the AUTHORITY and without prejudice to the AUTHORITY's other rights and remedies, arrange all such additional resources as are reasonably necessary to correct such failure as early as practicable thereafter and at no additional charge to the AUTHORITY.

10.5 **Non-conforming Services**

10.5.1 In the event that, as a result of its Default, the CONTRACTOR fails to perform the Services, or any of them, in accordance with this Agreement, and such failure is not caused by the AUTHORITY, or by its employees or authorised agents, then the AUTHORITY may elect, in addition to any other remedies that may be available to it either under this Agreement or otherwise, one or more of the following remedies:

10.5.1.1 the AUTHORITY may require the CONTRACTOR, at the CONTRACTOR's own expense, promptly to remedy any Default or re-perform any non-conforming Services; or

10.5.1.2 the AUTHORITY may withhold from payment to the CONTRACTOR or recover as a sum of money due from the CONTRACTOR the Charges or any portion thereof that are allocable to the Default or non-conforming Services other than where Service Credits are applicable to the failure in which case the recovery of such Service Credits shall be, subject to Clause 10.3.3, the sole financial remedy of the AUTHORITY in respect of such failure; or

10.5.1.3 if the CONTRACTOR fails to remedy the Default or re-perform any non-conforming Services pursuant to Clause 10.5.1.1 within thirty (30) days after notice thereof is given to the CONTRACTOR, the AUTHORITY may either remedy any Default or re-perform any non-conforming Services itself or have them remedied by a third party on its behalf, and in either case the CONTRACTOR shall pay the reasonable costs so incurred by the AUTHORITY.

10.6 **Recovery of Sums Due**

If any sum of money shall be due from the CONTRACTOR, the same may be deducted from any sum then due or which at any time thereafter may become due to the CONTRACTOR under this Agreement or under any other agreement between the CONTRACTOR and the AUTHORITY.

10.7 **IPR Indemnity**

10.7.1 The CONTRACTOR shall indemnify the AUTHORITY against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) in the United Kingdom of any Intellectual Property Right in the CONTRACTOR Software, Specially Written Software and CONTRACTOR Third Party Software.

10.7.2 The CONTRACTOR shall promptly notify the AUTHORITY if any claim or demand is made or action brought against the CONTRACTOR for infringement or

alleged infringement of any Intellectual Property Right which may affect the use of the Services.

- 10.7.3 The AUTHORITY shall promptly notify the CONTRACTOR if any claim or demand is made or action brought against the AUTHORITY to which Clause 10.7.1 may apply. The CONTRACTOR shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and the AUTHORITY hereby agrees to grant to the CONTRACTOR exclusive control of any such litigation and such negotiations.
- 10.7.4 The AUTHORITY shall at the request of the CONTRACTOR afford to the CONTRACTOR all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the AUTHORITY to which Clause 10.7.1 may apply or any claim or demand made or action brought against the CONTRACTOR to which Clause 10.7.2 may apply. The CONTRACTOR shall reimburse the AUTHORITY for all costs and expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) incurred in so doing.
- 10.7.5 The AUTHORITY shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right to which Clause 10.7.1 may apply or any claim or demand made or action brought against the CONTRACTOR to which Clause 10.7.2 may apply.
- 10.7.6 If a claim or demand is made or action brought to which Clause 10.7.1 may apply or in the reasonable opinion of the CONTRACTOR is likely to be made or brought, the CONTRACTOR may at its own expense:
- 10.7.6.1 modify any or all of the Services without reducing the performance and functionality of the same, or substitute services of equivalent performance and functionality for any or all of the Services, so as to avoid the infringement or the alleged infringement provided that the terms herein shall apply mutatis mutandis to such modified or substituted services and such modified or substituted services shall be acceptable to the AUTHORITY, such acceptance not to be unreasonably withheld or delayed; or
 - 10.7.6.2 procure a licence to use the Services on terms which are acceptable to the AUTHORITY (such acceptance not to be unreasonably withheld or delayed); or
 - 10.7.6.3 take such other action as the CONTRACTOR may propose and the AUTHORITY may agree (such agreement not to be unreasonably withheld or delayed) as appropriate to avoid or settle such claim, demand or action.
- 10.7.7 The foregoing provisions of this Clause 10.7 shall not apply in so far as any such claim or demand or action is in respect of:
- 10.7.7.1 any use by or on behalf of the AUTHORITY of the Services in combination with any products or services not supplied or approved (such approval not to be unreasonably withheld or delayed) by the CONTRACTOR where such combination directly gives rise to the claim, demand or action; or
 - 10.7.7.2 any use by the AUTHORITY of the Services in a manner not reasonably to be inferred from the specifications in this Agreement or the Service Specification as amended from time to time.

- 10.7.8 If the CONTRACTOR has availed itself of its rights to modify the Services or to supply substitute services pursuant to Clause 10.7.6.1 or to procure a licence under Clause 10.7.6.2 and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, or if the CONTRACTOR has otherwise avoided or settled the claim, demand or action for infringement or alleged infringement in accordance with Clause 10.7.6.3, then the CONTRACTOR shall have no further liability thereafter under this Clause in respect of the said claim, demand or action.
- 10.7.9 If a modification or substitution in accordance with Clause 10.7.6.1 above is not possible so as to avoid the infringement or the CONTRACTOR has been unable to procure a licence in accordance with Clause 10.7.6.2 or if the CONTRACTOR has been unable to take appropriate action in accordance with Clause 10.7.6.3:
- 10.7.9.1 it shall be deemed to be a Default not capable of remedy and the AUTHORITY shall be entitled to terminate this Agreement pursuant to Clause 11.4.1.2; and
- 10.7.9.2 the CONTRACTOR shall be liable for the additional costs of a reasonable equivalent replacement Solution or Services from a third party or part thereof together with all reasonable additional costs incurred in procuring, implementing and maintaining such replacements from a third party.
- 10.7.10 This Clause 10.7 sets out the entire financial liability of the CONTRACTOR with regard to the infringement of any Intellectual Property Right by the use of the Services by or on behalf of the AUTHORITY. For the avoidance of doubt this shall not affect the CONTRACTOR's financial liability for other Defaults or causes of action that may arise.

10.8 General Indemnity

- 10.8.1 The CONTRACTOR shall fully indemnify the AUTHORITY in respect of any personal injury or loss of or damage to tangible property incurred by the AUTHORITY or its respective employees and authorised agents to the extent that such personal injury or loss of property is directly caused by any Default of the CONTRACTOR, its employees or agents, or by any circumstances within its or their control in connection with the performance or purported performance of this Agreement.
- 10.8.2 The CONTRACTOR shall fully indemnify the AUTHORITY against all claims, demands, actions, costs, expenses, (including but not limited to legal costs and disbursements on a solicitor and client basis), losses and damages in respect of any personal injury or damage arising from or incurred by reason of the use of the Services by any Claimant.
- 10.8.3 In the event of any claim or demand being made or action brought to which Clause 10.8.1 or 10.8.2 applies, the CONTRACTOR shall be promptly notified thereof and the CONTRACTOR shall at its own expense conduct all negotiations for settlement of the same and any legal proceedings that may arise therefrom, and the AUTHORITY hereby agrees to grant to the CONTRACTOR exclusive control over any such negotiations or litigation. The CONTRACTOR shall consult with and pay due regard to the interests and views of the AUTHORITY in the conduct of any defence to any claim or demand hereunder, but shall not be required to comply with such interests or views. The AUTHORITY, its employees and agents, shall at the request of the CONTRACTOR afford all reasonable assistance for the purpose of contesting any such claim or demand or action and shall be repaid any expense incurred in so doing and shall not make any

admissions which may be prejudicial to the defence of such claim or demand or action.

10.9 Remedies Cumulative

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

10.10 Waiver

10.10.1 The failure of either party to insist upon strict performance of any provision of this Agreement, or the failure of either party to exercise any rights or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.

10.10.2 A waiver of any Default shall not constitute a waiver of any subsequent Default.

10.10.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other parties in writing in accordance with the provisions of Clause 8.3.

10.11 Limits of Liability

10.11.1 Neither party excludes or limits liability to the other party for death or personal injury, fraud or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

10.11.2 Nothing in this Clause shall be taken as limiting the liability of:

10.11.2.1 the AUTHORITY to pay any Charges due and payable or any Termination Payments due and payable; or

10.11.2.2 the CONTRACTOR for any direct losses or damages in respect of the following Clauses: 12.6 (Protection of Data and Social Security Administration Act); 12.1 (Corrupt Gifts and Payments of Commission); 12.2 (Discrimination).

10.11.3 Subject always to Clauses 10.11.1 and 10.11.2, the liability of either party for Defaults shall be subject to the financial limits set out in this Clause as follows:-

10.11.3.1 the aggregate liability under this Agreement (by way of indemnity or otherwise) of either party during each Year of this Agreement for all Defaults that occur during that Year shall in no event exceed fifty per cent (50%) of the Charges paid and payable by the AUTHORITY for the Services during the Year of this Agreement in which the Default occurs (as determined at the date of the Default); and

10.11.3.2 Redacted: This section has been removed as it contains information which is exempt under Section 43 of the Freedom of Information Act 2000, due to it being commercially sensitive.

10.11.4 On the first and subsequent anniversary date of the Commencement Date, the monetary limit set forth in Clause 10.11.3.2 shall increase by a percentage which is equal to the Retail Price Index (RPI), provided that if the RPI is no longer published, a replacement or equivalent index shall be used.

- 10.11.5 Subject always to Clause 10.11.1, in no event shall either party be liable to the other for:
- 10.11.5.1 loss of profits, business, revenue, goodwill or anticipated savings (including such losses incurred in the provision of services to third parties); and/or
- 10.11.5.2 indirect or consequential loss or damage.
- 10.11.6 The provisions of Clauses 10.11.5.1 and 10.11.5.2 shall not be taken as limiting the right of either party to claim from the other party for:
- 10.11.6.1 direct additional operational and administrative costs and expenses; and/or
- 10.11.6.2 direct expenditure or charges rendered unnecessary as a result of any Default by the other party.
- 10.11.7 The parties expressly agree that any order for specific performance made in connection with this Agreement in respect of either party shall be subject to the financial limitations set out in Clause 10.11.3.
- 10.11.8 The parties expressly agree that should any limitation or provision contained in this Clause be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

10.12 Force Majeure

- 10.12.1 For the purposes of this Agreement the expression "Force Majeure" shall mean any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster, or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its servants, agents or employees. For the avoidance of doubt, any industrial dispute affecting the employees of the AUTHORITY or of the CONTRACTOR or its Subcontractors shall not be considered an event of Force Majeure.
- 10.12.2 Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges or Service Credits whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to an event of Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event. In the case of the CONTRACTOR, the parties shall agree an orderly process for such continuation or resumption of performance (such agreement not to be unreasonably withheld or delayed), and the CONTRACTOR shall comply with such process. The CONTRACTOR shall remain liable to perform the Business Continuity and Disaster Recovery Services (as specified in Schedule 33), save where such Business Continuity and Disaster Recovery Services are themselves also affected by Force Majeure, in which case the CONTRACTOR shall be required to use all reasonable endeavours to perform such Contingency Services.

10.12.3 If either of the parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

10.12.4 It is expressly agreed that any failure by either Party to perform or any delay by either Party in performing its obligations under this Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which either Party shall have entered into any such contract, supply arrangement or Subcontract or otherwise, shall be regarded as a failure or delay due to an event of Force Majeure only in the event that such person, firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or Subcontract or otherwise as a result of circumstances of Force Majeure.

10.12.5 The AUTHORITY may terminate this Agreement by notice in writing to the CONTRACTOR where a Force Majeure event has substantially prevented or delayed either party from performing its obligations under this Agreement continuously during the immediately preceding six (6) months.

10.12.6 Where the Services are only partially affected by a Force Majeure event the Charges shall continue to be payable in respect of those Services (including any Business Continuity and Disaster Recovery) that the CONTRACTOR continues to provide in accordance with this Agreement. The Charges payable shall be calculated in accordance with the mechanism set out in Schedule 12.

10.13 **Loss of Data**

10.13.1 The CONTRACTOR and the AUTHORITY shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Agreement) to preserve the integrity of the AUTHORITY Data and to prevent any corruption or loss of the AUTHORITY Data.

10.13.2 The CONTRACTOR shall ensure that a back-up copy of the AUTHORITY Data is made at the end of each Working Day and that such copy is recorded on media from which the AUTHORITY Data can be re-loaded in the event of any corruption or loss of the AUTHORITY Data.

10.13.3 In the event that the AUTHORITY Data is corrupted or lost as a result of any Default by the CONTRACTOR the AUTHORITY shall have the option, in addition to any other remedies that may be available to it either under this Agreement or otherwise, to elect either of the following remedies:

10.13.3.1 the AUTHORITY may require the CONTRACTOR at its own expense to restore or procure the restoration of the AUTHORITY Data using the back-up copy referred to in Clause 10.13.2; or

10.13.3.2 the AUTHORITY may itself restore or procure restoration of the AUTHORITY Data using the back-up copy referred to in Clause 10.13.2 which shall be made available to the AUTHORITY by the CONTRACTOR, and the AUTHORITY shall be repaid by the CONTRACTOR any reasonable expenses so incurred.

10.14 **Alternative Dispute Resolution**

10.14.1 All disputes between the AUTHORITY and the CONTRACTOR arising out of or relating to this Agreement shall be referred, by either party, to the Joint Body.

- 10.14.2 If any dispute cannot be resolved by the Joint Body within a maximum of fourteen (14) days (or such other time as otherwise agreed in writing by the parties) after it has been referred under Clause 10.14.1, that dispute shall be referred to the AUTHORITY and a more senior representative nominated by the CONTRACTOR for resolution.
- 10.14.3 If the dispute cannot be resolved by the relevant parties' representatives nominated under Clause 10.14.2 within a maximum of fourteen (14) days (or such other time as otherwise agreed in writing by the parties) after it has been referred under Clause 10.14.2:
- 10.14.3.1 if the dispute is of a technical nature or is expressed by this Agreement to be subject to expert determination, by agreement between the relevant parties it may be referred for final determination to an expert (referred to in this Clause as the "Neutral Adviser") who shall be deemed to act as expert and not as arbitrator; or
- 10.14.3.2 otherwise the parties will attempt to settle the dispute by mediation in accordance with the CEDR Model Mediation Procedure of failing that it shall be determined pursuant to Clause 1.3.1.
- 10.14.4 The Neutral Adviser shall be selected by mutual agreement or, failing agreement, within fourteen (14) days after a request by one relevant party to the other, shall be chosen at the request of any party by the President for the time being of the Chartered Institute of Arbitrators who shall be requested to choose a suitably qualified and experienced Neutral Adviser for the dispute in question.
- 10.14.5 Fourteen (14) days after the Neutral Adviser has accepted the appointment the relevant parties shall submit a written report on the dispute to the Neutral Adviser and to each other and seven (7) days thereafter shall submit any written replies they wish to make to the Neutral Adviser and to each other.
- 10.14.6 The relevant parties will then afford the Neutral Adviser all necessary assistance which the Neutral Adviser requires to consider the dispute.
- 10.14.7 The Neutral Adviser shall be instructed to deliver his determination to the relevant parties within fourteen (14) days (or such other period as may be agreed between the parties and the Neutral Adviser) after the submission of the written reports pursuant to Clause 10.14.5.
- 10.14.8 Decisions of the Neutral Adviser shall be final and binding and not subject to appeal except in the case of fraud or manifest error.
- 10.14.9 The Neutral Adviser shall have the same powers to require any party to produce any documents or information to him and the other party as an arbitrator and each relevant party shall in any event supply to him such information which it has and is material to the matter to be resolved and which it could be required to produce on discovery.
- 10.14.10 The fees of the Neutral Adviser shall be borne by the parties in the proportions determined by the Neutral Adviser having regard (amongst other things) to the conduct of the parties in relation to the dispute in question.
- 10.14.11 Work and activity to be carried out under this Agreement shall not cease or be delayed by this alternative dispute resolution procedure.
- 10.15 **Step In Action**
- 10.15.1 If at any time during the term of this Agreement the AUTHORITY reasonably believes that it needs to take Step-in Action in respect of any Service:

10.15.1.1 because an event of Force Majeure has occurred which would seriously prejudice the continued provision of such Service in accordance with the Service Levels and this Agreement, or because there is a serious risk of such an event of Force Majeure occurring, or

10.15.1.2 because the AUTHORITY is entitled to terminate this Agreement, pursuant to Clauses 11.3 or 11.4; or

10.15.1.3 because there is a serious risk that the AUTHORITY be entitled to terminate this Agreement pursuant to Clauses 11.3 or 11.4,

the AUTHORITY shall be entitled to take Step-in Action in accordance with Clauses 10.15.2 to 10.15.6 below.

10.15.2 Where the AUTHORITY wishes to exercise its entitlement in Clause 10.15.1 to take Step-in Action and provided that the AUTHORITY has, where reasonably practicable, first consulted with the CONTRACTOR and the CONTRACTOR has been unable to demonstrate to the AUTHORITY's reasonable satisfaction that it is able to provide the Services in accordance with this Agreement, it shall notify the CONTRACTOR in writing of the following matters (and shall use reasonable endeavours to provide such notification fourteen (14) days prior to the date the action will commence):

10.15.2.1 the action that it intends to take;

10.15.2.2 the reason for taking such action;

10.15.2.3 the date from which such action shall commence;

10.15.2.4 the time period that it believes to be necessary for such action; and

10.15.2.5 to the extent practicable, the effect on the CONTRACTOR and its obligation to provide the Services during the period such action is being taken.

10.15.3 Following service of such notice, the AUTHORITY may take Step-In Action as notified under Clause 10.15.2 above and any consequential additional action as it reasonably believes is necessary (together, the "Required Action") and the CONTRACTOR shall give all reasonable assistance to the AUTHORITY while it is taking such Required Action.

10.15.4 If Step-In Action arises then for so long as and to the extent that the Required Action is taken, and this prevents the CONTRACTOR from providing any part of the Services the CONTRACTOR shall be relieved from its obligations to provide such part of the Services and from any liability for not providing such Services and/or for any consequences of such non-performance to the extent required as a result of the Required Action.

10.15.5 Where the AUTHORITY has exercised its rights to take the Required Action pursuant to this Clause, it shall act in accordance with good industry practice and (without prejudice to the obligation to act in accordance with good industry practice) in accordance with its own established internal procedures.

10.15.6 The AUTHORITY shall be permitted to engage the services of any third party to assist it in the performance of the Required Action. The AUTHORITY shall notify the CONTRACTOR in advance of the identity of the third party and shall procure that such third party enters into a confidentiality agreement in favour of the CONTRACTOR on no less onerous terms than those set out in Clause 12.5.

10.15.7 Where the AUTHORITY has exercised its right to take Step-In Action then the AUTHORITY shall cease to take Step-In Action and shall allow the CONTRACTOR to resume the performance of the affected Services, where the CONTRACTOR has demonstrated to the reasonable satisfaction of the AUTHORITY that it will be capable of providing such Services in accordance with this Agreement. Where the CONTRACTOR has so demonstrated the AUTHORITY shall deliver written notice (a Step-Out Notice) to the CONTRACTOR, specifying in reasonable detail (to the extent that it is reasonably practicable to do so in all the circumstances):

10.15.7.1 the action it has taken in exercising the Step-In Action; and

10.15.7.2 the date from which the CONTRACTOR is to resume the performance of the Services, such date being reasonable in all the circumstances.

11. TERM AND TERMINATION

11.1 Term

11.1.1 Initial Term

11.1.1.1 This Agreement shall commence on the Commencement Date and, unless renewed pursuant to Clause 11.1.2 or terminated in accordance with the provisions of this Agreement or otherwise in accordance with law or equity shall expire seven (7) years after the Cutover Date.

11.1.2 Options to Extend

11.1.2.1 In the event only of termination of this Agreement by effluxion of time, the CONTRACTOR hereby irrevocably grants to the AUTHORITY an option at the AUTHORITY's sole discretion to extend the term of this Agreement for additional consecutive term of three (3) years and a further additional consecutive term of two (2) years thereafter, such options being exercisable in writing not less than two (2) years prior to each such extension. The charges applicable to the first additional extension of three (3) years shall be as set out in Schedule 12. The charges applicable to the second extension of two (2) years shall be subject to variation in accordance with Clause 11.1.2.3.

11.1.2.2 In the event of termination of this Agreement for any reason, the CONTRACTOR hereby irrevocably grants to the AUTHORITY an option to extend the term of this Agreement for a further period of up to twelve (12) months such option being exercisable in writing by the AUTHORITY not less than three (3) month(s) prior to such extension. The charges applicable to this extension of twelve (12) months shall be subject to variation in accordance with Clause 11.1.2.3.

Save as provided in Clause 11.1.2.1, any variation of the Charges applicable to the extended terms shall be agreed by the parties pursuant to the Change Control Procedures. Failing such agreement the Charges shall be those applicable during the year preceding the date when the extended term commences. For the avoidance of doubt, it is agreed that any such variation shall apply from the commencement of the extended term and the relevant party shall make a balancing payment or issue a balancing credit to the other party in the event that the Charges as varied for the extended term differ from those actually paid for the extended term up to the date of the variation.

11.2 Break Option

- 11.2.1 Without prejudice to the AUTHORITY's other rights to terminate this Agreement (or any part of the Services pursuant to Clause 11.9) or otherwise at law or in equity, the AUTHORITY shall have the right to exercise the Break Option at any time after the Commencement Date by service on the CONTRACTOR of twelve (12) Month(s) prior written notice exercising the Break Option in accordance with the provisions of Clause 8.3. Upon service of notice in accordance with this Clause the performance of all Additional Services which the CONTRACTOR has not at that time commenced performance shall automatically be cancelled irrevocably as at the date of the notice.
- 11.2.2 The Agreement (or any part of the Services pursuant to Clause 11.9) shall terminate on the date specified in the notice served in accordance with Clause 11.2.1.
- 11.2.3 In the event of the notice being served pursuant to Clause 11.2.1 the AUTHORITY shall on termination hereof pay to the CONTRACTOR the Termination Charge (specified in Schedule 12). Such payment shall be in full and final settlement of all claims, demands, suits, actions or liabilities of any nature relating to the termination of this Agreement including all representations made prior thereto.
- 11.2.4 The CONTRACTOR shall use all reasonable efforts to ensure that any contracts it enters into with a Subcontractor, landlord of property or other third party in connection with or for the purposes of the provision of the Services, the occupation of property in connection with the provision of the Services or otherwise in connection with this Agreement shall provide the CONTRACTOR with rights equal to those pertaining to the AUTHORITY under this Clause 11.2.

11.3 Grounds for Early Termination

- 11.3.1 The AUTHORITY may at any time by notice in writing terminate any or all of the Services as from the date of service of such notice if:
- 11.3.1.1 there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the CONTRACTOR or its Parent Company; or
- 11.3.1.2 a judgment or order made against the CONTRACTOR is not complied with or set aside (or an application to set aside is not made) within twenty-one (21) days or an encumbrancer takes possession of the whole or any part of the undertaking, assets, rights or revenues having an aggregate value of more than fifty thousand pounds (£50,000) of the CONTRACTOR or of any goods having an aggregate value of more than fifty thousand pounds (£50,000) in the possession of the CONTRACTOR under any hire purchase, conditional sale, leasing, retention of title or similar agreement or a distress, distraint, execution or other process is levied or enforced upon any of the assets, rights, undertaking or revenues having an aggregate value of more than fifty thousand pounds (£50,000) of the CONTRACTOR or upon any goods having an aggregate value of more than fifty thousand pounds (£50,000) in the possession of the CONTRACTOR under any hire purchase, conditional sale, leasing, retention of title or similar agreement and is not discharged within twenty-one (21) days; or
- 11.3.1.3 the CONTRACTOR, being an individual, or where the CONTRACTOR is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or

administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall purport to do so, including, without limitation, an individual voluntary arrangement pursuant to the Insolvency Act 1986 or stops or suspends payment of its debts or is unable to or admits inability to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or in Scotland he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for behalf of his creditors, or any similar event occurs under the law of any other jurisdiction; or

11.3.1.4 where the CONTRACTOR is a company:

- (a) an administrative receiver or a receiver or a manager is appointed of the whole or any part of the undertaking, assets, rights or revenues of the CONTRACTOR (being a company);
- (b) the CONTRACTOR (being a company) stops or suspends payment of its debts or is unable to or admits inability to pay its debts (within the meaning of section 123 of the Insolvency Act 1986 or otherwise but ignoring the references in that section to determination by the court) or becomes insolvent or proposes or commences negotiations with one or more of its creditors with a view to the general rescheduling of its debts or proposes or enters into any composition or other arrangement for the benefit of its creditors generally or any class of its creditors including, without limitation, a scheme of arrangement pursuant to the Companies Act 1985 or a company voluntary arrangement pursuant to the Insolvency Act 1986; or
- (c) a resolution is passed or an order made for the liquidation of the CONTRACTOR (otherwise than for the purpose of a bona fide reconstruction or amalgamation); or
- (d) an order is made for the administration of the CONTRACTOR; or
- (e) the CONTRACTOR is subject to insolvency proceedings for the purposes of the EC Regulation on Insolvency Proceedings 2000 opened in respect of it; or
- (f) any event occurs or proceeding is taken with respect to the CONTRACTOR in any jurisdiction to which it is subject which has an effect equivalent or similar to any of the events mentioned in the sub-clauses above.

11.3.2 The AUTHORITY shall only be permitted to exercise its rights pursuant to Clause 11.3.1.1 for six (6) Months after the later of the date of receipt by the AUTHORITY of notification of a change of control or the date of a change of control actually taking place and shall not be permitted to exercise such rights where the AUTHORITY has agreed in advance in writing to the particular change of control and such change of control takes place as proposed provided that the CONTRACTOR shall notify the AUTHORITY within two (2) Months of any change of control taking place.

11.4 Breach

11.4.1 The AUTHORITY may at any time by notice in writing terminate this Agreement (or any part of the Services pursuant to Clause 11.9) forthwith, if the CONTRACTOR is in Default of any obligation under this Agreement and:

11.4.1.1 such Default is capable of remedy and the CONTRACTOR shall have failed to remedy the Default within thirty (30) days written notice (or such other reasonable period as may be agreed by the parties) to the CONTRACTOR specifying the Default and requiring its remedy; or

11.4.1.2 such Default is not capable of remedy and:

(a) the CONTRACTOR has failed to take action to prevent the breach from recurring ("Preventative Action"), such action to be taken within the period of thirty (30) days (or such other reasonable period as may be agreed by the parties) of the AUTHORITY having served a written notice specifying the breach (the "Preventative Action Period") or the AUTHORITY has agreed that no Preventative Action is required; or

(b) notwithstanding the taking or non-taking of Preventative Action by the CONTRACTOR, there is a further recurrence of the breach within the ninety (90) day period immediately following the end of Preventative Action Period.

11.4.2 The AUTHORITY may at any time by notice in writing terminate any Services to which Service Levels and Service Credits apply forthwith if at any time after the Cutover Date:

11.4.2.1 the CONTRACTOR fails, due to its Default, to provide such Services in accordance with the Service Level(s) applicable to such Services; and

11.4.2.2 the Service Credits that have been applied by the AUTHORITY with respect to such failure exceed the Service Level Termination Threshold referred to in Paragraph 4 of Schedule 25 with regard to such Services.

11.4.3 For the avoidance of doubt the AUTHORITY shall not be entitled to terminate any such Services pursuant to Clause 11.4.1 or 11.4.2 as a consequence of any such Default unless and until the applicable Service Level Termination Threshold has been exceeded.

11.4.4 The AUTHORITY may at any time by notice in writing terminate this Agreement if there is a breach by the CONTRACTOR of any provision hereof which expressly entitles the AUTHORITY to terminate this Agreement.

11.5 Retender Procedures

11.5.1 The parties shall comply with their respective obligations set out in Schedule 15 during the Retender Period.

11.6 Rights and Obligations on Termination or Expiry

11.6.1 In the event that this Agreement expires or is terminated as provided for herein:

11.6.1.1 notwithstanding the service by the AUTHORITY, pursuant to this Clause 11, of a notice to terminate this Agreement, the CONTRACTOR

shall continue to provide the Services to the required Service Levels until the date of termination of this Agreement;

11.6.1.2 the CONTRACTOR shall repay forthwith to the AUTHORITY all Charges paid up to and including such date of termination other than Charges in respect of any Services or part thereof properly performed in accordance with this Agreement subject to revision for any Service Credits outstanding or Termination Charge due; and

11.6.1.3 the parties shall comply with their respective obligations as set out in Schedule 26, and the CONTRACTOR shall, if requested by the AUTHORITY enter into the MSA Transition Agreement with the AUTHORITY and a Replacement Contractor.

11.7 Accrued Rights and Remedies

The termination of this Agreement shall not prejudice or affect any claim, right, action or remedy which shall have accrued or shall thereafter accrue to either party.

11.8 Survival of Obligations

Following the termination of this Agreement as provided for herein, neither the AUTHORITY nor the CONTRACTOR shall have any further obligation or right with respect to the other party except as set forth in this Clause and in the following additional Clauses:

- 1.1 - Interpretations
- 1.3 - Governing Law and Jurisdiction
- 4.7 – 4.11 - Ownership of Intellectual Property Rights
- 10.1 - Audit Access
- 10.6 - Recovery of Sums Due
- 10.7 - IPR Indemnity
- 10.8 - General Indemnity
- 10.9 - Remedies Cumulative
- 10.11 - Limits of Liability
- 11.6 - Rights and Obligations on Termination
- 12.3 - Official Secrets Act
- 12.5 - Confidentiality
- 12.6 - Protection of Personal Data, Freedom of Information and Social Security Administration Act

11.9 Partial Termination of Services

11.9.1 The AUTHORITY may terminate part of the Services when exercising its right to terminate this Agreement under Clause 11.2 or Clause 11.4 in which case:

11.9.1.1 the remaining Services shall continue to be performed for the remainder of the Agreement;

- 11.9.1.2 the Charges in respect of the remaining Services shall be calculated in accordance with the mechanism set out in Schedule 12; and
- 11.9.1.3 the responsibilities of the parties in respect of such terminated Services shall be performed in accordance with Schedule 26.
- 11.9.2 In the event that the AUTHORITY terminates part of the Services pursuant to Clause 11.2 the AUTHORITY shall not be required to pay a Termination Charge where the partial termination of the Services does not cause the actual volumes of Referrals to become:
- 11.9.2.1 greater or equal to 120% of the Predicted Volumes; or
- 11.9.2.2 less than or equal to 80% of the Predicted Volumes.
- 11.9.3 Where the partial termination of the Services does cause the actual volumes of Referrals to become:
- 11.9.3.1 greater or equal to 120% of the Predicted Volumes; or
- 11.9.3.2 less than or equal to 80% of the Predicted Volumes,
- the AUTHORITY shall pay Termination Charge in accordance with Paragraph 7.8 of Schedule 12.
- 11.9.4 In the event that the AUTHORITY terminates part of the Services pursuant to Clause 11.2 because of a change to law or policy, the AUTHORITY shall only be required to give reasonable prior written notice pursuant to Clause 11.2.1.
- 12. MISCELLANEOUS**
- 12.1 Corrupt Gifts**
- 12.1.1 The CONTRACTOR shall neither:
- 12.1.1.1 offer nor give nor agree to give any person acting for or on behalf of the Crown any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of this Agreement or any other agreement with the Crown or any department, office or agency of the Crown or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement; nor
- 12.1.1.2 enter into this Agreement if in connection with it commission has been paid or agreed to be paid to any person for or on behalf of the Crown by the CONTRACTOR or on the CONTRACTOR's behalf or to the CONTRACTOR's knowledge, unless before this Agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the AUTHORITY. For the avoidance of doubt the provisions of this Clause shall not apply to any payment made to either party's professional advisers in connection with this Agreement.
- 12.1.2 In the event of any breach of this Clause 12.1.1 by the CONTRACTOR or by anyone employed by the CONTRACTOR or acting on the CONTRACTOR's behalf (whether with or without the knowledge of the CONTRACTOR) or the commission of any offence by the CONTRACTOR or by anyone employed by the CONTRACTOR or acting on behalf of the CONTRACTOR under the Prevention of

Corruption Acts, 1889 to 1916 in relation to this or any other contract with the Crown, the AUTHORITY may summarily terminate this Agreement by notice in writing to the CONTRACTOR. Provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue to the AUTHORITY and provided always that the AUTHORITY may recover from the CONTRACTOR the amount of value of any such gift, consideration or commission.

12.1.3 The decision of the AUTHORITY shall be final and conclusive in any dispute, difference or question arising in respect of:

12.1.3.1 the interpretation of this Clause (except so far as the same may relate to the amount recoverable from the CONTRACTOR under Clause 12.1.1.2 in respect of any loss resulting from such termination of this Agreement); or

12.1.3.2 the right of the AUTHORITY under this Clause 12.1 to terminate this Agreement; or

12.1.3.3 the amount or value of any such gift, consideration or commission.

12.2 **Discrimination**

12.2.1 The CONTRACTOR shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, regulation or other similar instrument relating to discrimination (whether in relation to race, gender, religion, disability, age, sexual orientation or otherwise) in employment or in its dealings with Claimants.

12.2.2 The CONTRACTOR shall take all reasonable steps to ensure the observance of the provisions of Clause 12.2.1 by all servants, employees, agents and consultants of the CONTRACTOR and all Subcontractors.

12.3 **Official Secrets Act**

12.3.1 The CONTRACTOR's attention is drawn to the provisions of the Official Secrets Acts 1911 to 1989. The CONTRACTOR shall take all reasonable steps by display of notices or by other appropriate means to ensure that all persons engaged in any work in connection with this Agreement have notice that these statutory provisions apply to them and will continue so after the expiry or termination of this Agreement.

12.3.2 Notwithstanding the generality of Clause 12.3.1, the provisions of Clause 12.5 shall operate without prejudice to, and be read subject to, the application of the Official Secrets Acts 1911 to 1989 in so far as they apply to Confidential Information.

12.4 **Government Property**

12.4.1 All Government Property shall remain the property of the AUTHORITY and shall be used only for the purposes this Agreement.

12.4.2 Any Government Property made available to or otherwise received by the CONTRACTOR shall be deemed to be in good condition when received by or on behalf of the CONTRACTOR unless the CONTRACTOR notifies the AUTHORITY to the contrary within fourteen (14) days of receipt thereof by the CONTRACTOR. If the CONTRACTOR so notifies the AUTHORITY and the AUTHORITY disagrees with the CONTRACTOR's opinion of the condition of such Government Property, representatives of the parties' respective contract management teams will meet in

order to attempt to resolve the dispute. The AUTHORITY shall be under no obligation to replace any Government Property found not to be in good condition.

12.4.3 The CONTRACTOR undertakes the safe custody of and due return of all Government Property and shall be responsible for all loss thereof from whatever cause and shall indemnify the AUTHORITY against such loss.

12.4.4 The CONTRACTOR shall be responsible for any deterioration in the Government Property save for any deterioration resulting from its normal and proper use for the purposes of this Agreement provided that such deterioration resulting from normal and proper use is not contributed to by any want of due maintenance and repair.

12.4.5 Neither the CONTRACTOR, nor any Subcontractor, nor any other person, shall have a lien on any Government Property for any sum due to the CONTRACTOR, Subcontractor or other person and the CONTRACTOR shall take all reasonable steps to ensure that the title of the AUTHORITY and the exclusion of any such lien are brought to the notice of all Subcontractors and other persons dealing with any Government Property.

12.5 Confidentiality

12.5.1 Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information the CONTRACTOR acknowledges that any Confidential Information obtained from or relating to the AUTHORITY, its servants or agents, or obtained from or relating to any Claimant, is the property of the AUTHORITY and the AUTHORITY hereby reserves all and such Intellectual Property Rights that may subsist therein.

12.5.2 Both parties hereby warrant that:

12.5.2.1 any person employed or engaged by either party shall only use Confidential Information of the other party for the purposes of this Agreement; and

12.5.2.2 any person employed or engaged by either party shall not disclose any Confidential Information of the other party to any third party without the prior written consent of the other party.

12.5.3 Both parties shall take all necessary precautions to ensure that all Confidential Information of the other party is treated as confidential and not disclosed (save as aforesaid) or used other than for the purposes of this Agreement by their employees, servants, agents or Subcontractors.

12.5.4 Without prejudice to the generality of the foregoing neither party nor any person engaged by them whether as a servant or a consultant or otherwise shall use the Confidential Information for the solicitation of business from the other or by their servants or consultants or by any third party.

12.5.5 The parties shall comply (and shall ensure that their employees, servants, agents and Subcontractors comply) with all reasonable instructions of the other party from time to time (and communicated to the other party in accordance with Clause 8.3) for the handling and storage of Confidential Information generally or specific items of Confidential Information.

12.5.6 The CONTRACTOR shall obtain from any organisation engaged in connection with this Agreement (including any Subcontractors and any agents of such Subcontractors) a signed confidentiality undertaking in substantially the same terms as the confidentiality undertaking given by the CONTRACTOR under this Clause.

- 12.5.7 The CONTRACTOR shall ensure that its employees (and the employees of its Subcontractors) are subject to obligations of confidentiality which are no less onerous than those set out in this Clause 12.5 and shall inform its employees who have access to Confidential Information that breach of the obligations set out herein and imposed upon them will result in disciplinary proceedings, and the CONTRACTOR will institute and enforce such disciplinary proceedings.
- 12.5.8 The provisions of Clauses 12.5.1 to 12.5.7 shall not apply to any information which:
- 12.5.8.1 is or becomes public knowledge other than by breach of this Clause;
 - 12.5.8.2 is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;
 - 12.5.8.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - 12.5.8.4 is independently developed without access to the Confidential Information
- 12.5.9 Nothing in this Clause shall be deemed or construed to prevent the AUTHORITY from disclosing any Confidential Information obtained from the CONTRACTOR:
- 12.5.9.1 to any other department, office or agency of Her Majesty's Government, provided that the AUTHORITY has required that such information is treated as confidential by such departments, offices and agencies, and their servants or agents, including requiring such servants or agents to enter into a confidentiality undertaking where appropriate;
 - 12.5.9.2 to any consultant, contractor or other person engaged by the AUTHORITY in connection herewith, to the extent that such disclosure is required to assure to the AUTHORITY of the benefit of the Services and provided that the AUTHORITY shall have obtained from the consultant, contractor or other person a signed confidentiality undertaking on substantially the same terms as are contained in this Clause 12.5;
 - 12.5.9.3 which is disclosed by the AUTHORITY in the discharge of the AUTHORITY's obligations to supply information for parliamentary, governmental, judicial or other administrative purposes; and
 - 12.5.9.4 to each Bidder in connection with the retender of the Services or any part thereof, in accordance with the provisions of Schedule 15 provided that such Bidders have each signed the confidentiality undertaking contained in Appendix 4 of Schedule 15.
- 12.5.10 Nothing in this Agreement shall prevent the CONTRACTOR or the AUTHORITY from using data processing techniques, ideas, principles learned, experience and know-how gained during the performance of this Agreement in the furtherance of its normal business, to the extent that this does not involve a disclosure of Confidential Information or an infringement by the AUTHORITY or the CONTRACTOR of any Intellectual Property Right.
- 12.5.11 The provisions of this Clause 12.5 shall not apply so as to prevent disclosure of Confidential Information (including, for the avoidance of doubt, the

award or existence of this Agreement) by the CONTRACTOR where and to the extent that such disclosure is required to be made:

12.5.11.1 by virtue of the regulations of the UKLA or the London Stock Exchange or any other recognised exchange upon which the shares of the CONTRACTOR or any Subcontractor are traded:

12.5.11.2 by any court or governmental or administrative authority competent to require the same; or

12.5.11.3 by any applicable law, legislation or regulation,

provided that the CONTRACTOR, to the extent legally permitted, provides prompt written notice of such fact to the AUTHORITY, uses reasonable endeavours to obtain a written confidentiality undertaking or other appropriate remedy concerning any such disclosure and to the extent legally permitted, fully co-operates with the AUTHORITY, in connection with the AUTHORITY's efforts to oppose any such requirements of disclosure. The CONTRACTOR shall use all reasonable endeavours to consult with the AUTHORITY to agree the timing, manner and extent of such disclosure.

12.6 **Protection of Personal Data, Freedom of Information and Social Security Administration Act**

12.6.1 Each party shall comply with its respective obligations under the provisions of the Data Protection Act 1998.

12.6.2 Where the CONTRACTOR or any of its Sub-Contractors, as part of the services under this Agreement, processes personal data as a data processor on behalf of the AUTHORITY as data controller, the CONTRACTOR shall, and shall procure its Subcontractors to:

12.6.2.1 act only on instructions from the AUTHORITY as a data controller; and

12.6.2.2 comply with the AUTHORITY's reasonable instructions in relation to the processing of personal data as such instructions are given and varied from time to time by the AUTHORITY;

12.6.2.3 at all times take all appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and

12.6.2.4 obtain the prior written approval of the AUTHORITY for any transfer of personal data outside the European Economic Area.

12.6.3 The AUTHORITY may from time to time serve on the CONTRACTOR an information notice requiring the CONTRACTOR, within such time and in such form as is specified in the information notice, to furnish to the AUTHORITY such information as the AUTHORITY may reasonably require relating to:

12.6.3.1 compliance by the CONTRACTOR or by its Subcontractors with the CONTRACTOR's obligations to the AUTHORITY under this Agreement in connection with the processing of personal data; and/or

12.6.3.2 the rights of data subjects, including but not limited to subject access rights.

12.6.4 The CONTRACTOR shall assist the AUTHORITY at no additional charge in meeting any requests for information in relation to this Agreement which are made to the AUTHORITY in connection with the Freedom of Information Act 2000 or any statutory modification or re-enactment thereof, or any related guidelines or codes of practice. The AUTHORITY may, from time to time, serve on the CONTRACTOR an information notice requiring the CONTRACTOR within such time and in such form as is specified in the information notice, to furnish to the AUTHORITY such information as the AUTHORITY may reasonably require relating to such requests for information. The CONTRACTOR shall, and shall procure that all of its Subcontractors shall, forward to the AUTHORITY all Requests for Information which it (or they) receive as soon as practicable and in any event within two (2) working days of receipt.

12.6.5 Notwithstanding Clause 12.5, the CONTRACTOR acknowledges that in responding to requests for information described in Clause 12.6.4 the AUTHORITY shall be entitled to provide information relating to this Agreement. The AUTHORITY shall not, in responding to such requests for information, disclose any Confidential Information relating to or comprised in this Agreement which is exempt as described within any provision of Part II of the Freedom of Information Act 2000. The CONTRACTOR is entitled to notify the AUTHORITY of any information relating to this Agreement which the CONTRACTOR believes may be exempt as described within any provisions of Part II of the Freedom of Information Act 2000. In doing so, the CONTRACTOR shall detail the precise information, the exemption and the period of protection which it believes is applicable. Notwithstanding any such notification or any markings or information relating to this Agreement, the AUTHORITY shall be entitled to release such information in responding to requests for information made under the Freedom of Information Act 2000. The AUTHORITY shall use all reasonable endeavours to notify the CONTRACTOR prior to making any response to a request for information which includes information which the CONTRACTOR considers to be Confidential Information.

12.6.6 Section 123 of the Social Security Administration Act 1992 shall apply to this Agreement. It is an offence for a person to disclose any information obtained while carrying out administrative work where that information relates to a particular person. Both parties warrant that they will duly observe all their obligations under the Social Security Administration Act 1992 which arise in connection with this Agreement.

12.6.7 The CONTRACTOR shall ensure that all of its employees, agents, Subcontractors and representatives who are subject to the provisions of Section 123 of the Social Security Administration Act 1992 sign a declaration in the form annexed hereto as Appendix 1 acknowledging that they understand and have been informed about the application and effect of Section 123 of the Social Security Administration Act 1992. The CONTRACTOR shall provide a copy of each such signed declaration to the AUTHORITY upon demand.

12.7 **Publicity**

12.7.1 Except with the prior written consent of the AUTHORITY, the CONTRACTOR shall not make any press announcements or publicise this Agreement or the Services in any way.

12.7.2 The CONTRACTOR shall take all reasonable steps to ensure the observance of the provisions of Clause 12.7.1 by all its employees, agents and consultants and Subcontractors.

12.7.3 Notwithstanding anything in Clause 12.5 to the contrary, the AUTHORITY reserves the right to publicise this Agreement and the Services in any way, but in doing so shall use all reasonable endeavours not to disclose any commercial confidences of the CONTRACTOR except to the extent necessary to meet the

international obligations of the Government or to comply with domestic law or Government policy, including but not limited to any Government policy on "Open Government" or access to Government information.

12.8 Insurance

The CONTRACTOR shall to the extent reasonably possible insure or make provision for self-insurance against all losses and damages which are the result of its wilful act or omission or negligence in performing the Services hereunder, including employers liability, public liability, product liability, property damage, professional indemnity and (in respect of Registered Medical Practitioners employed by the CONTRACTOR) Registered Medical Practitioner's medical indemnity insurance. The CONTRACTOR will, if requested in writing by the AUTHORITY, produce to the AUTHORITY a certificate of insurance showing the applicable coverage currently in force, and will also give the AUTHORITY thirty (30) days' written notice before such insurance is altered or cancelled. The CONTRACTOR shall ensure that each Fee Paid Registered Medical Practitioner procures his or her own Registered Medical Practitioner's medical indemnity insurance. For the avoidance of doubt it is acknowledged that neither the CONTRACTOR nor any Subcontractor is obliged to insure or make provision for self-insurance in respect of Registered Medical Practitioner's medical indemnity pertaining to the Fee Paid Registered Medical Practitioners.

12.9 Guarantee

The CONTRACTOR shall procure that the GUARANTOR shall within five (5) days after the date hereof enter into and maintain a guarantee in the form set out in Schedule 27. Breach of this Clause shall constitute a Default not capable of remedy.

12.10 Rights of Third Parties

Save for the rights granted to OGDs pursuant to Clause 1.1.7, this Agreement is not intended to be for the benefit of, and shall not be enforceable by, any person who is not named in this Agreement as a party to it or any person who claims rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise and neither party can declare itself a trustee of the rights under it for the benefit of any third party.

12.11 Fraud Prevention

12.11.1 The Authority places the utmost importance on the need to prevent fraud and irregularity in the delivery of this Contract. Contractors and sub-contractors are required to:

12.11.1.1 Have an establish a system that enables Contractor and sub-contractor staff to report inappropriate behaviour by colleagues in respect of contract performance claims;

12.11.1.2 Ensure that Contractor or sub-contractors performance management systems do not encourage individual staff to make false claims regarding achievement of contract performance targets;

12.11.1.3 Ensure a segregation of duties within the Contractor's or sub-contractors operation between those employees directly involved in delivering the service/goods performance and those reporting achievement of contract performance to the Authority;

12.11.1.4 Ensure that an audit system is implemented to provide periodic checks, as a minimum at [six] monthly intervals, to ensure effective and accurate recording and reporting of contract performance.

- 12.11.2 The Contractor shall use its best endeavours to safeguard the Authority's funding of the Contract against fraud generally and, in particular, fraud on the part of the Contractor's directors, employees or sub-contractors. The Contractor shall pay the utmost regard to safeguarding public funds against misleading claims for payment and shall notify the Authority immediately if it has reason to suspect that any serious irregularity or fraud has occurred or is occurring.
- 12.11.3 If the Contractor, its Staff or its sub-contractors commits Fraud in relation to this or any other contract with the Crown (including the Authority) the Authority may:
- 12.11.3.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or
- 12.11.3.2 recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause.
- 12.11.4 Any act of fraud committed by the Contractor or its sub-contractors (whether under this Contract or any other contract with any other Contracting Authority) shall entitle the Authority to terminate this Contract, and any other contract the Authority has with the Contractor, by serving written notice on the Contractor.
- 12.11.5 If the Authority finds that the Contractor has deliberately submitted false claims for Contract payments with the knowledge of its senior officers the Authority will be entitled to terminate this Contract, or any other contract the Authority has with the Contractor, with immediate effect.
- 12.11.6 In exercising any right it may have under this Clause [] the Authority shall act reasonably having regard to (without limitation):
- 6.1 The scale of the Fraud;
 - 6.2 The persons involved in the Fraud and their level of seniority;
 - 6.3 The Contractor's processes in place to prevent and manage any Fraud; and
 - 6.4 The Contractor's actions upon notification or discovery of the Fraud.

IN WITNESS WHEREOF this Agreement has been executed on behalf of the parties as follows:

Signed for and on behalf of the AUTHORITY

By

Name

Title

Date

Signed for and on behalf of the CONTRACTOR

By

Name

Title

Date

APPENDIX 1

SOCIAL SECURITY ADMINISTRATION ACT DECLARATION

I, []]

do solemnly declare that I will not disclose any information received by me in the execution of duties in relation to the Department of Social Security except for the purpose of those duties or in accordance with the Department of Social Security's instructions.

I do solemnly declare also that my attention has been drawn to the provisions of Section 123 of the Social Security Administration Act 1992 which are set out on the back of this document, and I am fully aware of the serious consequences which may follow any breach of those provisions.

I understand that Section 123 covers information about any matter relevant to the social benefits of any identifiable person or business.

I also understand that if any time such information is disclosed without lawful authority, as explained in subsections (1) and (2), prosecution for a criminal offence may result: the penalty upon conviction can be imprisonment or a fine, or both.

_____ Signature

Declared before me)

on the [] day of)

19)

123 Unauthorised disclosure of information of the Social Security Administration Act 1992:

1. A person who is or has been employed in social security administration or adjudication is guilty of an offence if he discloses without lawful authority any information which he acquired in the course of his employment and which relates to a particular person.
2. A person who is or has been employed in the audit of expenditure or the investigation of complaints is guilty of an offence if he discloses without lawful authority any information
 - a. which he acquired in the course of his employment;
 - b. which is, or is derived from, information acquired or held by or for the purposes of any of the government departments or other bodies or persons referred to in Part I of Schedule 4 of this Act to Part I of Schedule 3 to the Northern Ireland Administration Act; and
 - c. which relates to a particular person.
3. It is not an offence under this section –
 - a. to disclose information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it; or
 - b. to disclose information which has previously been disclosed to the public with lawful authority.
4. It is a defence or a person charged with an offence under this section to prove that at the time of the alleged offence –
 - a. he believed that he was making the disclosure in question with lawful authority and had no reasonable cause to believe otherwise; or
 - b. he believed that the information in question had previously been disclosed to the public with lawful authority and had no reasonable cause to believe otherwise.
5. A person guilty of an offence under this section shall be liable -
 - a. on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both; or
 - b. on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.
6. For the purposes of this section, the persons who are “employed in social security administration or adjudication” are -

- a. any person specified in Part I of Schedule 4 to this Act or in any corresponding enactment having effect in Northern Ireland;
- b. any other person who carries out the administrative work of any of the government departments or other bodies or persons referred to in that Part of that Schedule or that corresponding enactment; and
- c. any person who provides, or is employed in the provision of, services to any of those departments, persons or bodies;

and “employment”, in relation to any such person, shall be construed accordingly.

7. For the purposes of subsections (2) and (6) above, any reference in Part I of Schedule 4 to this Act or any corresponding enactment having effect in Northern Ireland to a government department shall be construed in accordance with Part II of that Schedule of any corresponding enactment having effect in Northern Ireland, and for this purpose “government department” shall be taken to include –

- a. the Commissioners on Inland Revenue; and
- b. the Scottish Courts Administration.

8. For the purposes of this section, the persons who are “employed in the audit of expenditure or the investigation of complaints” are -

- a. the Comptroller and Auditor General;
- b. the Comptroller and Auditor General for Northern Ireland;
- c. the Parliamentary Commissioner for Administration;
- d. the Northern Ireland Parliamentary Commissioner for Administration;
- e. the Health Service Commissioner for England;
- f. the Health Service Commissioner for Wales;
- g. the Health Service Commissioner for Scotland;
- h. the Northern Ireland Commissioner for Complaints;
- i. any member of the staff of the National Audit Office or the Northern Ireland Audit Office;
- j. any other person who carries out the administration work of either of those Offices, or who provides, or is employed in the provision of, services to either of them; and
- k. any officer of any of the Commissioners referred to in paragraphs (c) to (h) above;

and “employment”, in relation to any such person, shall be construed accordingly.

9. For the purposes of this section a disclosure is to be regarded as made with lawful authority if, and only if, it is made -

- a. in accordance with his official duty -
 - i. by a civil servant; or

- ii. by a person employed in the audit of expenditure or the investigation of complaints, who does not fall within subsection (8)(j) above;
- b. by any other person either –
 - i. for the purpose of the function in the exercise of which he holds the information and without contravening any restriction duly imposed by the person responsible; or
 - ii. to, or in accordance with an authorisation duly given by, the person responsible;
- c. in accordance with any enactment or order of a court;
- d. for the purposes of instituting, or otherwise for the purposes of, any proceedings before a court or before any tribunal or other body or person referred to in Part I of Schedule 4 to this Act or Part I of Schedule 3 to the Northern Ireland Administration Act; or
- e. with the consent of the appropriate person;

and in this subsection “the person responsible” means the Secretary of State, the Lord Chancellor or any person authorised by the Secretary of State or the Lord Chancellor for the purposes of this subsection and includes a reference to “the person responsible” within the meaning of any corresponding enactment having effect in Northern Ireland.

10. For the purposes of subsection 9(e) above “the appropriate person” means the person to whom the information in question relates, except that if the affairs of that person are being dealt with -
- a. under a power of attorney;
 - b. by a receiver appointed under section 99 of the Mental Health Act 1983 or a controller appointed under Article 101 of the Mental Health (Northern Ireland) Order 1986;
 - c. by a Scottish mental health custodian, that is to say -
 - i. a curator bonis, tutor or judicial factor, or
 - ii. the managers of a hospital acting on behalf of that person under section 94 of the Mental Health (Scotland) Act 1984; or
 - d. by a mental health appointee, that is to say -
 - i. a person directed or authorised as mentioned in sub-paragraph (a) of rule 41(1) of the Court of Protection Rules 1984 or sub-paragraph (a) of rules 38(1) of Order 109 of the Rules of the Supreme Court (Northern Ireland) 1980; or
 - ii. a received ad interim appointed under sub-paragraph (b) of the said rule 41(1) or a controller ad interim appointed under sub-paragraph (b) of the said rule 38(1), the appropriate person is the attorney, receiver, controller, custodian or appointee, as the case may be, or, in a case falling within paragraph (a) above, the person to whom the information relates.