

DATED _____ **2011**

HEREFORDSHIRE COUNCIL (1)

and

**THE SHARED SERVICES
PARTNERSHIP LIMITED (2)**

SHARED SERVICES AGREEMENT

MILLS & REEVE

Contents

1	Particulars of Agreement	1
2	Commencement and Duration	1
3	Provision of the Services	1
4	Contents of this Agreement	2
5	Use of Premises	2
6	Security and Personnel Issues	3
7	Interpretation	3
8	Other Customers	6
9	Assignment and Sub-contracting	6
10	Corrupt Gifts and Payments	6
11	Amendments	8
12	Costs and Expenses.....	8
13	Mitigation.....	8
14	Compliance with Enactments	8
15	No Partnership or Agency.....	8
16	Severability.....	9
17	Waiver	9
18	Privity	9
19	Continuing Obligations	9
20	Notices	9
21	Further Assurance.....	10
22	Jurisdiction and Governing Law.....	10
23	Execution	11
	Schedule 1.....	12
1	Introduction	12
	Chapter 1	14
1	Partnership Statement.....	14
2	Managing the Provisions of Services.....	15
3	Specific Functions	16
4	Contract Liaison	16
	Chapter 2.....	17
1	[TO BE ADDED].....	17
	Chapter 3.....	18
2	[TO BE ADDED].....	18
	Chapter 4.....	19
1	[TO BE ADDED].....	19
	Chapter 5.....	20
1	[TO BE ADDED].....	20
	Chapter 6.....	21
1	[TO BE ADDED].....	21
	Chapter 7.....	22
1	Payment.....	22
2	Taxation	23
3	Payment Mechanism	23
	Chapter 8.....	24
1	TUPE.....	24
2	Employee remuneration	24
3	Customer indemnities.....	24
4	Company Indemnities.....	25
5	Application of TUPE on Agreement Termination.....	25
6	Pensions Matters - Transferring Employees	26
7	Resources and Training	26

Schedule 1 Transferring Employees	27
Chapter 9	29
1 Customer Equipment	29
2 Equipment	29
3 Intellectual Property	29
Chapter 10	33
1 Indemnities and Liability	33
2 Insurance [PLEASE CONFIRM WHAT YOUR INSURANCE REQUIREMENTS ARE]	33
.....	33
Chapter 11	34
1 Information and Audit Access	34
2 Confidentiality	34
Chapter 12	37
1 Variation by Agreement	37
Chapter 13	40
1 Deficient Performance	40
2 Company Events of Default	41
3 Dispute Resolution Procedure	42
4 No Fault Termination	42
5 Voluntary Termination	43
6 Customer ceases to be a shareholder in JVCo	44
7 Termination by the effluxion of time	44
8 Effect of Termination	44
9 Compensation on Termination	46
10 Customer Reduces the Volume of Services Purchased	46
11 Assets on Expiry or Termination	47
12 Contingency and Disaster Planning	49
13 Force Majeure	49
Chapter 14	51

1 Particulars of Agreement

Date of this Agreement	“Commencement Date”
Parties to this Agreement	<p>(1) HEREFORDSHIRE COUNCIL whose address is Brockington, 35 Hafod Road, Hereford, HR1 1SH (“the Customer”)</p> <p>THE SHARED SERVICES PARTNERSHIP LIMITED incorporated in England with registered number 07556595 and whose registered office is at Brockington, 35 Hafod Road, Hereford, HR1 1SH (“JVCo”)</p> <p>(together “the Parties”)</p>
Services	Contained in Chapters 2 to 6 inclusive of the Schedule to this Agreement
Agreement Term	Five years unless otherwise lawfully terminated.

2 Commencement and Duration

2.1 This Agreement shall commence on Commencement Date and shall end on its fifth anniversary unless and to the extent previously terminated in accordance with the provisions of this Agreement but subject always to Clause 19.

3 Provision of the Services

3.1 In consideration of payment in accordance with the Payment Provisions JVCo will provide the Services to the Customer starting on the Commencement Date.

3.2 The Customer shall not wilfully impede JVCo in JVCo's performance of its obligations under this Agreement.

3.3 Each Party shall act reasonably and co-operate with the other, at its own expense, in fulfilment of the purpose and intent of this Agreement.

4 Contents of this Agreement

4.1 This Agreement is composed of this document and:

- **Chapter 1:** “*Terms of Reference*”;
- **Chapter 2:** “*Revenues and Benefits Services*”;
- **Chapter 3:** “*ICT Services*”;
- **Chapter 4:** “*Human Resources Services*”;
- **Chapter 5:** “*Payroll Services*”;
- **Chapter 6:** “*Finance and Procurement Services*”;
- **Chapter 7:** “*Payment Provisions*”;
- **Chapter 8:** “*Employment and Pensions*”;
- **Chapter 9:** “*Assets and Equipment*”;
- **Chapter 10:** “*Managing Risk*”;
- **Chapter 11:** “*Dealing with Information*”;
- **Chapter 12:** “*Managing Change*”;
- **Chapter 13:** “*What if things go wrong?*”
- **Chapter 14:** “*Terms Used in this Agreement*”.

together with such other documents as may, from time to time be incorporated into this Agreement in accordance with the variation provisions at Clause 11 and the provisions of Chapter 12.

5 Use of Premises

5.1 The Customer grants to JVCo a licence to enter and use any of its premises (“the Premises”) for the proper carrying out of the Services. Such licence is personal to

JVCo and JVCo Parties and is granted only insofar as such rights are capable of being granted by the Customer.

- 5.2 The Company shall be deemed to have satisfied itself as to the adequacy of any premises or any other accommodation it may require for the purposes of fulfilling its obligations under this Agreement.

6 Security and Personnel Issues

- 6.1 The Customer shall have the right to refuse admittance to, or order the removal from any Premises of any person employed by (or acting on behalf of) JVCo, any Company Party or any sub-contractor whose presence, in the reasonable opinion of the Customer, is likely to have a materially adverse effect on the performance by the Customer of the Services or who is not a fit and proper person to be in the Premises.
- 6.2 Action taken under Clause 6.1 shall promptly be confirmed in writing by the Customer to JVCo and, to avoid doubt, shall not relieve JVCo of any of its obligations under this Agreement.
- 6.3 If and when so directed in writing by the Customer, JVCo shall within ten (10) Business Days of such direction provide a list of the names and addresses of all persons it expects may require admission in connection with this Agreement, to any Premises or other premises occupied by the Customer, specifying the capacities in which those persons are concerned with this Agreement and giving such other particulars as the Customer may reasonably require.
- 6.4 The decision of the Customer as to whether any person is to be refused admission shall be final and conclusive.

Standard terms applicable to this Agreement

7 Interpretation

- 7.1 This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:
- 7.1.1 The headings and marginal notes and references to them in this Agreement shall be deemed not to be part of this Agreement and shall not be taken into consideration in the interpretation of this Agreement.

- 7.1.2 Except where the context expressly requires otherwise, references to Clauses, Sub-clauses, paragraphs, sub-paragraphs, parts and Schedules are references to Clauses, Sub-clauses, paragraphs, sub-paragraphs and parts of and Schedules to this Agreement and references to Sections, Appendices and Attachments (if any) are references to Sections, Appendices and Attachments to or contained in this Agreement.
- 7.1.3 The Schedules to this Agreement are an integral part of this Agreement and a reference to this Agreement includes a reference to the Schedules.
- 7.1.4 Words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity.
- 7.1.5 Where the words day, month or year are used they are reference to a calendar, day, month or year.
- 7.1.6 Where the context so requires words importing the singular only also include the plural and vice versa and words importing the masculine shall be construed as including the feminine or the neuter or vice versa.
- 7.1.7 The language of this Agreement is English. All correspondence, notices, drawings, data, reports, certificates, specifications and information shall be in English. All operating and maintenance instructions, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Agreement shall be in English.
- 7.1.8 References to any agreement or document include (subject to all relevant approvals and any other provisions of this Agreement concerning amendments to agreements or documents) a reference to that agreement or document as amended, supplemented, substituted, novated or assigned.
- 7.1.9 References to any Law are to be construed as references to that Law as from time to time amended or to any Law from time to time replacing, extending, consolidating or amending the same.

- 7.1.10 References to a public organisation (other than the Customer) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation. References to other persons (other than the Customer) shall include their successors and assignees.
- 7.1.11 References to a deliberate act or omission of the Customer or any Customer Party shall be construed having regard to the interactive nature of the activities of the Customer and of JVCo and the expression shall exclude acts or omissions which were within the contemplation of the Parties or which were otherwise provided for in this Agreement.
- 7.1.12 The words in this Agreement shall bear their natural meaning. The Parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed contra proferentem.
- 7.1.13 Reference to "Parties" means the Parties to this Agreement and references to "a Party" mean one of the Parties to this Agreement.
- 7.1.14 In construing this Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 7.1.15 All of JVCo's obligations, duties and responsibilities shall be construed as separate obligations, duties and responsibilities owed to the Customer and to be performed at JVCo's own cost and expense.
- 7.1.16 Where this Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of Business Days after a stipulated date or event the latest time for performance shall be noon on the last Business Day for performance of the obligations concerned.

8 Other Customers

- 8.1 The Company shall be entitled to provide the Services (or services similar in nature to the Services) to individuals, bodies or organisations other than the Customer.

9 Assignment and Sub-contracting

- 9.1 JVCo shall not assign, sub-contract or in any other way dispose of this Agreement or any part of it without the prior written approval of the Customer, such approval not to be unreasonably withheld. The Customer shall be entitled to request such information about any proposed sub-contractor as it shall reasonably require. Sub-contracting any part of this Agreement shall not relieve JVCo of any obligation or duty attributable under this Agreement.
- 9.2 JVCo shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

10 Corrupt Gifts and Payments

- 10.1 The Company warrants that in entering into this Agreement it has not committed any Prohibited Act.
- 10.2 If JVCo or any Company Party (or anyone employed by or acting on behalf of them) commits any Prohibited Act then the Customer shall be entitled to act in accordance with Clauses 10.2.1 to 10.2.6 below:
- 10.2.1 if a Prohibited Act is committed by JVCo or by an employee not acting independently of JVCo, then the Customer may terminate the Agreement with immediate effect by giving written notice to JVCo;
- 10.2.2 if the Prohibited Act is committed by an employee of JVCo acting independently of JVCo, then the Customer may give written notice to JVCo of termination and the Agreement will terminate, unless within 20 Business Days of receipt of such notice JVCo terminates the employee's employment and (if necessary) procures the performance of the relevant part of the Services by another person;
- 10.2.3 if the Prohibited Act is committed by a sub-contractor or by an employee of that sub-contractor not acting independently of that sub-contractor then

the Customer may give written notice to JVCo of termination and the Agreement will terminate, unless within 20 Business Days of receipt of such notice JVCo terminates the relevant sub-contract and procures the performance of the relevant part of the Services by another person;

10.2.4 if the Prohibited Act is committed by an employee of a sub-contractor acting independently of that sub-contractor, then the Customer may give notice to JVCo of termination and the Agreement will terminate, unless within 20 Business Days of receipt of such notice JVCo procures the termination of the employee's employment and (if necessary) procures the performance of the relevant part of the Services by another person;

10.2.5 if the Prohibited Act is committed by any other person not specified in Clauses 10.2.1 to 10.2.4 above, then the Customer may give notice to JVCo of termination and the Agreement will terminate unless within twenty 20 Business Days JVCo procures the termination of such person's employment and of the appointment of their employer (where such person is not employed by JVCo) and (if necessary) procures the performance of the relevant part of the Services by another person, and

10.2.6 any notice of termination under this Clause shall specify:

- (i) the nature of the Prohibited Act;
- (ii) the identity of the party who the Customer believes has committed the Prohibited Act; and
- (iii) the date on which the Agreement will terminate in accordance with the applicable provisions of this Clause.

10.3 Without prejudice to its other rights or remedies under this Clause, the Customer shall be entitled to recover from JVCo:

10.3.1 the amount or value of any such gift, consideration or commission, and

10.3.2 any other loss sustained in consequence of any breach of this Clause.

10.4 Nothing contained in this Clause shall prevent JVCo from paying any proper commission or bonus to its employees within the agreed terms of their employment.

10.5 The Company shall notify the Customer of the occurrence (and details) of any Prohibited Act promptly on JVCo becoming aware of its occurrence.

11 Amendments

11.1 This Agreement may not be varied except by an agreement in writing signed by duly authorised representatives of the Parties and stating on its face that it is intended to be a variation to this Agreement.

12 Costs and Expenses

12.1 Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

13 Mitigation

13.1 Each of the Customer and JVCo shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Agreement.

14 Compliance with Enactments

14.1 In performing the Services and in the performance of all its duties and obligations under this Agreement JVCo shall comply at all times with:

14.1.1 all applicable Laws (including, regulations and orders made pursuant to any statutory instrument and all applicable European Community Regulations) and all applicable decisions of the European Court;

14.1.2 all applicable regulations or bye-laws of any local authority;

14.1.3 such contract procedures and financial regulations as are from time to time agreed between the Parties; and

14.1.4 all applicable rules or regulations of any statutory undertaker which has jurisdiction with regard to the Services.

15 No Partnership or Agency

15.1 Nothing in this Agreement will be construed as a legal partnership (within the meaning of the Partnership Act 1890) between the Customer and JVCo.

15.2 Save as expressly provided otherwise in this Agreement, JVCo will not be, or be deemed to be, an agent of the Customer and JVCo will not hold itself out as having authority or power to bind the Customer in any way.

16 Severability

16.1 If any provision of this Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement

16.2 Agreement shall so survive and be enforceable notwithstanding such termination or expiry.

17 Waiver

17.1 Failure by either Party to exercise an option or right conferred by this Deed shall not of itself constitute a waiver of such option or right.

18 Privity

18.1 Save where expressly provided to the contrary in this Agreement, it is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Agreement is not intended to, and does not, give to any person who is not a Party to this Agreement any rights to enforce any provisions contained in this Agreement.

19 Continuing Obligations

19.1 Save as otherwise expressly provided in this Agreement, termination of this Agreement shall not affect the continuing rights and obligations of JVCo and the Customer under Clauses (or parts of Clauses (as the case may be)) Clause 10, Clause 22, Chapter 8, paragraph 3.2 to 3.12 of Chapter 9, Chapter 10, paragraph 2 of Chapter 11 and paragraphs 3 and 13 of Chapter 13.

20 Notices

20.1 Any notice given under this Agreement shall be in writing and signed by or on behalf of the Party giving it and shall be served by delivering it personally, or by sending it by prepaid recorded delivery or special delivery to the address and for the attention of the relevant person set out in Clause 20.2 (or as otherwise notified by that Party). Any such notice shall be deemed to be received:

20.1.1 If delivered personally, at the time of delivery

20.1.2 In the case of recorded delivery or special delivery, two Business Days after the date of posting

Provided that if deemed receipt occurs before 9.00am on a Business Day the notice shall be deemed to have been received at 9.00am on that day and if deemed receipt occurs after 5.00pm on a Business Day the notice shall be deemed to have been received on the next Business Day.

20.2 The addresses of the Parties for service of notices are as follows:

The Council:

Brockington, 35 Hafod Road, Hereford, HR1 1 SH

for the attention of the Chief Executive

JVCo

Brockington, 35 Hafod Road, Hereford, HR1 1 SH

for the attention of The Managing Director

or such other addresses and/or named representatives as may be notified in writing from time to time by the relevant Party to the other Party.

20.3 For the avoidance of doubt notice under this Agreement shall not be validly served if sent by fax or e-mail.

21 Further Assurance

21.1 Each Party shall do all things and execute all further documents necessary to give full effect to this Agreement.

22 Jurisdiction and Governing Law

22.1 This Agreement shall be considered as a contract made in England and Wales and shall be subject to the laws of England and Wales.

22.2 Subject to the provisions of the Dispute Resolution Procedure, both Parties agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement and irrevocably submit to the jurisdiction of those courts.

23 Execution

23.1 This Agreement is executed as a deed and was delivered when it was dated.

The Common Seal of **HEREFORDSHIRE**)
COUNCIL was hereunto affixed in)
the presence of:)
)

.....
Authorised Signatory

Signed as a deed by **JVCo**)
acting by:)
)
)

.....
Director

.....
Director/Secretary

Schedule 1

SHARED SERVICES AGREEMENT

1 Introduction

- 1.1 The Customer requires the provision of several shared services and following discussions and negotiation the Customer wishes to enter into this Agreement, which sets out the terms and conditions upon which JVCo will provide the Services in co-operation with the Customer.
- 1.2 Under this Agreement the Parties have agreed to co-operate with each other to co-ordinate the way in which these Services are delivered by JVCo.
- 1.3 It is also envisaged that other organisations may enter into arrangements with JVCo for the receipt by such organisations of services of a type similar and/or identical to the Services.
- 1.4 The other Appendices in the series are:
- **Chapter 1:** “*Terms of Reference*”
 - **Chapter 2:** “*Revenues and Benefits Services*”;
 - **Chapter 3:** “*ICT Services*”;
 - **Chapter 4:** “*Human Resources Services*”;
 - **Chapter 5:** “*Payroll Services*”;
 - **Chapter 6:** “*Finance and Procurement Services*”;
 - **Chapter 7:** “*Payment Provisions*”;
 - **Chapter 8:** “*Employment and Pensions*”;
 - **Chapter 9:** “*Assets and Equipment*”;

- **Chapter 10:** *“Managing Risk”*;
- **Chapter 11:** *“Dealing with Information”*;
- **Chapter 12:** *“Managing Change”*;
- **Chapter 13:** *“What if things go wrong?”*
- **Chapter 14:** *“Terms Used in this Agreement”*.

Chapter 1

TERMS OF REFERENCE

1 Partnership Statement

1.1 In obtaining and delivering the Services the Parties are expected to operate in accordance with the following objectives which underpin the delivery of the Parties' obligations under the Agreement and to set out key factors for a successful relationship between the Parties:

- 1.1.1 it is the purpose of this Agreement, and any amendments adopted by the Parties, to establish a partnering relationship between the Parties in accordance with the principles set out in this Chapter to facilitate the provision of the Services and to foster continuous improvement in the provision of the Services;
- 1.1.2 the Parties will effectively co-ordinate and combine their expertise, manpower and resources in order to deliver an integrated and continuously improving delivery of the Services;
- 1.1.3 the Parties will develop a close working relationships at all levels;
- 1.1.4 the Parties will focus on achieving value for money, strong operational performance and delivery of the Services within agreed timescales;
- 1.1.5 the Parties recognise each other's needs, constraints, limitations, capabilities, roles and responsibilities to achieve mutually beneficial outcomes;
- 1.1.6 the Parties will identify, by regular monitoring, weaknesses and strengths in the relationship between and amongst the Parties and work together to overcome the weaknesses and to build on the strengths;

- 1.1.7 the Parties are committed to the early recognition and resolution of differences, conflicts and disputes between the Parties in a “no surprises” environment;
 - 1.1.8 the Parties recognise the importance of developing openness and trust in a transparent information and data sharing environment; and
 - 1.1.9 the Parties will agree mutual objectives at the outset of this Agreement and each Party will make known the individual long-term goals and ensure they are understood by the other Party.
- 1.2 The Parties will adopt an agreed and systematic approach to problem resolution which:
- 1.2.1 seeks solutions without apportioning blame;
 - 1.2.2 is based on mutually beneficial outcomes;
 - 1.2.3 treats all Parties as equal in the Dispute Resolution Procedure;
 - 1.2.4 contains a mutual acceptance that adversarial attitudes waste time and money; and
 - 1.2.5 relies on more and better discussion – with less paperwork and more constructive correspondence.
- 1.3 The Parties will commit themselves to the achievement of continuous, measurable and measured improvement by agreeing qualitative targets which are specific, challenging, add value and eliminate waste.
- 1.4 Further provisions concerning the resolution of disputes are contained in Chapter 13 “*What if things go wrong?*”

2 Managing the Provisions of Services

- 2.1 Each Party shall appoint a representative (“Manager”) and each Manager shall exercise the functions and powers in relation to the Services as are identified in this Agreement.
- 2.2 In the event of a change in the identity of one Party’s Manager that Party shall give written notice to the other Party of the identity of the new Manager.

- 2.3 The Parties shall be entitled to assume that any act of a Manager has been authorised by the Party that appointed them and the other Party shall not be required to enquire as to the existence of express authority.
- 2.4 Each Manager may appoint a deputy or alternate to carry out all or some of his functions and duties and shall notify the other Party of the appointment and the scope of authority of such appointee.
- 2.5 The Manager is to manage the implementation and operation of the Agreement by the Customer.

3 Specific Functions

- 3.1 The Manager's specific functions shall include those listed below:
- 3.1.1 acting as the principal interface between the Customer and JVCo in relation to all matters touching this Agreement and establish appropriate relationships with JVCo's Manager;
- 3.1.2 overseeing the monitoring of this Agreement and identifying ways in which the Services may be improved; and
- 3.1.3 agreeing the intervals for and carrying out audits of all quality management systems as the Parties may agree.

4 Contract Liaison

- 4.1 Subject to the provision of this Schedule, the Parties will establish a liaison committee to manage the provision of the Services adopting such procedures and practices as they consider appropriate from time to time.

Chapter 2

REVENUES AND BENEFITS SERVICES

1 [TO BE ADDED]

Chapter 3

ICT SERVICES

2 [TO BE ADDED]

Chapter 4

HUMAN RESOURCES SERVICES

1 [TO BE ADDED]

Chapter 5

PAYROLL SERVICES

1 [TO BE ADDED]

Chapter 6

FINANCE AND PROCUREMENT SERVICES

1 [TO BE ADDED]

Chapter 7

PAYMENT PROVISIONS

1 Payment

- 1.1 Subject to the provisions of this Agreement, the Customer shall pay JVCo the Monthly Service Payment in respect of each month following the Commencement Date in accordance with the Service Schedule.
- 1.2 At the end of each month JVCo shall provide the Customer with an invoice in relation to the Monthly Service Payment in respect of that month in sufficient detail to enable the Customer to identify whether or not the sums claimed are appropriate relating to the month in question.
- 1.3 All payments under this Agreement shall be made within 30 days of receipt of the invoice in pounds sterling by electronic transfer to the bank account of JVCo quoting the invoice number against which payment is made unless otherwise agreed.
- 1.4 If either Party (acting in good faith) disputes all or any part of the Monthly Service Payment calculated in accordance with paragraph 1.2, the undisputed amount of the Monthly Service Payment shall be paid by the Customer in accordance with paragraph 1.1 and the provisions of this paragraph shall apply. The Parties shall use all reasonable endeavours to resolve the dispute in question within ten Business Days of the dispute arising. If they fail to resolve it, either Party may refer the matter to the Dispute Resolution Procedure. Following resolution of the dispute, any amount agreed shall be paid forthwith by the Customer to JVCo together with interest on such amount calculated in accordance with paragraph 1.5.
- 1.5 Each Party shall be entitled, without prejudice to any other right or remedy, to receive interest on any payment not duly made pursuant to the terms of this Agreement on the due date calculated from day to day at a rate per annum equal to the Default Interest Rate from the day after the date on which payment was due up to and including the date of payment.

1.6 If either Party owes any other money under this Agreement then the Party who is owed the money may set off any such sum against money it subsequently owes to the other under this Agreement.

2 Taxation

2.1 All amounts stated to be payable by either Party under this Agreement shall be exclusive of any VAT properly chargeable on any amount.

2.2 Each Party shall pay to the other Party any VAT properly chargeable on any supply made to it under this Agreement provided that it shall first have received from the other Party a valid tax invoice in respect of that supply which complies with the requirements of Part III VAT Regulations 1995.

3 Payment Mechanism

3.1 For the first 12 months following the Commence Date the Monthly Service Payment shall be calculated by dividing the First Year's Budgeted Sum by twelve.

3.2 The Monthly Service Payment for the balance of the Agreement Term after the said first 12 months and the manner in which it will be calculated will be agreed by the Parties no later than 29 February 2012.

Chapter 8

EMPLOYMENT AND PENSIONS

1 **TUPE**

- 1.1 From the Transfer Date JVCo shall employ the Transferring Employees and shall be responsible for all remuneration benefits, entitlements, outgoings in respect of the Transferring Employees including without limitation all wages holiday pay bonuses commission payment of PAYE national insurance and superannuation contributions to the extent that the same arise on or after the Transfer Date.

2 **Employee remuneration**

- 2.1 The Customer shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance and superannuation contributions to the extent that the same arise before Transfer Date.
- 2.2 The Customer shall provide JVCo with their records for the Transferring Employees including all personal files and shall provide JVCo with the information that it is obliged to provide under regulation 11 of the Regulations.

3 **Customer indemnities**

- 3.1 The Customer undertakes to indemnify and keep JVCo indemnified from and against all claims, liabilities, obligations, costs, and demands incurred by JVCo arising from or in respect of any claim by any of the Transferring Employees any representative of any of the Transferring Employees and/or any other employee or former employee of the Customer caused by any act, fault or omission of the Customer at any time before, on or after the Transfer Date provided that:
- 3.1.1 JVCo makes no statement in connection with such claim that is prejudicial to the Customer;
- 3.1.2 such claim is not caused by acts, faults or omissions of JVCo;

- 3.1.3 the Customer is allowed to conduct and/or settle all litigation and negotiations resulting from such claims;
- 3.1.4 JVCo takes reasonable steps to mitigate its losses arising from such claim; and
- 3.1.5 JVCo gives the Customer all reasonable assistance in connection with such claim.

4 Company Indemnities

4.1 JVCo undertakes to indemnify and keep the Customer indemnified from and against all claims, liabilities, obligations, costs, and demands incurred by the Customer arising from or in respect of any claim by any of the Transferring Employees any representative of any of the Transferring Employees and/or any other employee or former employee of JVCo caused by any act, fault or omission of JVCo at any time before, on or after the Transfer Date provided that:

- 4.1.1 JVCo makes no statement in connection with such claim that is prejudicial to the Customer;
- 4.1.2 such claim is not caused by acts, faults or omissions of the Customer;
- 4.1.3 the Customer is allowed to conduct and/or settle all litigation and negotiations resulting from such claims;
- 4.1.4 JVCo takes reasonable steps to mitigate its losses arising from such claim; and
- 4.1.5 JVCo gives the Customer all reasonable assistance in connection with such claim.

5 Application of TUPE on Agreement Termination

- 5.1 The Parties acknowledge that the Regulations may apply in the event that the Customer (or its successor(s)) ceases to contract with JVCo for the provision of the Services or part of the Services and is replaced by a Replacement Contractor.
- 5.2 If the Regulations so apply, the contracts of employment of the Services Employees shall therefore take effect as if originally made between any Replacement Contractor, and the Services Employees.

- 5.3 In connection with a transfer of the Services to a Replacement Contractor to which the Regulations apply the Parties shall co-operate to ensure that any requirement to inform and consult with the affected employees and or employee representatives in relation to any relevant transfer pursuant to the Regulations or otherwise, as a consequence of such a transfer, will be fulfilled.

6 Pensions Matters - Transferring Employees

- 6.1 The Parties anticipate that JVCo will be under the control of the Customer for the purpose of Schedule 2, Part 2, paragraph 5 of the Admin Regs.
- 6.2 Provided that JVCo is under the control of the Customer, for the purpose of Schedule 2, Part 2, paragraph 5 of the Admin Regs, the Council shall designate for the purpose of Regulation 4 of the Admin Regs, that all employees of JVCo shall be eligible and shall remain eligible for active membership of the LGPS for so long as JVCo remains under the control of the Customer, for the purpose of Schedule 2, Part 2 paragraph 5 of the Admin Regs.
- 6.3 In the event that JVCo ceases to be under the control of the Customer, for the purpose of Schedule 2, Part 2 paragraph 5 of the Admin Regs, JVCo shall use its reasonable endeavours to procure that it shall become a Community Admission Body, for the purpose of Regulation 5 of the Admin Regs, or a Transferee Admission Body, for the purpose of Regulation 6 of the Admin Regs, so that all employees of JVCo shall remain eligible for active membership of the LGPS.

7 Resources and Training

- 7.1 JVCo shall procure that there shall at all times be a sufficient number of staff (including all relevant grades of supervisory staff) engaged in the provision of the Services with the requisite level of skill and experience.

Schedule 1 Transferring Employees

Chapter 9

ASSETS AND EQUIPMENT

1 Customer Equipment

- 1.1 The Customer Equipment shall, unless otherwise agreed, belong to the Customer and the Customer shall make available the Customer Equipment for the purposes of the Services.
- 1.2 JVCo shall, in accordance with Good Industry Practice, take care of the Customer Equipment with a view to minimising the cost of replacement or repair and maintenance.

2 Equipment

- 2.1 Any Equipment required for the performance of the Agreement not provided by the Customer in accordance with paragraph 1 of this Chapter must be provided by JVCo at its own expense.
- 2.2 At its own cost JVCo shall be responsible for the insurance, maintenance and repair (and where necessary replacement) of all Equipment used in the provision of the Services from time to time in accordance with this Agreement, Good Industry Practice and all applicable Law.

3 Intellectual Property

- 3.1 All rights in Intellectual Property and all data relating to persons and used by the Customer in the area to which the Services relate at the Commencement Date are hereby licensed to JVCo on a non-exclusive royalty free basis to be used solely in relation to the provision of the Services to the Customer. Such licence shall be non-transferable and may not be sub-licensed to any third party.
- 3.2 For the purpose of the following paragraphs, the term "personal data" and "data controller" shall have the meanings given to them in the Data Protection Act 1998.

- 3.3 In addition, JVCo:
- 3.3.1 warrants that it has, or will have at all material times, (and it shall procure that all sub-contractors (and their agents and sub-contractors of any tier have or will have at all material times) the appropriate technical and organisational measures in place against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data held or processed by it and that it has taken, or will take at all material times, all reasonable steps to ensure the reliability of any of its staff which will have access to personal data processed as part of the Services;
 - 3.3.2 undertakes that it will act only on the instructions of the Customer in relation to the processing of any personal data made available by or on behalf of the Customer as part of the Services;
 - 3.3.3 undertakes that it will only obtain, hold, process, use, store and disclose personal data as is necessary to perform its obligations under this Agreement and that such data will be held, processed, used, stored and disclosed only in accordance with the Data Protection Act 1998 and any other applicable Law, and
 - 3.3.4 shall provide all necessary assistance to the Customer to enable the Customer to comply with any subject access requests under section 7 Data Protection Act 1998 relating to personal data in the project data.
- 3.4 JVCo shall use all reasonable efforts to assist the Customer in its compliance with obligations imposed on the Customer by the Freedom of Information Act 2000 and all Law which may from time to time come into force and which for the avoidance of doubt shall include the Environmental Information Regulations 1999 (as amended by the Environmental Information (Amendment) Regulations 1998) and EC Directive (2003/4/EC) on Public Access to Environmental Information (and any implementing regulations in the UK), as may be amended or replaced from time to time, and which may also include any guidance and codes of practice which may be published from time to time in accordance with any such Legislation, including, for the avoidance of doubt, the Code of Practice on Access to Government Information (2nd edition) (together "**FOIA**") to the extent that the obligations relate to information held by JVCo on behalf of the Customer or otherwise in connection with this Agreement or the

Services provided hereunder. For the avoidance of doubt, this includes but is not limited to the obligations on JVCo to.

- 3.4.1 provide the Customer with all reasonable assistance in complying with requests for information received from individuals pursuant to FOIA including but not limited to the provision of information to the Customer. Such assistance shall be provided promptly and in any event within five days of the Customer making a request to JVCo to provide any necessary information or other assistance;
 - 3.4.2 provide the Customer with all reasonable assistance in the maintenance of the Customer's publication scheme which the Customer is required to publish in accordance with FOIA; and
 - 3.4.3 procure that its sub-contractors shall assist the Customer for the purposes of this paragraph 3.3.4 of this Chapter.
- 3.5 As soon as reasonably practicable and in any event by no later than the end of the period referred to at paragraph 3.4 of this Chapter JVCo shall:
- 3.5.1 provide to the Customer all data and other information which it has obtained in response to the request; and
 - 3.5.2 demonstrate to the reasonable satisfaction of the Customer the steps taken by JVCo to comply with its obligations under this Chapter and the amount of time and resources expended in so doing.
- 3.6 JVCo shall and shall procure that its sub-contractors shall transfer any request for information received from individuals pursuant to FOIA to the Customer as soon as practicable after receipt and in any event within five Business Days of receiving such a request.
- 3.7 In complying with the obligations of this paragraph the Parties agree that they shall at all times act in good faith and JVCo shall do nothing to prevent the Customer from complying with its obligations under the FOIA.
- 3.8 The Customer shall be responsible for determining at its absolute discretion whether any information which has been requested pursuant to FOIA is exempt from disclosure under FOIA; and whether such information is to be disclosed in response to such a request.

- 3.9 In no event shall JVCo respond directly to a request for information pursuant to FOIA unless expressly authorised to do so by the Customer.
- 3.10 JVCo acknowledges that the Customer may, acting in accordance with the Ministry of Justice Code of Practice on the Discharge of Functions of Public Authorities under Part1 of the Freedom of Information Act 2000, be obliged under FOIA to disclose information:
- 3.10.1 without consulting with JVCo; or
 - 3.10.2 following consultation with JVCo and having taken its views into account.
- 3.11 JVCo shall ensure that all information produced in the course of this Agreement or relating to this Agreement is retained for disclosure and shall permit JVCo to inspect such records as requested from time to time.
- 3.12 JVCo acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Customer may nevertheless be obliged to disclose Confidential Information in accordance with paragraph 3.10 of this Chapter.

Chapter 10

MANAGING RISK

1 Indemnities and Liability

- 1.1 JVCo shall indemnify and keep indemnified the Customer and their employees against the injury to or death of any persons, or loss of or damage to any property, caused by the act default or negligence of JVCo, those persons it engages in the provision of the Services or its agents and against all actions, claims, demands, proceedings, damages, costs, charges reasonably incurred in respect thereof, or in relation thereto, provided that JVCo shall not be liable for, nor be required to indemnify the Customer and its employees against, any compensation or damages for or in respect of death injuries loss or damage resulting from any act default or negligence on the part of the Customer its employees or agents (not being JVCo or employed by JVCo), or from the breach of the Customer of its obligations under this Agreement or from any liability which arises as a direct result of JVCo acting on any unreasonable instruction of the Customer.

2 Insurance [PLEASE CONFIRM WHAT YOUR INSURANCE REQUIREMENTS ARE]

- 2.1 The Company shall take out and prove to the Customer that it has the benefit of all insurances necessary to reflect the terms of any indemnity given in this Service Agreement and any liability for failure to provide the Services or carry out any of its other obligations under this Service Agreement and, in particular, shall take out professional indemnity insurance covering any liability arising out of the provision of the Services with an indemnity limit of £5,000,000 in respect of any one occurrence or series of occurrences arising out of any one event until at least the expiry of six years from the date of the last Services performed.

Chapter 11

DEALING WITH INFORMATION

1 Information and Audit Access

- 1.1 The Customer, and JVCo shall each keep proper accounts of all receipts and payments made in connection with the Services and each shall permit the other to inspect such accounts at any reasonable time.
- 1.2 JVCo shall prepare and submit to the Customer reports of the work it has undertaken and any other information reasonably required by the Customer in connection with the carrying out the Services and attend such meetings as the Customer shall require at such intervals and at such times as the Customer may request from time to time being no more frequent than once a month and, in the absence of any request, at least once every three months.
- 1.3 If requested to do so by the Customer, JVCo shall provide the Customer with any relevant information in connection with any legal inquiry, arbitration or court proceedings in which the Customer may become involved or any relevant investigation or disciplinary hearing internal to the Customer and through the appropriate officers or employees shall assist in such investigations and if required give evidence in such inquiries or proceedings or hearings.

2 Confidentiality

- 2.1 The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Agreement and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

Permitted disclosure

- 2.2 Paragraph 2.1 of this Chapter shall not apply to:
- 2.2.1 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under this Agreement for the performance of those obligations;

- 2.2.2 any matter which a Party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this provision;
- 2.2.3 any disclosure to enable a determination to be made under the dispute resolution procedures as set out in paragraph 3 of Chapter 13 of this Agreement or in connection with a dispute between JVCo and any of its sub-contractors;
- 2.2.4 any disclosure which is required pursuant to any Law placed upon the Party making the disclosure;
- 2.2.5 any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;
- 2.2.6 any provision of information to the Parties' own professional advisers or insurance advisers to enable the Party to carry out its obligations under this Agreement;
- 2.2.7 any disclosure for the purpose of the examination and certification of the Customer's or JVCo's accounts; or
- 2.2.8 (without prejudice to the generality of paragraph 2.1 above) compliance with the FOIA

provided that, to avoid doubt, neither paragraph 2.2.4 nor paragraph 2.2.8 above shall permit disclosure of Confidential Information otherwise prohibited by paragraph 2.1 where that information is exempt from disclosure under section 41 FOIA.

Announcements

- 2.3 Unless otherwise required by any Law or any regulatory or governmental authority (but only to that extent), neither Party shall make or permit or procure to be made any public announcement or disclosure (whether for publication in the press, the radio, television screen or any other medium) of any Confidential Information without the prior written consent of the other Party (which shall not be unreasonably withheld or delayed).
- 2.4 All records shall be kept and shall be available for inspection and audit by the Customer for a minimum period of 7 years from the date of their creation and shall be

so kept and be available both during and after the termination or expiry of this Agreement.

Chapter 12

MANAGING CHANGE

1 Variation by Agreement

- 1.1 The Parties may agree at any time during the Agreement Term to vary the terms of this Agreement in accordance with this paragraph.
- 1.2 Until such time as a variation is implemented in accordance with the terms of this paragraph the Parties shall, unless otherwise agreed in writing, continue to comply with the terms of this Agreement.
- 1.3 Any discussions that the Parties may enter into relating to any request or recommendation relating to any proposed variation before the resultant variation has been implemented shall be without prejudice to the rights of either Party.
- 1.4 Discussions between the Parties concerning any proposed variation may result in any one of the following:
 - 1.4.1 no further action being taken;
 - 1.4.2 a written request by the Customer to vary the Services; or
 - 1.4.3 a written recommendation by JVCo to vary the Services.
- 1.5 Where a written request for a variation is received from the Customer, JVCo shall, unless otherwise agreed, submit a Variation Control Notice (“**VCN**”) to the Customer within 21 days of the date of the request which embodies substantially the terms of the request.
- 1.6 A recommendation to vary by JVCo shall be submitted as a VCN direct to the Customer at the time of such recommendation.
- 1.7 Each VCN shall contain:
 - 1.7.1 the title of the variation;
 - 1.7.2 the originator and date of the request or recommendation for the variation;

- 1.7.3 the reason for the variation;
 - 1.7.4 full details of the variation including any specifications;
 - 1.7.5 the price, if any, of the variation;
 - 1.7.6 a timetable for implementation, together with any proposals for acceptance of the variation;
 - 1.7.7 a schedule of payments, if appropriate;
 - 1.7.8 details of the likely impact of the variation on other aspects of the Services to be provided including but not limited to:
 - (i) the personnel to be provided;
 - (ii) costs;
 - (iii) the payment profile;
 - (iv) working arrangements; and
 - (v) other contractual issues.
 - 1.7.9 the date of expiry of the validity of the VCN (which shall not be less than 3 months); and
 - 1.7.10 provision for signature by the Customer and by JVCo.
- 1.8 For each VCN submitted to the Customer it shall within the period of the validity of the VCN:
- 1.8.1 allocate a sequential number to the VCN
 - 1.8.2 evaluate the VCN, as appropriate:
 - (i) request further information including detailed financial breakdowns adopting open book accounting principles if required to justify costs;
 - (ii) approve the VCN; or
 - (iii) notify the Provider of the rejection of the VCN; and

(iv) arrange for 2 copies of any approved VCN to be signed by or on behalf of the Customer and JVCo.

1.9 A VCN signed by both Parties shall constitute an amendment to this Agreement pursuant to this clause.

1.10 If at any time the Parties are unable to resolve a request or recommendation for a variation to this Agreement under this paragraph, either Party may refer the request or recommendation for resolution under the Dispute Resolution Procedure.

WHAT IF THINGS GO WRONG?

1 Deficient Performance

- 1.1 The Customer, by notice to JVCo, require a plan (“**Corrective Action Plan**”) to be prepared by JVCo in respect of the Services in accordance with the provisions of this paragraph 1 and each Service Specification depending upon the performance of the Services by JVCo in any monitoring period as measured in accordance with each Service Specification.
- 1.2 A Corrective Action Plan shall:
 - 1.2.1 specify the Service failure which has occurred;
 - 1.2.2 specify the measures to be taken by JVCo in order to remedy such Service failure;
 - 1.2.3 specify the time period for implementation of the Corrective Action Plan;
 - 1.2.4 specify the consequences for JVCo failing to implement the measures it is required to take to remedy the Service Failure which is the subject matter of the Corrective Action Plan; and
 - 1.2.5 otherwise comply with the requirements specified in each Service Schedule.
- 1.3 JVCo shall prepare and send to the Customer any Corrective Action Plan within five Business Days unless the matter in question is certified by the Customer as important and urgent in which case it is one Business Day.
- 1.4 If the Customer disagrees with any of the contents of the Corrective Action Plan, including for the avoidance of doubt the measures to be taken, the consequences of failure to implement and the time period for implementation, the Customer shall notify JVCo in writing within five Business Days of receipt of the Corrective Action Plan, specifying the reasons for the disagreement.

- 1.5 If the Customer fails to notify JVCo in accordance with paragraph 1.4 then the Customer shall be deemed to have agreed with the Corrective Action Plan.
- 1.6 If the Customer and Company fail to agree the Corrective Action Plan within seven Business Days of receipt of the notice from the Customer in accordance with paragraph 1.1 either Party may refer such dispute for determination in accordance with Paragraph 3. Once agreed, the Corrective Action Plan shall be implemented in accordance with its terms.

2 Company Events of Default

- 2.1 For the purposes of this Agreement the Customer may immediately terminate the Agreement on the occurrence of any of the following events in respect of JVCo:
- 2.1.1 any arrangement or composition with or for the benefit of creditors (including any voluntary arrangement as defined in the insolvency Act 1986) being entered into by or in relation to JVCo;
- 2.1.2 a receiver, administrator, administrative receiver or other encumbrancer taking possession of or being appointed over, or any distress, execution or other process being levied or enforced (and not being discharged within ten Business Days) upon, the whole or any material part of the assets of JVCo;
- 2.1.3 a petition being presented (and not being discharged within 20 Business Days or a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of JVCo;
- 2.1.4 JVCo ceasing to carry on business;
- 2.1.5 JVCo committing a Prohibited Act; or
- 2.1.6 JVCo committing a material breach of its obligations under this Agreement which has a material and adverse effect on the delivery of Services for which a Customer is not responsible (other than as a consequence of a breach by a Customer of its obligations under this Agreement).

3 Dispute Resolution Procedure

3.1 Except where expressly provided otherwise in this Agreement, any dispute arising out of or in connection with this Agreement shall be resolved in accordance with the Dispute Resolution Procedure.

3.2 Any dispute arising out of or in connection with this Agreement will in the first instance be referred to the First Management Level as defined below. If the dispute is not resolved within 28 days, the dispute will be referred to the Second Management Level who must meet within 14 Business Days of the reference to attempt to resolve the dispute. If the dispute is not resolved at that meeting, the escalation will continue with the same maximum time interval to the Third Management Level. If the unresolved dispute is having a material effect on the provision of the Services the Customer acting jointly and JVCo will use their respective reasonable endeavours to reduce the elapsed time in reaching a resolution of the dispute.

3.3 The levels of escalation are :

	<u>Customer</u>	<u>JVCo</u>
First Management Level	Manager	Manager
Second Management Level	The Joint Management Board	The Joint Management Board
Third Management Level	The Chief Executive	The Chief Executive

3.4 If any of the above is unable to attend a meeting, a substitute may attend, provided that such substitute has sufficient seniority and is authorised to settle the unresolved dispute.

4 No Fault Termination

4.1 If, in the circumstances referred to in paragraph 13, the Parties have failed to reach agreement on any modification to this Agreement pursuant to paragraph 13 within 6 calendar months of the date on which the Party affected serves notice on the other Party in accordance with paragraph 13 either Party may at any time afterwards

terminate this Agreement by written notice to the other Party having immediate effect provided always that the effects of the relevant event of Force Majeure continues to prevent either Party from performing any material obligation under this Agreement.

5 Voluntary Termination

5.1 The Customer shall have the right to terminate this Agreement without cause at any time.

5.2 In the event a Customer gives JVCo less than 12 months notice in writing specifying the date when the Agreement is to terminate then the Customer shall pay to JVCo the following:

5.2.1 all costs related to the provision of the Services already incurred or committed and unavoidable following the date of this Agreement which have not been recovered by JVCo as charges for the Services from the Customer;

5.2.2 a payment over a period of 12 months, reduced by one month for each month's notice given, to JVCo based on an average of the aggregate monthly charges for the Services provided to the Customer from the date of this Agreement;

5.2.3 the statutory and contractual redundancy payments due to JVCo's employees which may become payable by JVCo arising out of or reasonably connected to a Customer terminating the Services; and

5.2.4 the reasonable costs JVCo will incur in terminating any equipment leases, licence, rental, support maintenance agreements or other similar arrangements as they relate to the provision of the Services by JVCo to the Customer.

5.3 The Customer and JVCo shall seek to agree the amount of any payment in accordance with paragraph 5.2.

5.4 If the Customer and JVCo have not agreed the sum payable in accordance with paragraph 5.2 within 3 months of the date that written notice is given terminating the Agreement then either Party may refer the matter to an independent expert appointed by both Parties with the intention that the expert shall provide a binding determination on the matter.

- 5.5 If the Parties are unable to agree on the appointment of an expert or the agreed expert is unable to or unwilling to act either Party may give to the other Party 14 days' notice of that Party's intention to apply to the Centre for Effective Dispute Resolution to appoint an expert.
- 5.6 Within 14 days of the appointment of an expert the Parties shall meet with the expert in order to agree in good faith the conduct of the expert's determination of the matter.
- 5.7 All negotiations and meetings connected with a dispute under this paragraph 5 shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- 5.8 The determination by the expert shall, in the absence of manifest error, be binding on the Parties from the date of such determination.

6 Customer ceases to be a shareholder in JVCo

- 6.1 In the event that a Customer ceases to be a member of JVCo for any reason they shall on that date be deemed to have terminated the Agreement without having given written notice in accordance with paragraph 5.2 and the remaining provision of that paragraph shall apply for the purposes of calculating compensation payable by the Customer to JVCo in accordance with this paragraph.

7 Termination by the effluxion of time

- 7.1 This Agreement shall terminate automatically on the expiry of the Agreement Term unless it shall have been terminated earlier in accordance with the provisions of this Agreement. To avoid doubt subject to paragraph 11 of Chapter 13, JVCo shall not be entitled to any compensation or payment arising from the termination on the Agreement on the expiry of the Agreement Term.

8 Effect of Termination

- 8.1 Notwithstanding any provision of this Agreement, on service of a notice of termination, this Agreement shall only terminate in accordance with the provisions of this paragraph.
- 8.2 Notwithstanding any breach of this Agreement by either Party, and without prejudice to any other rights which the other Party may have in relation to it, the other Party may elect to continue to treat this Agreement as being in full force and effect and to

enforce its rights under this Agreement. The failure of either Party to exercise any right under this Agreement, including any right to terminate this Agreement and any right to claim damages, shall not be deemed a waiver of such right for any continuing or subsequent breach.

- 8.3 Subject to any exercise by the Customer of its rights to perform, or to procure a third Party to perform, the obligations of JVCo, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any notice of default or notice of termination, until the termination of the Agreement becomes effective in accordance with the provisions of this paragraph.
- 8.4 On the termination of this Agreement for any reason, for a reasonable period both before and after any such termination, JVCo shall co-operate fully with the Customer and any successor providing to the Customer services in the nature of any of the Services or any part of the Services in order to achieve a smooth transfer of the manner in which the Customer obtains services in the nature of the Services and to avoid or mitigate in so far as reasonably practicable any inconvenience or any risk to the health and safety of the employees of the Customer and members of the public.
- 8.5 The cooperation referred to in paragraph 8.4 above shall include, for the avoidance of doubt, access to and transfer of all data used in or for the provision of the Services as the Customer and any successor providing services in the nature of any of the Services or any part of the Services shall reasonably require.
- 8.6 If the Customer wishes to conduct a competition prior to the end of the Agreement Term with a view to entering into an agreement for the provision of services (which may or may not be the same as, or similar to, the Services or any part of them) following the termination or expiry of this Agreement, JVCo shall co-operate with the Customer fully in such competition process including (without limitation) by:
- 8.6.1 providing any information which the Customer may reasonably require to conduct such competition but, to avoid doubt, information which is commercially sensitive to JVCo shall not be provided (and for the purpose of this Sub-paragraph commercially sensitive shall mean information which would if disclosed to a competitor of JVCo give that competitor a competitive advantage over JVCo and thereby prejudice the business of JVCo but shall, to avoid doubt, exclude any information referred to in paragraph 1 [TUPE and Employment and Pensions]); and

8.6.2 assisting the Customer by providing all (or any) participants in such competition process with reasonable access to the premises JVCo provides the Services from.

9 Compensation on Termination

9.1 If this Agreement is terminated pursuant to Clause 11 or paragraphs 2 or 12 of this Chapter or by effluxion of time then no compensation shall be payable to JVCo.

9.2 To avoid doubt, the Customer's obligations to make any payment of compensation to JVCo pursuant to this paragraph are subject to the Customer's rights under paragraph 1.5 [Set-Off].

9.3 Any compensation paid pursuant to this paragraph 9.3 shall be in full and final settlement of any claim, demand and/or proceedings of JVCo in relation to any termination of this Agreement (and the circumstances leading to such termination) and JVCo shall be excluded from all other rights and remedies in respect of any such termination.

9.4 The compensation payable (if any) pursuant to this paragraph 9.3 above shall be the sole remedy of JVCo and JVCo shall not have any other right or remedy in respect of such termination.

10 Customer Reduces the Volume of Services Purchased

10.1 This paragraph 10 shall apply if the Customer reduces the volume of Services by value purchased from JVCo by greater than 25 per cent in any continuous 12 month period during the Agreement Term following the first anniversary of the Commencement Date.

10.2 For the purposes of paragraph 10.1 the volume of Services by value purchased from JVCo in the first year of the Agreement Tem shall equal 100 per cent.

10.3 In the event that paragraph 10.1 applies then the Customer agrees to compensate JVCo for the:

10.3.1 the statutory and contractual redundancy payments due to JVCo's employees which may become payable by JVCo arising out of or reasonably connected to a Customer terminating the Services;

- 10.3.2 the reasonable costs JVCo will incur in terminating any equipment leases, licence, rental, support maintenance agreements or other similar arrangements as they relate to the provision of the Services by JVCo to the Customer; and
 - 10.3.3 any other costs reasonably attributable to the said reduction in the volume of Services purchased.
- 10.4 If and to the extent that the Parties are unable to reach an agreement in respect of the level of compensation under this paragraph the Parties shall resolve the dispute in the same manner that is set out in paragraphs 5.5 to 5.8 of this Chapter.

11 Assets on Expiry or Termination

- 11.1 Upon the Expiry Date or any earlier Termination Date JVCo shall transfer all data used for or in the performance of the Services Equipment as required in order to continue the provision of the Services and to ensure continued compliance with the statutory duties of the Customer.
- 11.2 In consideration of the performance by JVCo of its obligations in accordance with paragraph 11.1 above the Customer shall pay or procure the payment of the sum calculated in accordance with paragraph 11.4 of this Chapter to JVCo.
- 11.3 To the extent that any Equipment leased on an arm's length basis and on ordinary commercial terms ("Leasing Contracts"), JVCo shall assign its rights in respect of such contracts in accordance with the following conditions:
- 11.3.1 on or before the Termination Date or expiry date (as applicable) JVCo shall notify the Customer which Equipment are subject to JVCo Leasing Contracts;
 - 11.3.2 the Customer shall (or shall procure that any nominated contractor shall) with effect on and from the relevant Termination Date or expiry date take over from JVCo the benefit and burden of JVCo Leasing Contracts or part thereof relating to the Equipment referred to in paragraph 11.3.1 above and shall indemnify and keep indemnified JVCo against all direct losses sustained by JVCo in respect of the non-performance or defective or negligent performance by the Customer (or its nominated contractor) of JVCo Leasing Contracts to the extent relating to such Equipment following the Termination or expiry date. JVCo shall indemnify and keep

indemnified the Customer (and any such nominated contractor if relevant) against all direct losses sustained by the Customer (and any such nominated contractor if relevant) in respect of the non-performance or defective or negligent performance of JVCo Leasing Contracts prior to the relevant Termination Date or expiry date;

11.3.3 JVCo and the Customer shall use their reasonable endeavours to procure the novation (or an assignment with the consent of the other Party) of all or any relevant part of JVCo Leasing Contracts applying to the Equipment notified under paragraph 11.3.1 above to the Customer (or its nominated contractor) with effect on and from the relevant Termination Date or expiry date on terms that JVCo retains any liability accrued prior to such novation or transfer taking effect; and

11.3.4 if JVCo does not procure novation or assignment of any relevant JVCo Leasing Contracts (or part thereof) with effect on and from the relevant Termination Date or expiry date, the following provisions of this paragraph 11.3.4 shall apply:

- (i) JVCo shall from that date hold the benefit of such Company Leasing Contracts on trust for the Customer (or its nominated contractor);
- (ii) JVCo at the Customer's cost shall do all things reasonably necessary to enforce JVCo's rights under JVCo Leasing Contracts in question as required by the Customer;
- (iii) this paragraph 11.3 above shall not constitute a novation or an assignment or attempted novation or assignment of any part of JVCo Leasing Contract if such would constitute a breach of such relevant Company Leasing Contract; and
- (iv) the Customer shall (and shall procure that its nominated contractors shall) perform all of the obligations of JVCo under the relevant part of JVCo Leasing Contracts and the indemnity provisions of paragraph 11.3.2 above shall apply in favour of JVCo.

- 11.4 Notwithstanding anything to the contrary in this Agreement, the amount of compensation payable to JVCo for the transfer of all information relating to the performance of the Services and Equipment to allow the orderly transfer of the Services to a new provider and for Equipment shall be calculated as follows:
- 11.4.1 in relation to Equipment the net book value of such Equipment, as at the date of transfer;
 - 11.4.2 in relation to the assignment of rights under JVCo Leasing Contracts, the actual cost to JVCo of procuring such assignment; and
 - 11.4.3 in relation to all information and records the sum of £1 shall be payable.
- 11.5 In the event of any dispute between the Parties as to the amount of compensation payable in accordance with paragraph 11.4 above, either Party may refer such dispute for resolution in accordance with paragraph 3 of this Chapter.

12 Contingency and Disaster Planning

- 12.1 JVCo shall submit and within six months of the date of this Agreement and the Customer shall approve (such approval not to be unreasonably withheld or delayed) a plan for dealing with disasters and other contingencies so as to provide as far as the circumstances would permit the continuity of the provision of the Services.
- 12.2 JVCo shall review the said plan at least once every 12 months with the Customer and the Customer shall approve (such approval not to be unreasonably withheld) any proposed changes to the said plan.

13 Force Majeure

- 13.1 Neither Party shall be liable for delay or failure to perform any of its obligations under this Agreement insofar as the performance of such obligation is prevented by any event of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event.
- 13.2 If any event of Force Majeure directly causes JVCo or the Customer to be materially unable to comply with its obligations hereunder, JVCo and the Customer may agree such terms, including as to extension of time, as are appropriate for the continued performance of this Agreement. If no such terms are agreed within 150 Business

Days of the commencement of the said event, and such event is continuing or its consequence remains such that the Party subject to such event is materially unable to comply with its obligations, the Parties hereby agree that this Agreement shall thereupon terminate unless the Parties otherwise agree in writing.

- 13.3 Relief under this paragraph above shall not be given unless the Party intending to claim relief has, by notice to the other Party, as soon as reasonably practicable after becoming aware of the event of Force Majeure or, if later, of the failure to perform, informed the other said Party that it intends to claim relief. Such notice shall contain such relevant information relating to such failure as is available.
- 13.4 For the avoidance of doubt, it shall not be considered to be a Force Majeure event, nor shall either Party be excused from liability for delay or failure to perform any of its obligations under the Agreement, if it is delayed or fails to meet its obligations as a result of:
- 13.4.1 industrial action taken in isolation from any national dispute by it, or its employees;
 - 13.4.2 any failure by a Customer to pay for the Services; or
 - 13.4.3 any event JVCo is required to insure against in accordance with this Agreement.

Chapter 14

TERMS USED IN THIS AGREEMENT

In this Agreement unless the context otherwise requires:

"Admin Regs"	means the Local Government Pension Scheme (Administration) Regulations 2008;
"Particulars of Agreement"	means the particulars set out at Clause 1 of this Agreement;
"Agreement Term"	means the period defined in the Particulars of Agreement;
"Business Day"	means a day other than a Saturday, Sunday or a bank holiday in England;
"Change in Control"	means any sale or other disposal of any legal, beneficial or equitable interest in any or all of the equity share capital of a corporation (including the control over the exercise of voting rights conferred on that equity share capital or the control over the right to appoint or remove directors);
"Change in Law"	means the coming into effect or repeal (without reenactment or consolidation) in England and Wales of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England and Wales in each case after the date of this Agreement;
"Commencement Date"	means the earlier of the date that: (1) the Secretary of State for Health confirms

	in writing that the Transferring Employees are entitled to remain in the NHS Pension Scheme (or that the JVCo acquires Direction Body Status) following their transfer pursuant to the Regulations; or (2) or a the date the Parties agree;
“Community Admission Body”	has the same meaning ascribed to it by Regulation 5 of the Admin Regs;
“Company Party”	means the JVCo’s agents and contractors and its or their sub-contractors or any tier and its or their directors, officers, employees and workmen in relation to the Services and “Company Parties” shall be construed accordingly;
“Confidential Information”	means information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1988;
“Corrective Action Plan”	means a plan prepared in accordance with paragraph 1.1 of Chapter 13;
“Customer Equipment”	means
“Data”	means
“Default Interest Rate”	means 2 per cent over LIBOR;
“Dispute Resolution Procedure”	means the procedure set out in Chapter 13 “ <i>What if things go wrong?</i> ”;
“Employment Contract”	means the terms of employment between the Customer and the Seconded at the date

	of this Agreement subject to any changes in the Seconded's salary or other benefits in accordance with the Customer's usual procedures from time to time;
First Year's Budgeted Sum	means the sum of money the Customer has allowed or made for provision for (as the same has been agreed between the Parties at the date of this Agreement) in their financial accounts to meet the cost of providing the Services for the financial year 1 April 2011 to 31 March 2012;
"Force Majeure"	means any cause materially affecting the performance of the Parties' obligations under this Agreement arising from any act, events, omissions, happenings or non-happenings beyond the Parties' reasonable control including, without limitation, acts of God, war, riot, fire, flood or any disaster affecting either of the Parties;
"Good Industry Practice"	means using standards, practices, methods and procedures conforming to the Law and, where relevant, manufacturers' recommendations and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;
"Government"	means the government of the United Kingdom;
"Law"	means: (a) any applicable statute or proclamation or any delegated or subordinate legislation,

	<p>(b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</p> <p>(c) any applicable guidance, direction or determination with which the Customer and/or JVCo is bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to JVCo by the Customer; and</p> <p>(d) any applicable judgement of a relevant court of law which is a binding precedent in England and Wales;</p> <p>in each case in force in England and Wales;</p>
“Leasing Contracts”	Means
“LGPS”	means the Local Government Pension Scheme;
“LIBOR”	means the rate per annum for time to time determined by Barclays Bank Plc to be the offered rate for six months sterling deposits in the London interbank market;
“Manager”	means the manager appointed in accordance with paragraph 2.1 in Chapter 1;
“Management Issues”	means those matters under the Employment Contract requiring action, investigation and/or decisions by the Customer including in particular (by way of illustration only and without limitation) appraisals and performance issues; pay reviews and the award of other payments and benefits under the Employment Contract; periods of annual, sick or other leave; absence of the Secondee

	for any other reason; any complaint about the Seconded (whether or not that would be dealt with under the Customer's disciplinary procedure) and any complaint or grievance raised by the Seconded (whether or not that would be dealt with under the Customer's grievance procedure);
"Monthly Service Payment"	means
"NHS"	means the National Health Service or any successor body;
"Premises"	means any place owned or occupied by the Customer immediately prior to the date of this Agreement that the Services are performed;
"Prohibited Act"	<p>means offering, giving or agreeing to give to the Customer or any other public body or to any person employed by or on behalf of the Customer or any other public body any gift or consideration of any kind as an inducement or reward:</p> <ul style="list-style-type: none"> (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other agreement with the Customer or any other public body; or (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Customer or any other public body; <p>(b) entering into this Agreement or any</p>

	<p>other agreement with the Customer or any other public body in connection with which commission has been paid or has been agreed to be paid by JVCo or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment of such commission have been disclosed in writing to the Customer;</p> <p>(c) committing any offence:</p> <p>(i) under the Prevention of Corruption Acts 1889-1916;</p> <p>(ii) under any Law creating offences in respect of fraudulent acts; or</p> <p>(iii) at common law, in respect of fraudulent acts in relation to this Agreement or any other agreement with the Customer or any other public body;</p> <p>(iv) defrauding or attempting to defraud or conspiring to defraud the Customer or any other public body; or</p> <p>(v) under the Bribery Act 2010.</p>
<p>“Regulations”</p>	<p>means the Transfer of Undertaking (Protection of Employment) Regulations 2006 as amended or modified from time to time;</p>

“Replacement Contractor”	means any person who provides the Services in place of JVCo;
“Secretary of State”	means the/or any Secretary of State of Her Majesty’s Government;
“Services”	means the range of services to be provided by JVCo to the Customer as set out in the Services Chapters and as subsequently amended or adjusted in accordance with this Agreement;
“Services Employees”	means those employees of JVCo assigned to the Services immediately before the termination of the provision of the Services by JVCo;
“Services Chapters”	means Chapters 2 to 6 inclusive of the Schedule to this Agreement;
“Termination Date”	means any date on which this Agreement terminates early in accordance with the express provisions of this Agreement;
“Transfer Date”	means the date that the Services Employees transfer to JVCo in accordance with this Agreement;
“Transferee Admission Body”	has the same meaning ascribed to it by Regulation 6 of the Admin Regs;
“Transferring Employees”	means those employees of the Customer Transferring to JVCo on the Transfer Date;
“Variation”	means a variation to this Agreement agreed pursuant to or determined in accordance with 11or Chapter 12;
“Variation Control Notice”/”VCN”	means a notice pursuant to paragraph 1.5 of Chapter 12;
“Variation Procedure”	means the procedure set out in Chapter 12,
“VAT”	means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value

	Added Tax Act 1994;
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