

DATED

2019

(1) HEREFORDSHIRE COUNCIL

(2) HOOPLE LIMITED

HOOPLE SERVICES CONTRACT

Date of this Agreement	
Parties to this Agreement	<p>(1) THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL whose address is Plough Lane, Hereford, HR4 0LE (“the Commissioner”)</p> <p>Hoople Ltd. Ltd incorporated in England with registered number 07556595 and whose registered office is at Hoople Ltd. Plough Lane, Hereford, HR4 0LE (together “the Parties”)</p>

CORE CLAUSES

1 GENERAL

10 Actions

- 10.1 The *Commissioner*, the *Provider* and the *Contract Manager* shall act as stated in this contract and in a spirit of mutual trust and co-operation.
- 10.2 The *Provider* does not assign, transfer or charge the benefit of this contract or any part of it or any benefit or interest in or under it without the prior agreement of the *Commissioner*.
- 10.3 A person or organisation who is not one of the Parties may enforce a term of this contract under the Contracts (Rights of Third Parties) Act 1999 only if the term and the person or organisation is stated in this contract.
- 10.4 Neither the *Provider* nor anyone employed by him or acting on his behalf offers or gives to any person in the service of the *Commissioner* any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of this contract or any other contract with the *Commissioner* or for showing favour or disfavour to any person in relation to this contract or any other contract with the *Commissioner* or enters into this contract or any other contract with the *Commissioner* if, in connection with this contract or any such other contract, commission has been paid or an agreement for the payment of commission has been made by him or on his behalf or to his knowledge.
- 10.5 The Parties note that the *Commissioner* is the majority shareholder in the *Provider*, appoints a majority of the *Provider's* directors and those directors have, in all circumstances, a majority of the votes on the *Provider's* board.

11 Identified and defined terms

- 11.1 In these Conditions of Contract, terms identified in the Contract Data are in italics and defined terms have capital initials.

“Advance Payment”

Has the meaning set out in clause 50.25

"Annual Plan"

is the plan to be prepared by the *Provider* for each Financial Year falling wholly or partly within the Contract Period as detailed in clause 21.2.

“Assessment Date”

means the 1st day in each month.

“Benchmarking”

has the meaning set out in clause 217.1.

“Budget Report”

is the report to be prepared by the *Provider* detailing the financial performance and forecasts of the *Provider* against the Capital Services Budget and the Revenue Services Budget (respectively) in the form specified by the *Contract Manager*.

“Budget Report Action Plan”

is the action plan to be prepared by the *Provider* in accordance with clause 17.8 detailing:

- the risks affecting the delivery of the Services that may result following an overspend of the Services Budget;
- the options for corrective action to be carried out by the *Provider*; and
- the *Provider*'s recommendation for the corrective action necessary to prevent an overspend of the Services Budget.

“Business Continuity Plan”

is the plan prepared and updated by the *Provider* in accordance with clause 40.2.

"Capital Services"

are services that will be treated as capital expenditure for the purposes of local government accounting regulations and which will therefore be fundable from the Capital Services Budget.

"Capital Services Budget"

is the part of the Services Budget that is treated as capital for the purposes of local government capital expenditure accounting regulations.

"Code of Practice"

is any code of practice issued under section 45 of the Freedom of Information Act 2000 or pursuant to powers contained in the Environmental Information Regulations 2004.

"Contract Date"

is the date when this contract came into existence.

"Contract Period"

is the *contract period* or any extended period fixed under this contract.

"Cost of Services Provided to Date"

is the total of the Defined Cost of the Services which have been carried out by the *Provider* during the relevant Financial Year (less payments made to the *Provider* during the relevant Financial Year), plus the resulting Fee.

"Data Protection Legislation"

are any laws or regulations relating to privacy or personal data.

"Defective Service"

is:

- a part of the Services which has not been carried out in accordance with the Service Information; or
- a part of the Services designed by the *Provider* which is not in accordance with the applicable law or the *Provider's* design which the *Contract Manager* has accepted.

"Defined Cost"

is

- the amount of payments due to Subcontractors for work which is subcontracted without taking account of amounts deducted for
 - payments to Others and
 - the supply of equipment, supplies and services included in the charge for overhead costs incurred within the Working Areas in this contract and
- the cost of the components in Schedule 1 for other work

less

- Disallowed Cost.

"Defined Cost Report"

is a report detailing, on a cumulative basis, the Defined Cost plus the Fee for the Services delivered by the *Provider* from the beginning of each Financial Year to the date of the report (inclusive) in the format specified by the *Contract Manager*.

"Disallowed Cost"

is cost which the *Contract Manager* decides:

- is not justified by the *Provider's* accounts and records;
- should not have been paid to a Subcontractor or supplier in accordance with this contract;
- was incurred only because the *Provider* did not:
 - give an early warning notice which this contract required him to give;

and the cost of:

- work or remedial action caused by the *Provider's* failure to Provide the Services in accordance with this contract;
- Materials not used (after allowing for reasonable wastage) unless resulting from a change to the Service Information;
- resources not used (after allowing for reasonable availability and utilisation);

- preparation for and conduct of an adjudication or proceedings of the *tribunal*.

“Dispute Resolution Provisions”

are the provisions set out in clause 90.

"Documents"

are data (including Personal Data), records, reports, documents, manuals, designs, drawings, plans, specifications and other works or materials of any nature in any form or medium (excluding proprietary software).

"Emergency Services"

are representatives of the police, ambulance or fire services or other bodies having statutory powers to issue instructions following an Incident when engaged in an action which affects the provision of the Services.

"Commissioner’s Objectives"

are to provide effective Services, putting customers first, understanding and responding to their needs in a way that enhances the reputation of public services in the County, including:

- maintaining the delivery of essential services;
- achieving value for money, facilitated by process improvement and transparency through open book accounting;
- achieving service delivery which is efficient and responsive to local needs and priorities; and
- contributing to the regeneration of the economy and social capital in Herefordshire.

"Commissioner's Policies"

are any policies of the *Commissioner* from time to time in force that relate to the provision of the Services and which are notified to the *Provider*.

"Commissioner’s Premises"

are the office space and storage facilities made available by the *Commissioner* for the use of the *Provider* during the Contract Period.

"Commissioner’s Stocks"

are:

- the supplies of Materials and/or items of Equipment provided by the *Commissioner* free of charge for use by the *Provider* in Providing the Services and
- any items of equipment replaced by Commissioner’s Stocks.

"Equipment"

is items of plant, machinery and equipment provided by the *Provider* and used by him to Provide the Services.

"Fee"

is the sum of the amounts calculated by applying the *subcontracted fee percentage* to the Defined Cost of subcontracted work and the *direct fee percentage* to the Defined Cost of other work provided that the Fee will not be applied to:

- any pass-through costs from the *Commissioner* (including the property costs payable by the *Provider* under any leases and/or licences granted by the *Commissioner*);
- any costs originating from the *Commissioner* (including, for the avoidance of doubt, the cost of any ICT services provided by the *Commissioner*); and/or
- any statutory fees payable by the *Provider* in the course of Providing the Services.

"Fee Schedule"

is the schedule setting out the breakdown of the *subcontracted fee percentage* and the *direct fee percentage* into their component elements, supported by data showing how each element of each fee percentage has been calculated. The Fee Schedule is in the document which the Contract Data states it is in.

"Financial Year"

is the period commencing on 1 April in any calendar year and ending on 31 March in the following calendar year.

"Good Industry Practice"

is the degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced provider engaged in a similar type of undertaking under the same or similar circumstances.

"Incoming Provider"

is the agent or contractor appointed by the *Commissioner* to manage the Services after the expiry of the Contract Period or termination of this contract.

"Incident"

is:

- an unforeseen event which directly or indirectly affects the Services and or threatens the safety of the public or is an immediate or imminent threat to the long term integrity of any part of the Services; or
- breakdown or damage rendering the communications installations serving the Services or any part of them inoperable.

"Insurance Table"

is the table detailing the insurances to be provided by the *Provider* set out in clause 84.

"Intellectual Property Rights"

are any current and future legal and equitable interests in patents, trade marks, design rights, copyright, know-how and other similar rights, whether or not registered or capable of registration.

"Local Overhead Cost"

is the cost to the *Provider* of his employees engaged in the management of, and support to, the delivery of the Services (but not directly involved in the delivery of the Services) and of the property and costs of the provision of necessary medical and first aid facilities, necessary security, and office facilities including copying, telephone and necessary office sundries, management and other costs (including ICT costs) attributable to the provision of the Services contemplated in the Annual Plan for the relevant Financial Year.

"Materials"

are items intended to be used or included in, or in relation to, the course of Providing the Services.

"Open Book Cost Records"

means detailed cost records:

- in the same format and containing the same details and for the same period, as the *Provider* is required to keep; or
- providing a breakdown of its actual costs into the actual costs of its labour, plant and materials.

"Operational Performance Indicators"

are the Performance Indicators that relate to the operation of the Services as approved by the *Commissioner*.

"Operations Board"

is the board to be established in accordance with clause 19 by the Parties to oversee the management of the delivery of the Services.

"Others"

are people or organisations who are not the *Commissioner*, the *Contract Manager*, the *Adjudicator*, the *Provider* or any employee, Subcontractor or supplier of the *Provider*.

"Parties"

are the *Commissioner* and the *Provider* and a Party is either of them.

"Pay Less Notice"

has the meaning set out in clause 50.8.

"Performance Indicators"

are the performance indicators as approved by the *Commissioner*, comprising the Operational Performance Indicators and the Strategic Performance Indicators.

"Personal Data"

is information received by the *Provider* in relation to this contract, which relates to living individuals who can be identified

- from that information; or
- from that information combined with other details in (or likely to come into) the possession of the *Commissioner*.

"to Provide the Services"

means to do the work necessary to perform the Services in accordance with this contract and all incidental work, services and actions which this contract requires and references to "Providing the Services" shall be construed in the same way.

"Provider's Representative"

is the *Provider's* representative appointed in accordance with clause 211.

"Relevant Period(s)"

has the meaning set out in clause 31.2.

"Revenue Services"

are services that will be treated as qualifying as revenue expenditure for the purposes of local government accounting regulations and which will therefore be fundable from the Revenue Services Budget.

"Revenue Services Budget"

is the part of the Services Budget that is treated as revenue for the purposes of local government revenue expenditure accounting regulations.

"Risk Register"

is a register of the risks which is prepared in relation to the Services to be delivered in each Financial Year in accordance with clause 17.1.

"Service Information"

is the document of that name referred to in the Contract Data Part One which

- specifies and describes the Services;
- states any constraints on how the *Provider* Provides the Services; and
- identifies the performance requirements applicable to each of the Services.

"Service Order"

is an instruction from the *Contract Manager* to the *Provider* to carry out services within the scope of the Services.

"Service Order Completion"

is when the *Provider* has done all the work in a Service Order and corrected any Defective Services.

"Service Order Completion Date"

is the date for completion stated in a Service Order unless later changed in accordance with this contract.

"Service Order Plan"

is the plan or programme for the carrying out of the works and/or services set out in any Service Order.

"Service Order Risk Register"

is the risk register maintained in relation a Service Order which sets out the risks identified for that Service Order, including any risks which the *Provider* or the *Contract*

Manager has notified as an early warning matter in relation to that Service Order; it also includes a description of each risk and a description of the actions which are to be taken to avoid or reduce that risk.

"Services"

are the duties to be performed by the *Provider* under this contract as may be instructed by the *Commissioner* from time to time in accordance with this contract.

"Services Budget"

is the *Commissioner's* known budget at the start of each Financial Year to spend on the Services in accordance with this contract within that Financial Year (as notified by the *Commissioner* to the *Provider*). The Services Budget comprises the total of the Capital Services Budget and the Revenue Services Budget.

"Staff"

are employees employed by the *Provider* or any Subcontractor to Provide the Services at any time.

"Statutory Body"

is a person or corporate body who has a statutory right or a right pursuant to a licence granted under any statute to place or maintain any apparatus on, under or over the Commissioner's Premises or to inspect, adjust, repair, alter, renew, reposition or remove such apparatus.

"Strategic Performance Indicators"

are the Performance Indicators that relate to the strategic objectives for the Services as approved by the *Commissioner*.

"Subcontractor"

is a person or organisation (other than an employee or contract worker engaged by the *Provider*) who has a contract with the *Provider* to provide part of the Services or to supply Materials which the person or organisation has wholly or partly designed specifically for the Services.

"TUPE"

means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

"Working Areas"

are any premises occupied by the *Provider* which are necessary for Providing the Services and used only for provision of Services.

"Working Day"

is a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London.

12 Interpretation and the Law

12.1 In this contract, except where the context shows otherwise:

12.1.1 words in the singular also mean in the plural and the other way round;

12.1.2 words in the masculine also mean in the feminine and neuter and the other way round;

- 12.1.3 references to a document include any revision made to it in accordance with this contract;
- 12.1.4 references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it; and
- 12.1.5 references to a standard include any current relevant standard that replaces it.
- 12.2 Each of the Schedules and Annexes to this contract form part of it and shall apply.
- 12.3 In the event of any conflict or inconsistency between the provisions of the body of this contract and the Schedules (including their relevant Annexes), the body of this contract takes precedence. In the event of any conflict or inconsistency between the Service Information, the Service Information takes precedence.
- 12.4 No change to this contract, unless provided for by this contract, has effect unless it has been agreed, confirmed in writing and signed by the Parties.
- 12.5 This contract constitutes the entire agreement between the Parties and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this contract.
- 12.6 This contract is enforceable by the original parties to it and by their successors in title and permitted assignees.
- 12.7 A person or organisation who is not one of the Parties may enforce a term of this contract under the Contracts (Rights of Third Parties) Act 1999 only if the person or organisation is an Incoming Provider and it is stated in this contract in relation to the relevant term that the Incoming Provider has the right under that Act to enforce the term.
- 12.8 The *Provider* does not assign, transfer or charge the benefit of this contract or any part of it or any benefit or interest in or under it without the prior agreement of the *Commissioner*.
- 12.9 This contract is governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

13 Communications

- 13.1 Each instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded. Writing is in the English language.
- 13.2 A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.
- 13.3 If this contract requires the *Contract Manager* or the *Provider* to reply to a communication, unless otherwise stated in this contract, he replies within the *period for reply*.

- 13.4 The *Contract Manager* may extend the *period for reply* to a communication if the *Contract Manager* and the *Provider* agree to the extension before the reply is due. The *Contract Manager* notifies the *Provider* of the extension which has been agreed.
- 13.5 A notification which this contract requires is communicated separately from other communications.
- 13.6 The *Contract Manager* may withhold acceptance of a submission by the *Provider*. If he withholds acceptance, he states his reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Provider's* submission fully. Withholding acceptance for a reason stated in this contract is not a compensation event.
- 13.7 Neither the *Provider* nor the *Commissioner* nor anyone employed by either party nor acting on their behalf:
- gives information concerning the subject matter of this contract for publication in the press or on radio, television, screen, electronically or any other media
- without the written consent of the other party.
- Neither the *Provider* nor anyone employed by or acting on his behalf:
- publishes or circulates any photographs of the *Commissioner's* premises or assets or any part of it or any Incident (other than as necessary to Provide the Services)
- without the written consent of the *Contract Manager*. The *Provider* conducts any liaison with the media concerning the subject matter of this contract in accordance with the *Commissioner's* requirements.
- 13.8 The *Parties* keep (and ensures that anyone employed by him or acting on his behalf keeps) confidential and does not disclose to any person:
- the terms of this contract; and
 - any confidential or proprietary information (including Personal Data) provided to or acquired by the *Provider* in the course of Providing the Services;
- except that the *Parties* may disclose information:
- to his legal or other professional advisers;
 - to anyone employed by him or acting on his behalf as needed to enable the *Provider* to Provide the Services;
 - where required to do so by law or by any professional or regulatory obligation or by order of any court or governmental agency, provided that prior to disclosure the *Provider* consults the *Contract Manager* and takes full account of the *Contract Manager's* views about whether (and if so to what extent) the information should be disclosed;
 - which he receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

- which is in the public domain at the time of disclosure other than due to the fault of the *Provider*, or
- with the consent of the *other party*.

13.9 The *Provider* does not (and ensures that anyone employed by him or acting on his behalf does not) use any confidential or proprietary information provided to or acquired by it for any purpose other than to Provide the Services.

13.10 Not used

13.11 If required by any statute to obtain express authorisation from the *Commissioner* before taking any action, the *Provider* obtains such authorisation.

13.12 Not used

13.13 Not used

13.14 Not used

13.15 Subject to the *Commissioner's* obligations under the Freedom of Information Act 2000 and related statutory obligations (see clause 107 post), the *Commissioner* does not disclose any confidential or proprietary information provided by the *Provider* other than in accordance with the administration of this contract.

14 The Contract Manager

14.1 Acceptance by the *Contract Manager* of:

- a communication from the *Provider*;
- any design or work carried out by the *Provider*; or
- the key persons named or any replacement persons;

does not change the *Provider's* responsibility to Provide the Services or his liability for his design.

14.2 The *Contract Manager*, after notifying the *Provider*, may delegate any of his actions and may cancel any delegation. A reference to an action of the *Contract Manager* in this contract includes an action by his delegate.

14.3 The *Contract Manager* may give an instruction to the *Provider* which changes the Service Information and will do so in consultation with the *Commissioner*.

14.4 Not used

14.5 The *Commissioner* may replace the *Contract Manager* after he has notified the *Provider* of the name of the replacement.

15 Not used

16 Access to and use of the Commissioner's premises and other areas

- 16.1 The *Commissioner* allows access to and use of each part of the *Commissioner's* premises to the *Provider* as necessary to Provide the Services, subject to any limitations set out in the Service Information. Access and use is allowed on or before the access date.
- 16.2 The *Provider* liaises as necessary with the *Commissioner* and Others responsible for the management and maintenance of the *Commissioner's* premises as stated in the Service Information in order to enable the *Provider* to Provide the Services. The *Commissioner* assists the *Provider* in liaising with Others as required.
- 16.3 The *Provider* shall be deemed to have satisfied itself as to the adequacy of any premises or any other accommodation it may require to Provide the Services.
- 16.4 The *Commissioner* 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) the *Provider*.
- 16.5 Action taken under Clause 16.4 shall promptly be confirmed in writing by the *Contract Manager* and, to avoid doubt, such action shall not relieve *Provider* of any of its obligations to the *Commissioner*.
- 16.6 Not Used.
- 1.4 The decision of the *Commissioner* as to whether any person is to be refused admission shall be final and conclusive.

17 Risk management, progress meetings and early warning

- 17.1 The *Provider* carries out (with assistance from the *Commissioner*, the *Contract Manager* and any relevant *Subcontractors* engaged in relation to the Services as considered appropriate) a risk assessment to identify:
- 17.1.1 potential risks relating to the carrying out of the Services (and thereafter for each ensuing Financial Year) the occurrence of which are capable of adversely affecting the time for completion, cost or quality of the Services during that Financial Year;
 - 17.1.2 the probability of these risks occurring;
 - 17.1.3 a financial estimate of the most likely consequences of each risk occurring; and
 - 17.1.4 (without prejudice to the risk allocation under, and terms of, this contract) those risks that are within the control of, or are best managed by, the *Commissioner*, the *Contract Manager* or the *Provider* or any other relevant *Subcontractors* engaged in relation to the relevant Services (provided that such risk allocation does not change the contractual risk allocation under this contract);

and the results of this risk assessment will be included in a risk register produced by the *Provider* which will become the "Risk Register" for the purposes of this contract for the particular Financial Year.

- 17.2 Throughout each Financial Year, with assistance from the *Commissioner*, the *Contract Manager* and any other relevant *Subcontractors* engaged in relation to the

Services as considered appropriate, the *Provider* carries out further risk assessments and regularly reviews and updates the Risk Register at three monthly intervals (or such other intervals as may be agreed by the Parties from time to time) in relation to:

- 17.2.1 any new risks that have arisen since the date of the last review;
 - 17.2.2 the steps taken to prevent/mitigate previously identified risks;
 - 17.2.3 risks which have been successfully prevented/mitigated (which can be removed from the Risk Register); and
 - 17.2.4 (without prejudice to the risk allocation under, and terms of, this contract) the prioritisation of all continuing risks and agreement of an action plan in respect of, and risk owners for, all risks prioritised as serious risks.
- 17.3 In addition to, or as part of, any risk reduction meetings in accordance with clause 17.8, the *Provider* or the *Contract Manager* arrange regular meetings to review the Risk Register in accordance with clause 17.2.
- 17.4 As identified in the Service Information, or as agreed otherwise by the *Commissioner* and *Provider*, the *Provider* and the *Commissioner* operate a similar procedure to that set out in this clause 17 in relation to the carrying out of Services in relation to individual Service Orders in order to produce a Service Order Risk Register for the relevant works and/or services comprised in the relevant Service Order.
- 17.5 The *Provider* arranges regular progress meetings at three monthly intervals (or at such other intervals as may be agreed from time to time by the Parties) with the *Contract Manager* to report on progress in relation to individual Service Orders and generally in relation to the performance of the Services and the actual and estimated further cost of Providing the Services during the relevant Financial Year.
- 17.6 Throughout the Contract Period the *Provider* seeks to identify and mitigate potential risks affecting the delivery of the Services. The *Provider* and the *Contract Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could:
- 17.6.1 increase the cost of Providing the Services;
 - 17.6.2 affect the progress or performance of the Services;
 - 17.6.3 impair the performance of the Services in use; or
 - 17.6.4 result in the aggregate of all amounts due under this contract in relation to a Financial Year exceeding the relevant Services Budget for that Financial Year (as indicated by any Budget Report).
- 17.7 If appropriate, the *Contract Manager* instructs the *Provider* to enter early warning matters in the Risk Register or (if applicable to a particular Service Order) in the relevant Service Order Risk Register. Early warning of a matter for which a compensation event has previously been notified is not required.
- 17.8 If an early warning notice is issued in accordance with clause 17.6, the *Provider* discusses the issue that has arisen, or may arise, with the *Contract Manager* and provides a Budget Report Action Plan to the *Contract Manager* within 10 Working Days.

- 17.9 Not used.
- 17.10 If either the *Contract Manager* or the *Provider* considers that a matter notified is sufficiently important to require a risk reduction meeting, they may instruct the other to attend. Either the *Contract Manager* or the *Provider* may instruct other people to attend if the other agrees.
- 17.11 At a risk reduction meeting those who attend co-operate in:
- 17.11.1 making and considering proposals for how the effect of the registered risks can be avoided or reduced;
 - 17.11.2 seeking solutions that will bring advantage to all those who will be affected;
 - 17.11.3 deciding on the actions which will be taken and who, in accordance with this contract, will take them; and
 - 17.11.4 deciding which risks have now been avoided or have passed and can be removed from the Risk Register or (as the case may be) the relevant Service Order Risk Register.
- 17.12 The *Provider* takes all reasonable steps to minimise risks that could have an adverse effect on the cost, time to complete or quality of the Services and reports to the *Contract Manager* at, or before, each progress meeting on the nature, likelihood and possible effect of such areas of potential risk.
- 17.13 If appropriate, the *Provider* revises the Risk Register or (as the case may be) the relevant Service Order Risk Register to record the decisions made at each risk reduction meeting and issues the revised Risk Register or (as the case may be) the relevant Service Order Risk Register to the *Contract Manager*. If the decision needs a change to the Service Information and/or to any relevant Service Order, the *Contract Manager* instructs the change as soon as practicable after he receives the revised Risk Register or the relevant Service Order Risk Register.

18 Ambiguities and inconsistencies

- 18.1 The *Contract Manager* or the *Provider* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. The *Commissioner* resolves the ambiguity or inconsistency taking into account clause 12.3 so far as it applies.
- 18.2 The *Provider* notifies the *Contract Manager* as soon as he considers that the Service Information requires him to do anything which is illegal or impossible. If the *Contract Manager* requests, the *Provider* submits proposals for overcoming the illegality or impossibility to the *Contract Manager* within the *period for reply*. The *Commissioner* decides how the illegality or impossibility is to be overcome and what (if any) changes are required to the Service Information and the *Contract Manager* notifies the *Provider* of the *Commissioner's* decision.

19 Operation and management of the Services

19.1 The Operations Board

- 19.1.1 An Operations Board shall operate throughout, including representatives for *Commissioner*, *Provider* and the *Contract Manager*.
- 19.1.2 Not used.
- 19.2 The Operations Board is responsible for:
 - 19.2.1 monitoring and reviewing the performance of the *Provider* in the delivery of the *Services*, in particular, the performance of the *Provider* against the Operational Performance Indicators and the progress against the Service Order Plans;
 - 19.2.2 reviewing the risk assessments carried out in accordance with clause 17.1 and reviewing and managing the risks as set out in the Risk Register;
 - 19.2.3 making recommendations and observations to the *Provider* and the *Commissioner* regarding the operational performance of the *Provider* and the ways in which performance needs to be, or might be, improved;
 - 19.2.4 Sharing the results of its monitoring of the *Provider's* performance of the *Services* with a view to identifying any lessons that can be learnt or practices that can be improved upon;
 - 19.2.5 considering and providing recommendations on budget and programme issues to meet the *Commissioner's* Objectives;
 - 19.2.6 making recommendations regarding the prioritisation of all spending;
 - 19.2.7 monitoring the effectiveness and implementation of the shared culture and behaviours, considering proposals for improvement.
- 19.3 Unless agreed otherwise the Operations Board meets three monthly and otherwise as required by the *Commissioner* to consider and review the delivery of the *Services*.
- 19.4 All members of the Operations Board act in a spirit of mutual trust and co-operation.

2 THE PROVIDER'S MAIN RESPONSIBILITIES

20 The Provider's main responsibilities

20.1 Providing the Services

20.1.1 The *Provider* Provides the Services so as not to cause, or contribute to, a breach of the Commissioner's Policies, and in accordance with the Service Information and any Service Orders.

20.1.2 The *Provider* carries out all Services which are:

20.1.1.1 contained within a Service Order; or

20.1.1.2 otherwise agreed between the *Provider* and the *Contract Manager*.

20.1.3 In Providing the Services, the *Provider* uses reasonable endeavours to minimise the interference caused to the Commissioner's activities, provided that the *Provider* is not responsible for the acts or omissions of the *Commissioner* or Others save where any such act or omission arises as a result of the *Provider* failing to Provide the Services in accordance with this contract.

20.1.4 The *Provider* continually seeks to carry out the Services in a manner that achieves greater value for money for the *Commissioner*, year on year, by reducing costs and delivering the Services more efficiently whilst seeking to maximise the achievement of the Commissioner's Objectives, year on year.

20.1.5 If the *Provider* considers that any requirements of the Service Information should be amended so as to:

20.1.1.3 reduce the cost of carrying out the relevant Services; and/or

20.1.1.4 deliver better value for money, without adversely affecting the achievement of the Commissioner's Objectives,

the *Provider* notifies the *Commissioner* accordingly and both Parties meet (via the Operations Board, if appropriate) to discuss and agree any necessary changes to, or relaxations of, the Service Information. The *Contract Manager* gives an instruction in respect of any agreed changes to the Service Information and any such changes are documented in writing.

20.1.6 The *Provider* corrects all defects in accordance with the timescales set out in the Service Information.

21 Planning the delivery of the Services

21.1 Not Used

21.2 Provision of budgetary information

21.2.1 The *Commissioner* provides details of the estimated Services Budget for the forthcoming Financial Year. The *Commissioner* provides details of the actual Services Budget and of the breakdown of the Services Budget between the Revenue Services Budget and the Capital Services Budget as soon as practicable and in any event, prior to the start of each Financial Year.

21.2.2 The *Provider* takes into account the estimated Services Budget when planning services.

21.3 Changes to the Service Budget during a Financial Year

21.3.1 Discussion of actual or proposed changes to the Services Budget

The *Commissioner* informs the *Provider* of any actual or proposed changes to the Services Budget during any Financial Year. The Parties discuss any such changes with a view to agreeing what changes are, or may be, necessary to the Services. The changes may increase or reduce the Services to be provided by the *Provider* in the relevant Financial Year. The Parties act reasonably and with a view to mitigating the effects of any actual or proposed reduction in the Services Budget. The consequences of any actual changes in the Services are dealt with in accordance with clause 28.

21.3.2 Changes to Services which are not subject of an issued Service Order

21.3.2.1 The *Commissioner* (acting via the *Contract Manager*) may instruct changes in the Services which are not the subject of an issued Service Order. The changes may increase or reduce the Services to be provided by the *Provider* in the relevant Financial Year.

21.3.2.2 If the changes will increase the Services to be provided by the *Provider* within the relevant Financial Year and the *Provider* reasonably considers that the additional Services will not be capable of completion within the relevant Financial Year, the *Provider* discusses this with the *Commissioner*. Unless the Parties agree that the change can be dealt with by another means, the *Commissioner* issues an additional Service Order for such additional services, which is dealt with in accordance with clause 28.

21.3.2.3 Both Parties act reasonably and with a view to mitigating the effects of any increase or reduction in the Services and use their respective reasonable endeavours to agree any necessary changes to the Cost. If the Parties fail to agree the consequences of the change within 4 weeks of the change (or whatever alternative period may be agreed), the matter is decided by the *Commissioner*. If any party is dissatisfied they may seek resolution of the matter in accordance with the Dispute Resolution Provisions.

21.3.3 Changes to Services in the Annual Plan which are the subject of an issued Service Order

21.3.3.1 The *Commissioner* (acting via the *Contract Manager*) may instruct a change to the Services set out in an issued Service Order. The change may increase or reduce the Services to be provided by the *Provider* in the relevant Financial Year.

21.3.3.2 If the change will increase the Services to be provided by the *Provider* within the relevant Financial Year and the *Provider* reasonably considers that the additional Services will not be capable of completion within the relevant Financial Year, the *Provider* discusses this with the *Commissioner*. Unless the Parties agree that the change can be dealt with by another means, the *Commissioner* issues an additional Service Order for such additional services in accordance with clause 28.

21.3.3.3 The consequences of any change to an existing Service Order are dealt with as a compensation event in accordance with clause 60.

21.3.4 Recording changes any existing Service Order

Any changes to any existing Service Order are recorded in writing.

22 Care and Diligence

22.1 The *Provider* carries out all Services required by this contract in accordance with:

22.1.1 all relevant statutory provisions;

22.1.2 Good Industry Practice;

22.1.3 in a good and workmanlike manner; and

22.1.4 to the quality and standards specified in the Service Information.

22.2 Where in the provision of any of the Services the *Provider* is providing any professional services, the *Provider* exercises the degree of skill, care and diligence reasonably to be expected from an appropriately qualified and competent professional person holding himself out as competent to perform such services.

22.3 The *Provider* obtains approval of his designs or methods from the *Commissioner*, the *Contract Manager* or Others where required by the Service Information and within the timescales stated in the Service Information.

23 Not used

24 People

24.1 The *Provider* either employs each key person named to do the job stated in Part 2 of the Contract Data or employs a replacement person.

- 24.2 Prior to engaging any person to provide the Services, the *Provider* undertakes:
- 24.2.1 security and other relevant statutory or regulatory checks relevant to the Services being provided in respect of Staff and
 - 24.2.2 training of Staff
- as specified in the Service Information.
- 24.3 The *Commissioner* may (acting reasonably), via the *Contact Manager*, having stated his reasons, instruct the *Provider* to remove an employee or other person engaged in Providing the Services. The *Provider* immediately, or within such other time period as the *Commissioner* specifies, arranges that the employee or person has no further connection with Providing the Services.
- 24.4 The *Commissioner* may, with the agreement of the *Provider*, supply employees of the *Commissioner* to work in, or manage, functions of the *Provider*. The *Commissioner* will have responsibility for the work undertaken by these employees.

25 Co-operation with the *Commissioner* and Others

- 25.1 The *Provider* co-operates with Others in obtaining and providing information which they need in connection with the Services.
- 25.2 The *Provider* co-operates with Others and provides access to the *Commissioner's* premises and facilities for them as stated in the Service Information or as instructed by the *Contract Manager* from time to time.
- 25.3 The *Commissioner*, the *Contract Manager* and the *Provider* co-operate in carrying out the actions set out in the Risk Register.
- 25.4 The *Provider* co-operates with Others appointed by the *Commissioner* to manage and carry out the Services. The *Provider* provides these Others with information about the Services and attends meetings as requested by these Others to discuss any issues that relate to the carrying out the Services.
- 25.5 As set out in the Service Information, the *Provider* liaises with the Emergency Services and provides information to them as required to enable them to perform their duties.
- 25.6 The *Provider* is responsible for liaising with, and managing all work to be carried out by, all relevant body and Others in relation to the provision of the Services.

26 Subcontracting

- 26.1 If the *Provider* subcontracts any part of the Services, he is responsible for Providing the Services as if he had not subcontracted. This contract applies as if a Subcontractor's employees and equipment were the *Provider's*.
- 26.2 The *Provider* submits the name of each Subcontractor to the *Contract Manager* before the Subcontractor commences work.
- 26.3 The conditions of contract for each subcontract are to include:

- 26.3.1 provisions embodying the principles of supply chain management set out in the *Commissioner's Policies*;
 - 26.3.2 (subject to the operation of clause 26.6) an obligation on the Subcontractor to work with the *Provider* to assist the *Commissioner* to achieve the *Commissioner's Objectives* and to seek continual improvement in the delivery of the *Services*;
 - 26.3.3 Not used;
 - 26.3.4 obligations substantially similar to those in clause 29;
 - 26.3.5 Not used;
 - 26.3.6 a term requiring (at the *Commissioner's* option) the novation of the subcontract to the *Commissioner* or an Incoming Provider following the termination of this contract;
 - 26.3.7 a term requiring the Subcontractor to assist and co-operate in responding to any requests received by the *Commissioner* in relation to FOIA or EIR;
 - 26.3.8 a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation; and
 - 26.3.9 a term requiring the *Provider* to pay the Subcontractor within a specified period not exceeding 20 Working Days from receipt by the *Provider* of a valid application for payment from the Subcontractor.
- 26.4 The *Commissioner* (via the *Contract Manager*) may (acting reasonably), having stated his reasons, instruct the *Provider* to remove a Subcontractor. The *Provider* then arranges the removal of the Subcontractor and the appointment of a replacement in accordance with this contract.
- 26.5 Not used.

27 Health and safety

- 27.1 The *Provider* acts in accordance with the health and safety requirements stated in the Service Information.
- 27.2 Not used.
- 27.3 Not used.
- 27.4 The *Provider* complies with all health and safety obligations applicable to the *Services* by virtue of any legislation from time to time in force.
- 27.5 The *Commissioner* provides to the *Provider* copies of any health and safety information in his possession relating to any works being carried out by the *Provider*.

28 Issue of Service Orders

28.1 Issue of Service Orders in relation to the Services

28.1.1 In consultation with the Commissioners, the *Contract Manager* issues Service Orders as soon as possible for the relevant Financial Year (if possible). Individual Service Orders may relate to multiple services with a view to enabling the *Provider* to plan the delivery of the majority of the services over the whole of the relevant Financial Year, rather than receiving Service Orders piecemeal throughout the Financial Year.

28.1.2 The *Contract Manager* works closely with the *Provider* and the *Commissioner* via the Operations Board to manage the issue of Service Orders pursuant to this clause 28 for the remainder of the Capital Services Budget during the course of the Financial Year with the aim of ensuring the efficient provision of the Services to best meet the Commissioner's Objectives without exceeding the Services Budget.

28.2 Form and content of Service Orders and Service Order Plans

28.2.1 All Service Orders include:

28.2.1.1 a description of the services comprised in the Service Order;

28.2.1.2 (where relevant) the elements of services that are to be completed before the end of the relevant Financial Year;

28.2.1.3 Not used.

28.2.1.4 Not used; and

28.2.1.5 (where required by the relevant Service Order) a Service Order Plan setting out the *Provider's* programme for the carrying out of the works and/or services comprised in the relevant Service Order (for the avoidance of doubt, a Service Order Plan does not show a Service Order Completion Date extending beyond the end of the relevant Financial Year unless expressly agreed by the *Commissioner*).

28.2.2 Not used.

28.2.3 No Service Order is issued after the end of the Contract Period.

28.2.4 The *Provider* submits any Service Order Plan required by a Service Order to the *Commissioner* for acceptance.

28.2.5 The *Provider* shows on any Service Order Plan which he submits for acceptance:

28.2.5.1 the service to which the Service Order Plan relates;

28.2.5.2 the order and timing of any works and/or services required to be undertaken by the *Commissioner* and/or Others as agreed with the *Commissioner*;

28.2.5.3 Provision for:

- time risk allowances;

- health and safety requirements;
- the procedures set out in this contract;
- the dates when, in order to Provide the Services in accordance with the relevant Service Order, the *Provider* will need:
 - (i) access to the Commissioner's premises;
 - (ii) acceptances;
 - (iii) any things to be provided by the *Commissioner*, and
 - (iv) information, approvals and consents from Others.

28.2.6 Unless agreed otherwise, within 4 weeks of the *Provider* submitting a Service Order Plan to him for acceptance, the *Contract Manager* either accepts the Service Order Plan or notifies the *Provider* of his reasons for not accepting it. Reasons for not accepting a Service Order Plan are that:

28.2.6.1 the *Provider's* plans which it shows are not practicable;

28.2.6.2 it does not show the information which this contract requires;

28.2.6.3 it does not represent the *Provider's* plans realistically; or

28.2.6.4 it does not comply with the information contained within the Service Order.

29 Discrimination

29.1 The *Provider* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Equality Act 2010.

29.2 Where possible in Providing the Services, the *Provider* co-operates with and assists the *Commissioner* to satisfy his duty under the Equality Act 2010 to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.

29.3 Where any employee or Subcontractor employed by the *Provider* is required to carry out any activity on the Commissioner's premises or alongside the *Commissioner's* employees in any Commissioner's Premises, the *Provider* ensures that each such employee or Subcontractor complies with the *Commissioner's* employment policies and codes of practice relating to discrimination and equal opportunities.

29.4 The *Provider* notifies the *Contract Manager* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Provider* under the Equality Act 2010 in connection with this contract and

- 29.4.1 provides any information requested by the investigating body, court or tribunal in the timescale allotted,
 - 29.4.2 attends (and permits a representative from the *Commissioner* to attend) any associated meetings,
 - 29.4.3 promptly allows access to any relevant documents and information and
 - 29.4.4 cooperates fully and promptly with the investigatory body, court or tribunal.
- 29.5 The *Provider* indemnifies the *Commissioner* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Commissioner* arising out of or in connection with any investigation or proceedings under the Equality Act 2010 resulting from any act or omission of the *Provider*.
- 29.6 The *Commissioner* indemnifies the *Provider* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Provider* arising out of or in connection with any investigation or proceedings under the Equality Act 2010 resulting from any act or omission of the *Commissioner*, or the employees of *the Commissioner* who have been supplied to the *Provider* to work in, or manage, functions of *the Provider*.

210 Not used

211 Provider's Representative

211.1 The *Provider* appoints the Provider's Representative to act on his behalf for the Contract Period. The Provider's Representative is the representative of the *Provider* in relation to the day to day operation of this contract. Any instructions or representations made or information needing to be passed by the *Commissioner* or the *Contract Manager* under this contract (other than information communicated via the Operations Board) is communicated to the Provider's Representative.

211.2 Not used.

212 Not used

213 Incidents

213.1 Where so required by the Service Information, the *Provider* obeys an oral instruction given by the Emergency Services following an Incident. The *Provider* notifies the *Contract Manager* of an instruction given by the Emergency Services following an Incident at the earliest suitable opportunity.

213.2 Following an Incident the *Provider* cooperates and provides such support as may be necessary to Others in relation to any damage and/or works which may need to be carried out to the Commissioner's premises and/or any adjacent property for which Others may from time to time be responsible for managing on behalf of the *Commissioner*.

213.3 Following an Incident, the *Contract Manager* may instruct the *Provider* to:

213.3.1 stop Providing the Services (or part of them);

213.3.2 remove Equipment and Materials from the Commissioner's premises; and

213.3.3 take such other actions as are necessary to enable the Commissioner's premises (or part of it) to be brought back into use.

213.4 If the *Contract Manager* instructs the *Provider* to stop Providing the Services (or part of them) following an Incident, the *Commissioner* may himself provide or procure from another provider such Services as are required to enable the Commissioner's premises (or part of it) to be brought back into use. The *Commissioner* bears the cost of such Services, unless the Incident was due to an act or default of the *Provider* or would not have occurred if the *Provider* had Provided the Services in accordance with this contract.

214 Not used.

215 Not used.

216 Not used.

217 Benchmarking

217.1 The *Commissioner* may benchmark all or part of the Defined Cost of Providing the Services with the equivalent cost incurred by other contractors providing similar services under similar contractual arrangements ('**Benchmarking**').

217.2 Not used

217.3 The *Provider* provides the *Contract Manager* with access to accounts and records for Benchmarking purposes and demonstrates, at the *Commissioner's* cost, value for money and that his costs are competitive in the open market.

217.4 If the Benchmarking shows that the Defined Cost of Providing the Services (or any part of them) by the *Provider* exceeds by 5% or more costs that may reasonably be expected from other contractors providing similar services under similar contractual arrangements:

217.4.1 the *Provider* provides a detailed explanation of any difference (including meeting the requirements of the law) and

217.4.2 the results are discussed by the Operations Board.

217.5 If, as a result of Benchmarking, the *Commissioner* decides that the Defined Cost of Providing the Services is more than may reasonably be expected and the *Provider* does not reduce this cost the *Contract Manager* may instruct that:

217.5.1 the Services (or any part of them) are not provided by the *Provider* in the next Financial Year; or

217.5.2 the *Provider* stops Providing the Services (or any part of them) until he provides proposals to reduce cost which are accepted by the *Contract Manager*.

218 Not used.

219 Not used.

220 Customer care and dealing with complaints

The *Provider* provides a response service to enquiries, requests and complaints from the Commissioner's staff (who are the customer) relating to the Services and deals efficiently and effectively with customer complaints at all times. The *Provider* notifies the *Commissioner* of all complaints received from the public and will allow the *Commissioner* to deal direct where the *Commissioner* considers this may be more appropriate. The *Provider* responds to, and provides notice to the *Commissioner* in time to enable the *Commissioner* to respond to (should it wish to deal directly with the complaint), all complaints within the periods specified in the Service Information, or if no period is specified, a period of 10 Working Days (or whatever other period for responding to complaints is adopted by, and communicated to, the *Provider* during the Contract Period) from the date the complaint is made.

221 Operation of ICT systems

221.1 The *Provider* uses the *Commissioner's* ICT system or systems for:

221.1.1 monitoring the progress and cost of the Services and progress;

221.1.2 maintaining up to date records; and

221.1.3 the storage of all reports and records produced in relation to the performance of the Services.

221.2 All information stored on ICT systems maintained by the *Provider* in connection with the provision of the Services is in a format that can be accessed by the *Commissioner* and is capable of being transferred to the *Commissioner* or a third party at the expiry or earlier termination of this contract. The *Provider* ensures that all necessary licences are in place in relation to software provided by the *Provider* under this contract to enable the *Commissioner* to continue to operate any ICT system or systems utilising such software without infringing any copyright or third party rights. The *Provider* ensures that the *Commissioner* has ownership of all data and information stored on ICT systems maintained by the *Provider* relating to the Services.

221.3 The *Provider* provides the *Commissioner* access to the *Provider's* ICT systems necessary for the provision of the Services and ensures the compatibility of his ICT systems with the *Commissioner's* ICT systems. The *Provider* grants, or procures the grant of, licences, at the *Commissioner's* cost, to enable the *Commissioner* to access and use the ICT systems developed, procured or otherwise provided from time to time by the *Provider* in Providing the Services.

221.4 The *Provider* complies with the Commissioner's ICT policies (as the same may be updated from time to time), including but not limited to information security policies and procedures in respect of communications, access controls and the safeguarding of any information and data relating to the Commissioner's business.

221.5 The *Provider* stores information and data which relates to the *Commissioner* and the Services only as necessary for the *Provider* to Provide the Services. Where the *Provider*:

- 221.5.1 stores any such information and data it takes responsibility for preserving the integrity of such information and data and prevents its corruption or loss; and
 - 221.5.2 backs up any such information and data on a secure system which complies with the Commissioner's ICT policies (as the same may be updated from time to time).
- 221.6 The *Provider* gives appropriate training to its employees and, where relevant, any Subcontractors, so that when they are Providing the Services they have knowledge of and are competent to use the ICT systems maintained by the *Provider* and/or the *Commissioner* (as the case may be).

222 Other Customers

- 222.1 The *Provider* shall be entitled to provide the Services (or services similar in nature to the Services) to individuals, bodies or organisations other than the *Commissioner*.

3 TIME

30 Contract Period

30.1 The *Provider* begins to provide those of the Services identified in the Service Information on the *starting date* and begins fully to Provide the Services on the *access date*. The *Provider* continues to Provide the Services until the later of:

30.1.1 the expiry of the Contract Period; and

30.1.2 the date when all the items of work commenced by the *Provider* prior to the expiry of the Contract Period have been completed.

30.2 Not used.

30.3 Not used.

30.4 Not used.

31 Extensions to the Contract Period

31.1 The Commissioner may grant an extension to the Contract Period at any time.

31.1 The Commissioner may revoke any extension to the Contract Period at any time.

32 Not used

33 Cost forecasting and monitoring

33.1 The *Provider* prepares forecasts of the total cost to the *Commissioner* of the Services for each Financial Year in consultation with the *Contract Manager* and submits them to the *Contract Manager*. Forecasts are prepared at three monthly intervals throughout each Financial Year until the expiry of the Contract Period.

33.2 The *Provider* submits to the *Contract Manager* with each forecast an explanation of the changes made since the previous forecast. The *Provider* provides details of

33.2.1 the amount of any actual or forecast overspend or underspend against any of the budget headings specified in the Annual Plan for any Financial Year,

33.2.2 a detailed explanation of why it has occurred,

33.2.3 his proposed revisions to any Service Order Plan; and

33.2.4 any consequential changes to the Service Information.

33.3 The *Commissioner* (via the *Contract Manager*) may instruct an adjustment to the Service Information.

34 Not used

35 Certificate of completion

35.1 The *Provider* certifies to the *Commissioner* when an item of work is completed in accordance with the Service Information.

36 Expiry of Contract Period

36.1 During the last 6 months of the Contract Period, the *Commissioner* (via the *Contract Manager*) may instruct the *Provider* not to Provide any part of the Services which:

36.1.1 the *Commissioner* considers will not be completed prior to the expiry of the Contract Period.

36.2 The *Provider* co-operates with the *Commissioner* and the Incoming Provider so as to ensure a smooth transfer of functions on the expiry of the Contract Period.

37 TUPE and Pensions

The Parties agree that the employment and pension provisions in Schedule 7 apply.

38 Not used.

39 Not used.

4 QUALITY MANAGEMENT, AUDIT AND REPORTING

40 Quality Management

40.1 Not used

40.2 Business Continuity Plan

40.2.1 The *Provider's* Business Continuity Plan demonstrates how he will manage unforeseen events and ensure continuation of delivery of the Services to enable the *Commissioner* to meet his duties under the Civil Contingencies Act 2004 ("CCA") insofar as this duty extends to the Services being provided by the *Provider*.

40.2.2 The *Provider* is aware of the legal requirements placed on the *Commissioner* under the CCA as a "category one responder" and the requirement to maintain plans to ensure that the *Commissioner* can continue to exercise all of his functions in the event of an emergency insofar as reasonably practicable. These requirements are specified in Schedule 8.

40.2.3 The *Provider* develops his Business Continuity Plan in compliance with the requirements of the Service Information and includes an action plan identifying the timetable for improvement actions that are necessary to ensure the *Provider's* ability to satisfy the duties of the *Commissioner* under the CCA.

40.2.4 The *Provider* co-operates with the *Commissioner* in developing the *Provider's* Business Continuity Plan.

40.2.5 The *Commissioner* provides to the *Provider* relevant Business Continuity Plans relating to its own functions to enable the *Provider* to make co-ordinated provision.

40.2.6 The *Commissioner* approves the *Provider's* Business Continuity Plan prior to it being adopted.

40.3 Not used.

40.4 Records

40.4.1 The *Provider* keeps detailed records relating to the Services (including performance levels and records relating to Subcontractors) in the format and containing the details and for the period specified in the Service Information. The *Provider* makes the records available to the *Commissioner* and his representatives (including the *Contract Manager*) on request.

40.4.2 The *Provider* acknowledges that, for the purpose of examining and certifying the *Commissioner's* accounts or any exercise of a right or power under Section 6 of the Audit Commission Act 1998, the Audit Commission, any auditor appoint by the Audit Commission or any auditor appointed by the *Commissioner* may (inter alia) examine, copy or take away documents

held or controlled by the *Provider* or any Subcontractor and may require the *Provider* or any Subcontractor to provide such oral or written information or explanations as he considers necessary. The *Provider* promptly complies with any such requirements, and as applicable procures that any Subcontractor complies with any such requirements, at his own cost.

41 Not used.

42 Not used.

5 PAYMENT

50 Payment

50.1 Open book recording of costs

The *Provider* keeps detailed records of the Defined Cost incurred in Providing the Services on an “open book” basis, i.e. on the basis that:

50.1.1 records of Defined Costs are maintained in a fully auditable manner and physical records are made available to the *Commissioner* in accordance with clause 50.2; and

50.1.2 empirical electronic records are maintained showing all actual costs to which the Commissioner has direct access at all times.

The *Commissioner* and the *Provider* agree what records need to be kept by the *Provider* in respect of the Defined Cost.

The *Provider's* records show separate allocation of all Defined Costs in relation to:

50.1.3 each of the Services; and

50.1.4 a separate record of all Defined Cost in relation to the Local Overhead Cost

50.2 Access to original vouchers and books of account

50.2.1 The *Provider* provides to the *Commissioner* or his representatives or agents, full access to and/or details of, all original vouchers and books of account necessary to demonstrate his Defined Cost if and when reasonably requested to do so by the *Commissioner*.

50.2.2 The *Provider* grants to the *Commissioner* and his internal audit team authority to enter any premises or land used by the *Provider* at any time and to have access to all correspondence, documents, books, property or other records relating to the *Commissioner's* business. The *Provider* further agrees that the *Commissioner* is entitled to receive such explanation as he considers necessary to establish the correctness of any matter under examination.

50.3 Regular breakdowns of the Cost of Services Provided to Date

50.3.1 No later than 2 Working Days before each Assessment Date, the *Provider* provides the *Commissioner* with:

50.3.1.1 a statement of the Cost of Services Provided to Date in respect of each continuing Service Order together with a breakdown showing how it is made up and showing separately expenditure in respect of all Services;

50.3.1.2 Not used;

50.3.1.3 Not used;

50.3.1.4 the forecast of the total cost of the Services for the relevant Financial Year in accordance with clause 33.

50.3.2 The *Commissioner* and the *Provider* agree what form the breakdown takes. The *Commissioner* reviews the form of the breakdown during the Contract Period and discusses any proposed changes to the form of breakdown with the *Provider*. The *Provider* complies with all reasonable requests to change the form of breakdown.

50.3.3 The reports and other information to be provided in accordance with clause 50.3.1 are delivered electronically in the format set out in the Service Information (or in such other format as agreed from time to time by the Parties).

50.4 Assessing the amount due

50.4.1 The *Contract Manager* assesses the amount due at each Assessment Date.

50.4.2 The amount due is:

- the Cost of Services Provided to Date;
- plus other amounts to be paid to the *Provider* (including any Value Added Tax payable in accordance with clause 50.21);
- less amounts to be paid by or retained from the *Provider*;
- less any Disallowed Cost.

50.4.3 In assessing the amount due, the *Contract Manager* considers any application for payment the *Provider* has submitted on or before the Assessment Date. The *Contract Manager* gives the *Provider* details of how the amount due has been assessed.

50.4.4 The *Contract Manager* corrects any wrongly assessed amount due in a later payment certificate.

50.5 Not used.

50.6 Certification of payment

50.6.1 The *Contract Manager* certifies payment within 10 Working Days of each Assessment Date. The certificate specifies the payment (if any) the *Commissioner* considers to be due at the Assessment Date and the basis on which it was calculated.

50.6.2 The amount due is calculated in accordance with clause 50.4. The first payment is the amount due less the sum of the advance Payments made

at the first Assessment Date. Other payments are the change in the amount due since the last payment certificate less the sum of the Advance Payments made since the prior Assessment Date. A payment is made by the *Provider* to the *Commissioner* if the change reduces the amount due. Other payments are made by the *Commissioner* to the *Provider*.

50.6.3 The amount due is payable within 20 Working Days after the relevant Assessment Date (the “**due date**”).

50.6.4 The *Provider* provides a valid Value Added Tax invoice in respect of all amounts due from the *Commissioner* in accordance with clause 50.21. The *Commissioner* is not bound to make final payment of any amounts due until receipt of such an invoice.

50.7 Payment notices

50.7.1 Not used.

50.7.2 If the *Contract Manager* fails to issue a payment notice no later than 10 Working Days after the due date, the *Provider's* payment breakdown in accordance with clause 50.3 is treated as the payment notice (provided that it sets out the sum the *Provider* considers to be due and basis on which that sum is calculated). If the payment application does not contain the sum which the *Provider* considers to be due at the Assessment Date and the basis on which that sum was calculated, the *Provider* may, at any time thereafter give the *Commissioner* (with a copy to the *Contract Manager*), a payment notice in respect of the sum the *Provider* considers to be due at the Assessment Date, and the basis for calculation of that sum.

50.7.3 Where pursuant to clause 50.7.2 the *Provider* gives a payment notice, the final date for payment of the sum specified in the notice is for all purposes regarded as being postponed by the same number of days as the number of days after the relevant due date referred to in clause 50.6 that the notice was given.

50.8 Pay Less Notice

If a payment is due from the *Commissioner* to the *Provider*, the *Commissioner* may pay to the *Provider* less than the sum stated in the relevant payment notice under clause 50.7 provided that the *Commissioner* has given notice to the *Provider* of his intention to pay a lesser sum (the “**Pay Less Notice**”) complying with the following requirements:

50.8.1 the notice is given not less than 3 Working Days before the final date for payment; and

50.8.2 it specifies the sum that the *Commissioner* considers to be due on the date the notice is served under this clause 50.8 and the basis on which that sum is calculated.

50.9 Final date for payment

The final date for payment of any sum specified in a payment notice in accordance with clause 50.7 or a Pay Less Notice in accordance with clause 50.8 is 10 Working Days after the later of:

50.9.1 the due date; or

50.9.2 the receipt by the *Commissioner* of a valid VAT invoice in accordance with clause 50.21.

50.10 Costs included in the Fee

All the *Provider's* costs which are not included in the Defined Cost are treated as included in the Fee. The *Provider* demonstrates that value for money is being achieved in relation to his Defined Cost from time to time and as requested by the *Commissioner*, it being recognised that competitive tendering, of itself, will not necessarily be a demonstration of achieving the best value for money.

50.11 Not used.

50.12 Not used.

50.13 Not used.

50.14 Not used.

50.15 Not used.

50.16 Not used.

50.17 Not used.

50.18 Not used.

50.19 Not used.

50.20 Not used.

50.21 Value Added Tax

50.21.1 Unless otherwise stated, all sums payable under this contract are exclusive of Value Added Tax.

50.21.2 The *Provider* presents a valid VAT invoice to the *Commissioner* together with any other information reasonably requested by the *Commissioner* in relation to the amount of VAT claimed.

50.21.3 A VAT invoice will not be valid for the purposes of charging VAT if more than 48 months have elapsed since the time of assessment of the amount due to the *Provider* either in accordance with clause 50.4 or in accordance with the Dispute Resolution Provisions.

50.21.4 The *Commissioner* is not liable for any penalties or interest arising from any failure by the *Provider* to account to HM Revenue and Customs at the correct time for any VAT due under this clause 50.21.

50.22 Not used.

50.23 Not used.

50.24 Costs and Expenses

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

50.25 Payment in advance

50.25.1 On the first working day of each month the *Commissioner* will make an "Advance Payment" a sum equal to one twelfth of the Services Budget..

50.26

6 COMPENSATION EVENTS

60 Compensation events

60.1 The following are compensation events:

60.1.1 the *Commissioner* (via the *Contract Manager*) gives an instruction changing the Service Information during the course of any Financial Year except:

60.1.1.1 a change made in order to accept a Defective Service; or

60.1.1.2 a change to the Service Information which is requested by the *Provider* and which is required as a result of the *Provider's* approach to Providing the Services;

for the avoidance of doubt, the events listed in clauses 60.1.1.1 or 60.1.1.2 shall not be treated as compensation events;

60.1.2 the *Commissioner* (via the *Contract Manager*) instructs or agrees a change to the Service Information unless such change is stated elsewhere in this contract not to be a compensation event;

60.1.3 the *Commissioner* does not allow access to and use of a part of the *Commissioner's* premises or equipment as the *Provider* reasonably requires to Provide the Services;

60.1.4 the *Commissioner* (via the *Contract Manager*) instructs or agrees a change to the information contained in, or the works/services to be provided under, a Service Order unless such change is stated elsewhere in this contract or in the relevant Service Order as not being a compensation event;

60.1.5 the *Commissioner* does not provide something which the Service Information states that he is to provide within 4 weeks of a request from the *Provider* to do so (or such longer period either as may be stated as the response period in the Service Information or is agreed by the Parties as being reasonable in the context of the thing being requested);

60.1.6 the *Contract Manager* gives an instruction to stop or not to start any element of the Services (except any instruction issued to prevent a breach of this contract);

60.1.7 the *Commissioner* or Others do not work in accordance with or within the conditions stated in the Service Information;

60.1.8 a change to the *Commissioner's* premises during the course of any Financial Year other than a change as a result of Providing the Services;

60.1.9 the *Contract Manager* changes a decision (other than a decision referred to in clause 60.1.1(b)) which he has previously communicated to the *Provider*;

60.1.10 an event which is a *Commissioner's* risk stated in this contract;

60.1.11 Not used.

- 60.1.12 a change in law occurring during any Financial Year which has an effect on the carrying out of the Services, unless the change and its effects could reasonably have been anticipated by the *Provider* prior to the start of the relevant Financial Year (and for the purposes of this clause 60.1.12, a change in law will be treated as being so capable of anticipation by the *Provider* if such change in law has been published at the start of the relevant Financial Year);
- 60.1.13 in relation to a Service Order, the occurrence of an event which is stated to be a compensation event in relation to that Service Order;
- 60.1.14 the *Contract Manager* does not reply to a communication where required by this contract within the *period for reply* or, where relevant, other period required by this contract; or
- 60.1.15 a breach of contract or act or prevention by the *Commissioner* which is not one of the other compensation events in this contract.
- 60.2 The *Commissioner* does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for purpose of any information he has disclosed to the *Provider* prior to entry into this contract and/or set out or referred to in the Service Information and the *Provider* is deemed to have satisfied himself before entering into the delivery of the Services:
- 60.2.1 Not used;
- 60.2.2 as to the scope and nature of the Services and his obligations under this contract;
- 60.2.3 as to the basis of payment for the Services; and
- 60.2.4 that he has all the information and resources necessary to enable him to Provide the Services in accordance with this contract.
- 60.3 Subject to clause 60.1.3, neither the *Commissioner* nor any of his agents or employees shall be liable to the *Provider* in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:
- 60.3.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the information the *Commissioner* has disclosed to the *Provider* prior to entry into this contract and/or set out or referred to in the Service Information; or
- 60.3.2 any failure to make available to the *Provider* prior to entry into this contract any materials, documents, drawings, plans or other information relating to the Services.
- 60.4 Nothing in clauses 60.2 and 60.3 shall exclude any liability which the *Commissioner* or any of his agents or employees would otherwise have to the *Provider* in respect of any statements made fraudulently prior to the date of this contract.
- 60.5 The provisions of clauses 60.2 and 60.3 are without prejudice to the *Provider's* express rights and remedies under or pursuant to this contract.

61 Notifying compensation events

61.1 For compensation events which arise from the *Commissioner* (via the *Contract Manager*) giving an instruction or changing an earlier decision, the *Contract Manager* notifies the *Provider* of the compensation event at the time of giving the instruction or changing the earlier decision. He also instructs the *Provider* to submit quotations, unless the event arises from a fault of the *Provider* or quotations have already been submitted. The *Provider* puts the instruction or changed decision into effect in accordance with the timescale agreed with the *Contract Manager*.

61.2 The *Contract Manager* may instruct the *Provider* to submit quotations for a proposed instruction or a proposed changed decision. The *Provider* does not put a proposed instruction or a proposed changed decision into effect, unless and until the *Contract Manager* instructs him to do so.

61.3 The *Provider* notifies the *Contract Manager* of an event which has happened or which he expects to happen as a compensation event if:

61.3.1 the *Provider* believes that the event is a compensation event; and

61.3.2 the *Contract Manager* has not notified the event to the *Provider*.

If the *Provider* does not notify a compensation event within 12 weeks of becoming aware of the event, he is not entitled to any change to the relevant target cost unless the *Contract Manager* should have notified the event to the *Provider* but did not.

61.4 The *Provider* is not entitled to any additional Defined Cost or to any change to any Service Order Completion Date(s) if the *Contract Manager* decides that an event notified by the *Provider*:

61.4.1 arises from a fault of the *Provider*;

61.4.2 has not happened and is not expected to happen;

61.4.3 was something of which the *Provider* was or ought reasonably to have been aware at the time when the Defined Cost for the work affected by the compensation event were assessed;

61.4.4 has no effect upon the Defined Cost or any Service Order Completion Date(s); or

61.4.5 is not one of the compensation events stated in this contract;

and in any such case, the *Contract Manager* notifies the *Provider* of his decision that the Defined Cost and/or any Service Order Completion Date(s) are not to be changed. If the *Contract Manager* decides otherwise, he notifies the *Provider* accordingly and instructs him to submit quotations.

61.5 If the *Contract Manager* does not notify his decision to the *Provider* within either:

61.5.1 one week of the *Provider's* notification; or

61.5.2 a longer period to which the *Provider* has agreed,

the *Provider* may notify the *Contract Manager* to this effect. A failure by the *Contract Manager* to reply within 4 weeks of the *Provider's* notification is treated as acceptance by the *Contract Manager* that the event is a compensation event and an instruction to submit quotations.

- 61.6 If the *Contract Manager* decides that the *Provider* did not give an early warning of the event which an experienced provider acting in accordance with Good Industry Practice could have given, he notifies this decision to the *Provider* when he instructs him to submit quotations.
- 61.7 If the *Contract Manager* decides that the effects of a compensation event are too uncertain to be forecast reasonably, he states assumptions about the event in his instruction to the *Provider* to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the *Contract Manager* notifies a correction.
- 61.8 A compensation event is not notified after the end of the Contract Period.

62 Quotations for compensation events

- 62.1 After discussing with the *Provider* different ways of dealing with the compensation event which are practicable, the *Contract Manager* may instruct the *Provider* to submit alternative quotations. The *Provider* submits the required quotations to the *Contract Manager* and may submit quotations for other methods of dealing with the compensation event which he considers practicable.
- 62.2 Quotations for compensation events comprise:
 - 62.2.1 estimated increases or decreases in the Defined Cost plus resulting Fee; and
 - 62.2.2 any changes to any Service Order Completion Date(s); and
 - 62.2.3 any consequential changes to the Cost of Services and to the Annual Plan and Service Information;assessed by the *Provider*. The *Provider* submits details of his assessment with each quotation.
- 62.3 The *Provider* submits quotations within 3 weeks of being instructed to do so by the *Contract Manager*.
- 62.4 The *Contract Manager* replies within 3 weeks of a complete submission. His reply is:
 - 62.4.1 an instruction to submit a revised quotation;
 - 62.4.2 an acceptance of a quotation;
 - 62.4.3 a notification that a proposed instruction will not be given or a proposed changed decision will not be made; or
 - 62.4.4 a notification that he will be making his own assessment.

- 62.5 The *Contract Manager* instructs the *Provider* to submit a revised quotation only after explaining his reasons for doing so to the *Provider*. The *Provider* submits the revised quotation within 3 weeks of being instructed to do so.
- 62.6 The *Contract Manager* extends the time allowed for:
- 62.6.1 the *Provider* to submit quotations for a compensation event; and
 - 62.6.2 the *Contract Manager* to reply to a quotation,
- if the *Contract Manager* and the *Provider* agree to the extension before the submission or reply is due. The *Contract Manager* notifies the extension that has been agreed to the *Provider*.
- 62.7 If the *Contract Manager* does not reply to a quotation within the time allowed the *Provider* may notify the *Contract Manager* to this effect. If the *Provider* has submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes to be accepted. If the *Contract Manager* does not reply to the notification within 3 weeks, and unless the quotation is for a proposed instruction or a proposed changed decision the *Provider's* notification is treated as acceptance of the quotation by the *Contract Manager*.
- 62.8 If, due to a compensation event, a planned Service Order Completion Date is delayed, the delay is stated in the *Provider's* quotation for the compensation event and an amended Service Order Plan is submitted with details of the assessment of the delay. Assessments of delay include time risk allowances and are based on the assumption that the relevant Service Order Plan can be changed and that delays were or will be reasonably incurred. The *Contract Manager* may assess the delay and/or revisions if, when the *Provider* submits quotations for a compensation event, the *Provider* has not submitted an amended Service Order Plan as required by this contract.

63 Assessing compensation events

- 63.1 The financial consequences of a compensation event are assessed as the effect of the compensation event upon:
- 63.1.1 the actual Defined Cost of the work already done;
 - 63.1.2 the forecast Defined Cost of the work not yet done; and
 - 63.1.3 the cost of initiating or terminating work, including (but not limited to) the cost of any necessary recruitment, redundancy and termination of subcontracts; and
 - 63.1.4 the resulting Fee,
- The date when the *Contract Manager* instructed, or should have instructed, the *Provider* to submit quotations divides the work already done from the work not yet done.
- 63.2 Not used.
- 63.3 Effects on the Defined Cost are assessed separately for:

63.3.1 people who are employed by the *Provider*;

63.3.2 Equipment;

63.3.3 Other costs.

The *Provider* shows how each of these effects is built up in each quotation for a compensation event.

63.4 If the *Contract Manager* has notified the *Provider* of his decision that the *Provider* did not give an early warning of a compensation event which an experienced contractor could have given, the event is assessed as if the *Provider* had given early warning.

63.5 Assessment of the effect of a compensation event includes risk allowances for cost for matters which have a significant chance of occurring and are at the *Provider's* risk under this contract and set out any expected impact on the provision of the Services.

63.6 Assessments are based upon the assumptions that:

63.6.1 the *Provider* reacts competently and promptly to the compensation event;

63.6.2 any additional Defined Cost due to the event is reasonably incurred;

63.6.3 any relevant Service Order Plan can be changed; and

63.6.4 the *Provider* takes all reasonably practicable steps to minimise the increase or maximise the reduction (as the case may be) in Defined Cost.

63.7 A compensation event which is an instruction to change the Service Information in order to resolve an ambiguity or inconsistency is assessed in a manner which is most favourable to the achievement of the Commissioner's Objectives.

64 The *Contract Manager's* assessment

64.1 The *Contract Manager* assesses a compensation event:

64.1.1 if the *Provider* has not submitted a required quotation and details of his assessment within the time allowed;

64.1.2 if the *Contract Manager* decides that the *Provider* has not assessed the compensation event correctly in a quotation and he does not instruct the *Provider* to submit a revised quotation; or

64.1.3 if, when the *Provider* submits quotations for a compensation event, the *Contract Manager* has not accepted the *Provider's* latest relevant Service Order Plan for one of the reasons stated in this contract.

64.2 The *Contract Manager* notifies the *Provider* of his assessment of a compensation event and gives the *Provider* details of it within the period allowed for the *Provider's* submission of his quotation for the same event. This period starts when the need for the *Contract Manager's* assessment becomes apparent.

64.3 If the *Contract Manager* does not assess a compensation event within the time allowed, the *Provider* may notify the *Contract Manager* to this effect. If the *Provider* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Contract Manager* does not reply within 2 weeks (or other period as agreed between the Parties) of this notification, the notification is treated as acceptance of the *Provider's* quotation by the *Contract Manager*.

65 Implementing compensation events

- 65.1 A compensation event is implemented when:
- 65.1.1 the *Contract Manager* notifies his acceptance of the *Provider's* quotation;
 - 65.1.2 the *Contract Manager* notifies the *Provider* of his own assessment; or
 - 65.1.3 a *Provider's* quotation is treated as having been accepted by the *Contract Manager*.
- 65.2 The assessment of a compensation event is not revised if a forecast upon which it is based is shown by later recorded information to have been wrong.

7 TITLE

70 Commissioner's title to Materials

- 70.1 Whatever title the *Provider* has to Materials which are outside the Commissioner's premises passes to the *Commissioner* if the *Provider* has marked them as for this contract.
- 70.2 Whatever title the *Provider* has to Materials passes to the *Commissioner* if they have been brought within the Commissioner's premises. The title to Materials passes back to the *Provider* if they are removed from the Commissioner's premises with the *Contract Manager's* permission.
- 70.3 If the Service Information states that, at the access date, the *Commissioner* makes available materials (excluding Commissioner's Stocks) for the *Provider* to Provide the Services, the *Provider* supplies the same quantity and quality of materials to the *Commissioner* at the end of the Contract Period.

71 Use of Commissioner's Premises

- 71.1 The *Contract Manager*, after notifying the *Provider*, may change the *Provider's* permitted use of the Commissioner's Premises from that stated in the *premises document* provided that use of alternative premises is made available to enable the *Provider* to provide the Services.
- 71.2 The *Provider* occupies and maintains the Commissioner's Premises on the terms set out in Schedule 9.
- 71.3 Not used.

72 Removing Equipment

The *Provider* removes Equipment and Materials from the Commissioner's Premises when they are no longer needed unless the *Contract Manager* allows them to be left in or on the Commissioner's premises.

73 Not used.

74 Objects and materials within the Commissioner's premises

- 74.1 The *Provider* has no title to an object of value or of historical or other interest found on, in or under the Commissioner's premises. The *Provider* notifies the *Contract Manager* when such an object is found and the *Contract Manager* instructs the *Provider* how to deal with it. The *Provider* does not move the object without instructions.

75 Intellectual Property Rights

- 75.1 All Intellectual Property Rights in Documents existing at the Contract Date remain the property of the *Provider* or the *Commissioner* as the case may be.
- 75.2 All Intellectual Property Rights in Documents created by or on behalf of the *Commissioner* in connection with the Services are the property of the *Commissioner*.

- 75.3 The *Provider* assigns to the *Commissioner* a perpetual, non-exclusive licence in all present and future Intellectual Property Rights in all Documents created by the *Provider* or any Subcontractor in Providing the Services. The *Provider* obtains all documents from third parties necessary to ensure that the *Commissioner* is entitled to use the Intellectual Property Rights in the Documents.
- 75.4 The *Provider* makes available to the *Commissioner* all Documents created by the *Provider* or any Subcontractor in Providing the Services for use by the *Commissioner* to carry out any statutory duty or perform any function in relation to the Services during or after the expiry of the Contract Period. The *Provider* makes available the Documents in the format specified in the Service Information.
- 75.5 The *Provider* has the right to use Documents provided by the *Commissioner* only to Provide the Services. The *Provider* may make this right available to Subcontractors. On completion of the Services the *Provider* returns all the Documents to the *Commissioner*.
- 75.6 Where any Documents created by the *Provider* or any Subcontractor are held on computer or in other machine readable format, the *Provider* provides a licence for and supplies any software, at the *Commissioner's* cost, necessary to enable the *Commissioner* and his representatives to access and use the Documents for the purpose of performing any statutory duty or carrying out any function in relation to the Services during or after the expiry of the Contract Period.
- 75.7 The *Commissioner* and the *Provider* do anything necessary to confirm the terms of any assignment of Intellectual Property Rights or licence to use the Documents.

76 Not used.

8 RISKS AND INSURANCE

80 Commissioner's risks

80.1 The following are *Commissioner's* risks:

80.1.1 Claims, proceedings, compensation and costs payable to Others which are due to:

80.1.1.1 an unavoidable result of Providing the Services;

80.1.1.2 defects in the design or work of persons employed by or contracted to the *Commissioner* (except the *Provider*);

80.1.1.3 defects in the design, or work, that are attributable to persons deployed as clause 24.4;

80.1.1.4 negligence, default, breach of statutory duty or interference with any legal right by the *Commissioner* or by any person employed by or contracted to him (except the *Provider*);

80.1.1.5 an Incident occurring during the Contract Period, unless the Incident (or any claims, proceedings, compensation or costs incurred by the *Commissioner* as a result of the Incident) is due to any act or default of the *Provider* or would not have occurred if the *Provider* had Provided the Services in accordance with this contract; or

80.1.1.6 loss of or wear or damage to, any part of the Services by any cause except loss, wear or damage which is due to any act, omission, default or breach of this contract on the part of the *Provider*.

80.1.2 Loss of, or damage to, any part of the Commissioner's premises, due to:

80.1.2.1 war, civil war, rebellion, revolution, insurrection, military or usurped power;

80.1.2.2 strikes, riots and civil commotion not confined to the *Provider*, the Subcontractors and Associated Companies' employees; or

80.1.2.3 radioactive contamination; or

80.1.2.4 failure of the electricity supply, network connection, fire or flood.

80.1.3 Loss of or wear or damage to any part of the Commissioner's premises by any other cause, except loss, wear or damage:

80.1.3.1 which is due to any act, omission, default or breach of this contract on the part of the *Provider*.

Claims, proceedings, compensation and costs resulting from equal pay claims against the *Provider*.

80.1.4 Additional *Commissioner's* risks are stated in the Service Orders.

81 The Provider's risks

From the *access date* until the end of the Contract Period or until all the Services have been completed (whichever is the later) or until termination if earlier, the risks which are not carried by the *Commissioner* are carried by the *Provider*.

82 Indemnity

82.1 Unless otherwise stated in this contract, each Party indemnifies the other against claims, proceedings, compensation and costs due to an event which is at his risk.

82.2 The liability of each Party to indemnify the other is reduced if events at the other Party's risk contributed to the claims, proceedings, compensation and costs. The reduction is in proportion to the extent that events which were at the other Party's risk contributed, taking into account each Party's responsibilities under this contract.

83 Not used.

84 Insurance cover

84.1 The *Provider* provides the insurances stated in the Insurance Table except any insurance which the *Commissioner* is to provide as stated in any Service Order. The *Provider* provides additional insurances as stated in any Service Order.

84.2 The insurances are in the name of the *Provider* but notify the interests of the *Commissioner* on the relevant policy and provide cover for events which are at the *Provider's* risk from the Contract Date until the end of the Contract Period or a termination certificate has been issued.

INSURANCE TABLE

Insurance against	Minimum amount of cover or minimum limit of indemnity
Loss , or damage caused by the <i>Provider</i>	Unlimited
Loss of or damage to Equipment	The replacement cost of any Equipment
The Provider's liability for loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the <i>Provider</i>) arising from or in connection with the <i>Provider</i> Providing the Services	Unlimited
Liability for death or of bodily injury to employees of the <i>Provider</i> arising out of	Unlimited

and in the course of their employment in connection with this contract	
Professional indemnity insurance in respect of the liability of the <i>Provider</i>	£5 million 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.

85 Insurance policies

- 85.1 Before the *access date* and on each renewal of the insurance policy, the *Provider* submits to the *Contract Manager* written confirmation or a broker's letter which states that the insurance required by this contract is in force.
- 85.2 The *Provider* complies with the terms and conditions of the insurance policies.
- 85.3 Any amount not recovered from an insurer is borne by the *Commissioner* for events which are at his risk and by the *Provider* for events which are at his risk.

86 If the *Provider* does not insure

The *Commissioner* may insure a risk which this contract requires the *Provider* to insure if the *Provider* does not submit the written confirmation or broker's letter required by clause 85 above. The cost of the insurance to the *Commissioner* is paid by the *Provider*.

87 Claims against third parties

- 87.1 Where so required by the Service Information, the *Provider* in accordance with this contract
- 87.1.1 repairs defects in the Services caused by a fault in the work of Others; and
 - 87.1.2 repairs and replaces loss or damage caused by the act or default of Others.
- 87.2 Where the rectification, repair or replacement falls within the Services, the *Provider* may pursue a claim against any third party to recover the costs involved in the name of the *Commissioner*. The *Provider* bears and indemnifies the *Commissioner* against any costs and liabilities incurred in pursuing the claim. Any sums recovered by the *Provider* as a result of the claim and received by the *Commissioner* (other than sums recovered in respect of the repair or replacement of Commissioner's Stocks, which belong to the *Commissioner*) are held on trust for the *Provider* and are paid by the *Commissioner* to the *Provider* on demand. Alternatively the *Provider* may agree with the third party that the third party will carry out the necessary works at no cost to the *Commissioner*.
- 87.3 Where the repair or replacement does not fall within the Services, the *Commissioner* may request the *Provider* to pursue a claim against any third party to recover the costs involved on behalf of the *Commissioner*. The *Provider* conducts the claim in accordance with the Service Information. The *Commissioner* reimburses the *Provider* in accordance with this contract for any costs incurred by him in pursuing the claim.

Any sums recovered by the *Provider* as a result of the claim belong solely to the *Commissioner*.

9 DISPUTES AND TERMINATION

90 Dispute resolution

- 90.1 Each Party endeavours to notify the other Party of any anticipated disputes so that any potential dispute can be avoided by negotiation between them.
- 90.2 Parties will endeavour to resolve any failures to agree matters or any disputes by direct negotiations between senior representatives of each Party.
- 90.3 The Parties comply with the *dispute resolution hierarchy* set out in the Contract Data in order to resolve any difference or dispute.

91 Not used.

92 Not used.

93 Not used.

94 Termination

- 94.1 If either Party wishes to terminate the *Provider's* obligation to Provide the Services, he notifies the *Contract Manager* and the other Party giving details of his reason for terminating. The *Contract Manager* issues a termination notice to both Parties promptly if the reason complies with this contract.
- 94.2 The procedures for termination are implemented immediately after receipt of a termination notice.
- 94.3 Within thirteen weeks of receipt of the termination notice, the *Provider* submits his final invoice which is the *Provider's* assessment of the amount due on termination. Payment is made within 30 days of the *Provider's* invoice.
- 94.4 After a termination notice has been received, the *Provider* stops Providing the Services.

95 Reasons for termination

- 95.1 Either Party may terminate if the other Party has done one of the following or its equivalent:
 - 95.1.1 had a winding-up order made against it;
 - 95.1.2 had a provisional liquidator appointed to it;
 - 95.1.3 passed a resolution for winding-up (other than in order to amalgamate or reconstruct);
 - 95.1.4 had an administration order made against it;
 - 95.1.5 had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of his undertaking or assets; or
 - 95.1.6 made an arrangement with his creditors.

- 95.2 The *Commissioner* may terminate if the *Contract Manager* has notified him that the *Provider* has defaulted in one of the following ways and not put the default right within four weeks of the notification:
- 95.2.1 substantially failed to comply with his obligations;
 - 95.2.2 wholly or substantially abandoned or stopped Providing the Services without reasonable cause; or
 - 95.2.3 persistently or materially failed to meet any of the performance requirements for the Services set out in the Service Information.
- 95.3 The *Commissioner* may terminate if the *Contract Manager* has notified him that the *Provider* has defaulted in one of the following ways and not stopped defaulting within four weeks of the notification:
- 95.3.1 substantially hindered the *Commissioner* or Others; or
 - 95.3.2 substantially broken a health and safety, equality or other regulation.
- 95.4 The *Commissioner* may terminate if the *Provider* fails to comply with clause 10.4 or clause 29.1.
- 95.5 The *Provider* may terminate by notifying the *Contract Manager* if the *Commissioner* has not paid an amount due to the *Provider* within eight weeks of the issue of a notice by the *Provider* to the *Contract Manager* that payment is overdue.
- 95.6 Either Party may terminate if the Parties have been released under the law from further performance of the whole of this contract.
- 95.7 If the *Contract Manager* has instructed the *Provider* to suspend the whole or substantially the whole of the Services and an instruction to restart the Services has not been given within 3 months:
- 95.7.1 the *Commissioner* may terminate if the instruction was due to a default by the *Provider*;
 - 95.7.2 the *Provider* may terminate if the instruction was due to a default by the *Commissioner*; and
 - 95.7.3 either Party may terminate if the instruction was due to any other reason.
- 95.8 Either Party may terminate this contract on notice (without any of the above reasons applying) by serving on the other not less than 6 months' notice in writing.

96 Procedures on termination

- 96.1 On termination:
- 96.1.1 the *Commissioner* may Provide the Services and may use any Materials to which he has title; and
 - 96.1.2 the *Provider* gives to the *Commissioner* copies of all Documents in his possession which relate to the Services.

- 96.2 The *Contract Manager* may instruct the *Provider* to leave the Commissioner's premises, remove any Equipment and Materials from the Commissioner's premises and assign the benefit of any subcontract or other contract related to performance of this contract to the *Commissioner* or another person specified by the *Commissioner*. The *Provider* complies with any such instruction.
- 96.3 The *Commissioner* may use any Equipment to which the *Provider* has title to Provide the Services. The *Provider* promptly removes the Equipment from the Commissioner's premises when the *Contract Manager* notifies him that the *Commissioner* no longer requires him to Provide the Services.
- 96.4 If the *Contract Manager* so instructs, the *Provider*:
- 96.4.1 completes the performance of any Services started prior to the date of termination; and
 - 96.4.2 co-operates with the *Commissioner* and with any Incoming Provider so as to ensure a smooth transfer of functions.

97 Payment on termination

- 97.1 The amount due on termination includes:
- 97.1.1 an amount due assessed as for normal payments (subject to clause 97.2);
 - 97.1.2 the cost of applicable redundancies (including pension costs) or the proportion of such costs that relate to Providing the Services;
 - 97.1.3 applicable third party contract termination payments or the proportion of such costs that relate to Providing the Services;
 - 97.1.4 the Defined Cost for Materials:
 - 97.1.2.1 within the Commissioner's premises; or
 - 97.1.2.2 to which the *Commissioner* has title and of which the *Provider* has to accept delivery;
 - 97.1.2.3 the Defined Cost of removing Equipment from the Commissioner's premises if applicable; and
 - 97.1.2.4 other Defined Cost reasonably incurred in expectation of completing the Services.
- 97.2 Not used.
- 97.3 Not used.

10 SPECIAL CONDITIONS

100 Special Requirements

100.1 The *Provider* complies with all special requirements of any Statutory Body listed in the Service Information.

101 Personal Data

101.1 For the purposes of this contract and the Data Protection Legislation:

101.1.1 the *Commissioner* is the Data Controller; and

101.1.2 the *Provider* is the Data Processor.

101.2 The *Provider* processes the Personal Data in accordance with (and so as not to put the *Commissioner* in breach of) the Data Protection Legislation and only to the extent necessary for the purpose of performing his obligations under this contract and in accord with the data processing schedule (which is as Schedule 6 to this agreement).

101.3 The *Provider* has in place for so long as he holds the Personal Data:

101.3.1 appropriate technical and organisational measures (having regard to the nature of the Personal Data) to protect the Personal Data against accidental, unauthorised or unlawful processing, destruction, loss, damage, alteration or disclosure; and

101.3.2 adequate security programmes and procedures to ensure that unauthorised persons do not have access to the Personal Data or to any equipment used to process the Personal Data.

101.4 The *Provider* immediately notifies the *Contract Manager* and the *Commissioner's* information governance team if he receives

101.4.1 a request from any person whose Personal Data he holds to access his Personal Data; or

101.4.2 a complaint or request relating to the *Commissioner's* obligations under the Data Protection Legislation.

101.5 The *Provider* assists and co-operates with the *Commissioner* in relation to any complaint or request received, including:

101.5.1 providing full details of the complaint or request;

101.5.2 complying with the request within the time limits set out in the Data Protection Legislation and in accordance with the instructions of the *Contract Manager* or the *Commissioner's* data protection officer; and

101.5.3 promptly providing the *Contract Manager* with any Personal Data and other information requested by him.

101.6 The *Provider* does not process the Personal Data outside the European Economic Area without the agreement of the *Contract Manager*. Where the *Contract Manager* agrees, the *Provider* complies with the instructions of the *Contract Manager* and

provides an adequate level of protection to any Personal Data in accordance with Data Protection Legislation.

101.7 The *Provider* complies with the requirements of the *Commissioner* in relation to the storage, dispatch and disposal of the Personal Data in any form or medium.

101.8 The *Provider* immediately notifies the *Contract Manager* on becoming aware of any breach or potential breach of this clause 104 or of Data Protection Legislation.

102 Assignment

102.1 The *Commissioner* may only assign this contract to another entity carrying on the functions of the *Commissioner*.

102.2 The *Provider* may not assign this contract.

103 Freedom of Information

103.1 The Parties acknowledge that the requirement of Freedom of Information Act 2000 ("**FOIA**") and the Environmental Information Regulations 2004 ("**EIR**") may apply to this contract. The Parties undertake to facilitate compliance with the information disclosure requirements pursuant to the same in the manner provided for in this clause 107 to the extent that such obligations relate to information held by a Party on behalf of another party in connection with this contract.

103.2 Where a Request for Information has been received by the *Commissioner* he will consider in his absolute discretion:

103.2.1 the availability of exemptions under the FOIA, the EIR or any other applicable legislation; and

103.2.2 where an exemption being considered requires it, whether or not the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing information relating to this contract (together, an "**Exemption**");

103.2.3 before responding to such a request (which, where the legislation provides, includes confirming or denying that the information is held by the *Commissioner* or on the *Commissioner's* behalf) and/or disclosing information about, or relating to, this contract, notify the *Provider* of this request and stipulate the time period during which the *Provider* needs to respond in order to make representations to the *Commissioner* (and such time period will not exceed 5 Working Days from the date of the request) considering whether an Exemption applies (including where necessary why the public interest in maintaining the exemption is not outweighed by the public interest in disclosure);

103.2.4 in determining whether an Exemption applies and/or whether to confirm or deny and/or disclose any information pursuant to this clause 107.2, the *Commissioner* takes into account any reasonable representations made to him by the *Provider*.

103.3 The *Provider* acknowledges that, acting in accordance with the Code of Practice and the Secretary of State for Constitutional Affairs' Code of Practice on the Discharge of Public Authorities Functions under Part 1 of the FOIA, the *Commissioner* may be

obliged, or in his discretion decide, under the FOIA or the EIR to disclose information concerning this contract:

103.3.1 without consulting with the *Provider*, or

103.3.2 following consultation with the *Provider* and having taken his views into account.

103.4 A disclosure made in accordance with the FOIA or the EIR is not in breach of any confidentiality agreements between the parties.

104 No guarantee of minimum levels of services

The *Commissioner* makes no representations regarding the level of Services he will require from the *Provider* in any Financial Year.

105 Corrupt gifts

105.1 The *Commissioner* may terminate this contract forthwith and recover from the *Provider* the amount of any loss resulting from such termination if the *Provider* has offered or given, or agreed to give, to any person any gifts or consideration of any kind as an inducement or reward for doing, or forbearing to do, or having done, or forborne to do, any action in relation to the entry into this contract with the *Commissioner* or for showing or forbearing to show favour or disfavour to any other person in relation to this contract or if similar acts have been done by any person in relation to this contract or if similar acts have been done by any person employed by the *Provider* or acting on behalf of the *Provider* (whether with, or without, the knowledge of the *Provider*).

105.2 The *Commissioner* may terminate this contract forthwith and recover from the *Provider* the amount of any loss resulting from such termination if, in relation to this contract, the *Provider* or any persons employed by the *Provider* have committed any offence under the Bribery Act 2010.

106 General conduct

The *Provider* Provides the Services in a manner which does not undermine the public's confidence in the *Commissioner* or bring the *Commissioner* into disrepute.

107 No Partnership or Agency

107.1 Nothing in this Agreement will be construed as a legal partnership (within the meaning of the Partnership Act 1890) between the *Commissioner* and *Provider*.

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

108 Resources and Training

The *Provider* shall procure that there shall at all times be a sufficient number of staff (including all relevant grades of supervisory staff) engaged in the Providing the Services with the requisite level of skill and experience.

109 General Data Protection Regulation

109.1 (1) The GDPR means the General Data Protection Regulation and any subordinate legislation made under this act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

(2) “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Process” and “Processing” have the meanings prescribed under the GDPR.

109.2 The *Provider* complies (and ensures that all his employees comply) with any notification requirements under the GDPR and both Parties observe their obligations under the GDPR which arise in connection with this contract.

109.3 Notwithstanding the general obligation in clause 109.2, where the *Provider* is processing Personal Data as a Data Processor for the *Commissioner*, the *Provider* shall enter into a specific data processing agreement with the *Commissioner*, if so requested, and in any event shall ensure that it and any of its Subcontractors:

- processes the Personal Data only in accordance with instructions from the *Commissioner* (which may be specific instructions (in the form as Schedule 6 to this agreement or otherwise) or instructions of a general nature),
- complies with all applicable statutory provisions,
- processes the Personal Data only to the extent, and in such manner as is, necessary for the provision of the *Provider's* obligations under this contract or as required by any statutory provision or any regulatory body,
- implements appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures must be appropriate to the harm which may result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data, having regard to the nature of the Personal Data which is to be protected,
- takes reasonable steps to ensure the reliability of its employees and agents who may have access to the Personal Data,
- obtains prior written consent from a strategic director or head of service of the *Commissioner* in order to transfer the Personal Data to any Subcontractor in connection with Providing the Service,
- does not cause or permit the Personal Data to be transferred outside of the European Economic Area (unless transferred under a “safe harbour” scheme) without the prior consent of the *Commissioner*,
- ensures that all employees and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with their obligations,
- ensures that none of the employees and agents publish, disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the *Commissioner*,
- does not disclose Personal Data to Others in any circumstances other than with the written consent of the

Commissioner or in compliance with a legal obligation imposed on the *Commissioner*,

- notifies the *Commissioner* (within one week) if it receives:
 - a request from a Data Subject to have access to that person's Personal Data or
 - a complaint or request relating to the *Commissioner's* obligations under the GDPR and
- notifies the *Commissioner* immediately of any breach or potential breach of the GDPR, including the loss of personal information relating to this Contract and provide all reasonable assistance to the *Commissioner* in managing such breach.

Managed Applications – The Commissioner's Supply Chain

110 The *Provider* shall manage the use of the Commissioner's Supply Chain (these are managed applications) to Provide the Services unless agreement to do otherwise is obtained from the *Employer* through the *Service Manager*.

110.1 The Employer may accept, reject or return any proposal not to manage the use of the Commissioner's Supply Chain for any reason. The Commissioner need not give any reason for his decision to accept, reject or return any proposal, but shall provide views on what further development the *Provider* should consider to transform any returned proposal into one that can be approved by the *Commissioner*.

Procurement and delivery of the Commissioner's Supply Chain

110.2 The responsibility for, and cost of, establishing the contract with the members of the Commissioner's Supply Chain rests with the *Commissioner*.

110.3 Any re-negotiation or re-procurement of any contract with the Commissioner's Supply Chain shall take place in consultation with the *Provider*.

110.4 The *Provider* is free to tender in open competition for any or all of the works, services, materials or plant identified as provided by the Commissioner's Supply Chain at the time of any re-procurement.

110.5 If the *Provider* is required by the *Commissioner* to increase or decrease the financial value of contribution from the Commissioner's Supply Chain by no more than 5% in any one Financial Year then any such requirement shall not be considered as a compensation event.

The management of the Commissioner's Supply Chain by the Provider

110.6 The *Provider* shall manage the provision of services using the Commissioner's Supply Chain for the costs agreed between the *Commissioner* and *Provider* and with no additional on-cost or fee to the *Commissioner* over that charged by the Commissioner's Supply chain.

- 110.7 The *Provider* shall manage the Commissioner's Supply Chain on the *Commissioner's* behalf in total compliance with the contracts between the Commissioner and the members of the Commissioner's Supply Chain, the *Provider* having been made fully aware of the relevant terms and conditions of the contracts beforehand. All requisitions shall be made within agreed limits of financial authorisations.
- 110.8 The *Provider* shall arrange to receive all invoices and applications for payment from the Commissioner's Supply Chain and shall certify that the works, services, materials or plant that have been received are fit for purpose, and that the amounts applied for in any such invoice or application for payment are correct and all in accordance with the relevant contract.
- 110.9 Whenever the *Provider* identifies an invoice or application for payment that has not been correctly submitted, for any reason, he shall arrange for the appropriate correction to be made prior to certifying.
- 110.10 Once certified the *Provider* will pass the invoice or application for payment to the *Commissioner* for payment. The *Commissioner* will then pay the Commissioner's Supply Chain directly.
- 110.11 The *Provider* shall ensure that all invoices or applications for payment from the Commissioner's Supply Chain are processed and submitted to the *Commissioner* in good time to allow for payment by the *Commissioner* to the Commissioner's Supply Chain to take place in accordance with the requirements of the relevant contract.

Disputes involving the Commissioner's Supply Chain

- 110.12 Disputes in regard to the works, services, materials or plant as supplied by the Commissioner's Supply Chain shall be resolved by the Commissioner and *Provider*, on behalf of and in the best interests of the *Commissioner* in accordance with the requirements of the relevant contract between the *Commissioner* and the Commissioner's Supply Chain.
- 110.13 The *Provider* shall work for and with the *Commissioner* in the resolution of any disputes involving the Commissioner's Supply Chain.
- 110.14 The *Provider* shall give early warning as soon as he becomes aware of a dispute involving the Commissioner's Supply Chain. The *Commissioner* may instruct the *Provider* to attend an early warning meeting and each may instruct other people to attend if the other agrees.
- 110.15 At an early warning meeting those who attend co-operate in:
- making and considering proposals for how the effect of each non-conformance can be resolved, or reduced,
 - seeking solution that will bring advantage to all those who will be affected,
 - deciding upon actions which they will take and who, in accordance with the relevant contract, will take them.

The *Provider* shall record the proposals considered and the decisions taken at these early warning meetings and shall provide all attendees with a copy of this record.

CONTRACT DATA

Part one – Data provided by the *Commissioner*

1 General

- 1.1 The Conditions of Contract are the Model Conditions of Contract for Managing Agent Contractor as amended by the Parties.
- 1.2 The *Commissioner* is:
Name: **Herefordshire Council**
Address:
Plough Lane,
Hereford,
HR4 0LE
- 1.3 The *Contract Manager* is:
Name: Clive Hall
Address: Plough Lane,
Hereford,
HR4 0LE
- 1.4 Not used.
- 1.5 The *Adjudicator* will be appointed on the application of either party to the adjudicator nominating body.
- 1.6 The Service Information is contained at Schedule 4.
- 1.7 Not used
- 1.8 Not used
- 1.9 The *period for reply* to a communication is 10 Working Days.
- 1.10 Not used
- 1.11 Not used
- 1.12 Not used

1.13 The Commissioner's representatives on the Operations Board are:

	Designated representative	Position	Designated alternative representative	Position
Commissioner's representative 1	Clive Hall	<i>Contract Manager</i>	Steve Hodges	Directorate Services Team Leader
Commissioner's representative 2	Laura Lloyd	Commercial & Contracts Manager	John Manterfield	Contract Lead Officer

1.14 The limits of authority of the *Commissioner's* representatives are:

- Financial:

	Designated representative	Position	Financial
Commissioner's representative 1	All in accord with the Council's scheme of delegation		
Commissioner's representative 2			

- Contractual:

	Designated representative	Position	Contractual
Commissioner's representative 1	Clive Hall	<i>Contract Manager</i>	All in accord with the role as <i>Contract Manager</i>
Commissioner's representative 2	All as delegated by the <i>Contract Manager</i>		

1.15 The *Provider* arranges progress meetings at intervals no longer than quarterly.

1.16 The following persons or organisations may enforce the following terms of this contract:

- Person or organisation: an Incoming Provider

- Terms: clauses 26.3 and 96.4

3 Time

- 3.1 The *starting date* is the Contract Date
- 3.2 The *access date* is 1 April 2019
- 3.3 The *contract period* commencing on the *access date* and continues until the contract is terminated.
The *extension period* is in accordance with clause 31.
- 3.4 Not used.

4 Payment

- 4.1 The currency of this contract is pounds sterling (£).
- 4.2 The first *invoice date* is the 1st day of the month following the *starting date*.
- 4.3 The assessment interval is three calendar months.
- 4.4 The interest rate is, unless the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 otherwise require, 4% per annum above the Bank of England base rate in force from time to time.
- 4.5 Not used

4.6 Not used

4.7 Not used

4.8 Not used

7 Title

7.1 Not used

8 Risks and Insurance

8.1 The *Provider* provides the insurance stated in the Insurance Table.

8.2 The *Commissioner* does not provide any of the insurances stated in the Insurance Table.

8.3 The additional Commissioner's risks are none.

9 Disputes and Termination

9.1 The *Adjudicator nominating body* is to be determined by the Commissioner as a body relevant to the resolution of the subject matter of any dispute.

9.2 The *tribunal* is the English courts.

9.3 Not used.

9.4 Not used.

9.5 Not used.

9.6 The following *dispute resolution hierarchy* applies to the resolution of any difference or dispute in accordance with clause 90.4:

Level	<i>Commissioner's representative</i>	<i>Provider's representative</i>	Period for resolution
1	<i>Contract Manager</i>	contract manager	No later than 5 Working Days from the date of referral to the <i>Contract Manager</i> .
2	<i>Operations Board</i>		No later than 10 Working Days from the date of referral to the <i>Operations Board</i> .
3	Corporate director having	senior manager/director	No later than 10 Working Days from the date of referral to the

	responsibility for the Services		Corporate director having responsibility for the Services
4	The Chief Executive	The Chief Operating Officer	No later than 10 Working Days from the date of referral to the Commissioner's Chief Executive

Part Two – Data provided by the *Provider*

1 General

1.1 The *Provider* is:

Name: Hoople Limited
Address: Plough Lane,
Hereford,
HR4 0LE

1.2 The *Provider's* Representative is:

Name: Nick Mather
Address: Plough Lane,
Hereford,
HR4 0LE

1.3 Not used

1.4 .

1.5 The *direct fee percentage* is 0%

1.6 The *subcontracted fee percentage* is 0%

1.7 The Fee Schedule is in Schedule 13.

1.8 Not used

1.9 Not used

1.10 Not used

1.11 Not used

1.12 The *Provider's* representatives on the Operations Board are:

	Designated representative	Position	Designated alternative representative	Position
Provider's representative 1	Nick Mather	Chief Operating Officer		

Provider's representative 2	Audrey Clements	Head of Management Accounts		
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1.13 The limits of authority of the *Provider's Representative* are:

- Financial: Unlimited
- Contractual: Unlimited

1.14 Not used

1.15 Not used

1.16 Not used

1.17 For the purpose of clause 24, the *Provider's* key persons are:

Name	Job title
??	

SCHEDULE 1 – PAYMENT SCHEDULE

Part I – Operating the payment provisions

1 Defined Cost

The Defined Cost is the actual cost to the *Provider* of components in the Schedule of Cost Components (set out in Part II of this Schedule) of carrying out the Services comprised in any Service Order.

The Defined Cost excludes the Fee and is net of all discounts, rebates and taxes that can be recovered by the *Provider*, ascertained on an open book basis in accordance with clause 50.1.

The Local Overhead Cost is separately identified and is not double counted in the cost of carrying out the Services comprised in any Service Order.

2 Agreement of the Local Overhead Cost

The *Provider* provides its genuine estimate of the Defined Cost of providing the relevant Services required in accordance with the relevant Service Order. The *Provider* provides, separately, a breakdown of the risks associated with the provision of those services. If requested, the *Provider* provides evidence to demonstrate that its estimates are reasonable and offer value for money.

The Parties use their respective reasonable endeavours to agree the relevant estimate of the Defined Cost of providing the relevant Services and of the risks associated with the provision of those Services. The agreed estimate of the Defined Cost of providing the relevant Services together with the agreed allowance in respect of the risks associated with the delivery of those Services constitutes the relevant cost for the provision of those Services under the relevant Service Order.

Throughout the delivery of the Services under the relevant Service Order, the *Provider* continually seeks to manage and mitigate risks associated with the delivery of these Services and the *Commissioner* provides all reasonable assistance.

In relation to the Local Overhead Cost for each Financial Year, the *Provider* provides its genuine estimate of the Defined Cost of the Local Overhead Cost for that Financial Year. The *Provider* provides, separately, a breakdown of any risks associated with the Local Overhead Cost. If requested, the *Provider* provides evidence to demonstrate that its estimate is reasonable and offers value for money.

The Parties use their respective reasonable endeavours to agree the relevant estimate of the Local Overhead Cost.

Part II – Schedule of cost components

An amount from this schedule is included only in one cost component and only if it is incurred in order to Provide the Services.

1 People

- 1.1 The following components of the cost of: people who are engaged in Providing the Services and are directly employed by the *Provider* (excluding people engaged only in providing the supporting functions identified in the Fee Schedule).
- 1.2 Wages, salaries and amounts paid by the *Provider* for people.
- 1.3 Payments to people for:
 - 1.3.1 bonuses and incentives;
 - 1.3.2 overtime;
 - 1.3.3 working in special circumstances;
 - 1.3.4 special allowances;
 - 1.3.5 absence due to training & education, maternity, paternity, adoption, bereavement, sickness and holidays;
 - 1.3.6 severance in accordance with the *Commissioner's* employment policies or the employment contracts of the impacted people.
- 1.4 Payments made in relation to people for:
 - 1.4.1 Travel;
 - 1.4.2 subsistence and lodging;
 - 1.4.3 relocation;
 - 1.4.4 medical examinations;
 - 1.4.5 passports and visas;
 - 1.4.6 travel insurance;
 - 1.4.7 items 1.4.1 to 1.4.6 for dependants;
 - 1.4.8 protective clothing;
 - 1.4.9 National Insurance contributions;
 - 1.4.10 meeting the requirements of the law;
 - 1.4.11 pensions and life assurance;
 - 1.4.12 death benefit;

- 1.4.13 occupational accident benefits;
 - 1.4.14 medical aid;
 - 1.4.15 a vehicle;
 - 1.4.16 safety training;
 - 1.4.17 vetting in accordance with the Service Information.
- 1.5 The following components of the cost of people who are engaged in Providing the Services and are not directly employed by the *Provider* but are paid for by him according to the time worked (excluding people engaged only in providing the supporting functions comprised in the Fee).
- 1.5.1 Amounts paid by the *Provider*.

2 Equipment

The following components of the cost of Equipment which is used.

- 2.1 Amounts for Equipment assessed at open market rates multiplied by the time for which the Equipment is required.
- 2.2 Payments for the purchase price of Equipment which is consumed.
- 2.3 Unless included in the open market rates, payments for:
 - 2.3.1 transporting Equipment to and from the Working Areas other than for repair and maintenance;
 - 2.3.2 erecting and dismantling Equipment; and
 - 2.3.3 constructing, fabricating or modifying Equipment as a result of a compensation event.
- 2.4 Payments for purchase of materials used to construct or fabricate Equipment.
- 2.5 Unless included in the open market rates, the cost of operatives is included in the cost of people.
- 2.6 Licences.

3 Other costs

The following components of the cost of plant and Materials.

- 3.1 Payments for:
 - 3.1.1 Purchasing plant and Materials;
 - 3.1.2 delivery to and removal from the Working Areas;

- 3.1.3 providing and removing packaging; and
- 3.1.4 samples and tests.
- 3.2 Cost is credited with payments received for disposal of plant and Materials unless the cost is disallowed.
- 3.3 Payments for provision and use in the Working Areas of:
 - 3.3.1 water;
 - 3.3.2 gas; and
 - 3.3.3 electricity.
- 3.4 Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the Services.
- 3.5 Payments for:
 - 3.5.1 cancellation charges arising from a compensation event;
 - 3.5.2 leasing of property;
 - 3.5.3 compensation for loss of buildings;
 - 3.5.4 royalties;
 - 3.5.5 inspection certificates;
 - 3.5.6 charges for access to the Working Areas;
 - 3.5.7 facilities for visits to the Working Areas by Others;
 - 3.5.8 advertising, and the like in connection with the Services;
 - 3.5.9 specialist services;
 - 3.5.10 consumables and equipment provided by the *Provider* for the *Contract Manager's* offices.
- 3.6 The following are insurance costs are included:
 - 3.6.1 the cost of events for which this contract requires the *Provider* to insure;
- 3.7 Other costs paid to the *Provider* by insurers shall be deducted.

SCHEDULE 2 – PERFORMANCE MANAGEMENT

Part I – Performance management

1 Self-assessment

- 1.1 The *Provider* monitors its performance against the Operational Performance Indicators on a monthly or other relevant basis. The *Provider* monitors its performance against the Strategic Performance Indicators on a three monthly or other relevant basis. The *Provider* takes any steps reasonably necessary to correct any shortfalls in performance. Within one month before, or after the end of, each Financial Year the *Provider* provides the *Commissioner* with its assessment of its performance against the Performance Indicators during that Financial Year in accordance with this Schedule provided that the one month period is extended to the extent that any information is required from Others.

2 Records and reporting of performance monitoring

- 2.1 The *Provider* keeps a written record of all performance monitoring carried out under this contract and submits performance monitoring reports against the Performance Indicators on a monthly basis during each Financial Year. The *Provider* provides information on the delivery of the Services to enable the *Commissioner* to complete statistics and report on its national and local performance indicators of which the *Commissioner* has notified the *Provider* (which, for the avoidance of doubt, may include statistics going beyond the Performance Indicators). The *Commissioner* notifies the *Provider* of any changes or developments to the national and local performance indicators during the Contract Period.

3 Services audit

- 3.1 The *Commissioner* reserves the right for itself and any appointed agents to open up, inspect and/or audit any of the Services carried out by the *Provider* at any time during the Contract Period. The *Commissioner* uses its right to open up, inspect and/or audit any of the Services as often as it reasonably considers it necessary to do so. The *Commissioner* is subject to a corporate responsibility to audit its business activities and entry into this contract is likely to see an increased level of audit activity in relation to the operation of this contract which should reduce in intensity over the course of the Contract Period.
- 3.2 In the event that any Services are found not to be in compliance with this contract or any relevant national standards, or are found to have been notified by the *Provider* as completed but which are found to be incomplete or to be a Defective Service, the *Commissioner* may serve a notice on the *Provider* requiring that any such Defective Service or non-compliance is rectified and setting out the timescales in which such rectification must occur.
- 3.3 The *Provider* carries out any rectifications as required by a notice served at his own expense.
- 3.4 The Parties bear their own costs in connection with any inspection and/or audit carried out in accordance with this paragraph 3 save to the extent that any such inspection or audit reveals:

4 major non-compliance; or

5 a significant number (judged by the *Commissioner*, acting reasonably) of minor non-compliances;

5.1 with the *Provider's* obligations under this contract, in which cases, the *Provider* pays the *Commissioner's* reasonable costs in carrying out the original inspection and any further inspections required to monitor the rectification of the relevant non-compliance.

6 Updating of the Performance Indicators

6.1 The Parties keep under review the relevance of the Performance Indicators to the successful operation of this contract and may agree from time to time during the Contract Period to make amendments to the Performance Indicators.

7 Annual review of the Performance Indicator thresholds

7.1 The Parties review annually the thresholds in relation to each of the Performance Indicators. The expectation is that these levels will increase rather than decrease over the Contract Period. Pending agreement of amended levels, the previous thresholds continue.

SCHEDULE 3 – SERVICE INFORMATION

- The Hoople SLA for the applicable year together with all supporting information and specifications.

SCHEDULE 4 – TEMPLATE FOR SERVICE ORDERS

Service Orders will be issued for the *Commissioner* by the *Contract Manager* to the *Provider* in a format agreed between the *Provider* and the *Contract Manager*.

SCHEDULE 5 – TUPE

There are no particular requirements, in addition to the requirements of legislation, in regard to TUPE.

SCHEDULE 6 - Schedule of Processing, Personal Data and Data Subjects

1. The *Provider* shall comply with any further written instructions with respect to processing by the Commissioner.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	<i>This should be a high level, short description of what the processing is about i.e. its subject matter</i>
Duration of the processing	<i>Clearly set out the duration of the processing including dates.</i>
Nature and purpose of the processing	<p><i>Be as specific as possible, making sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alternation, retrieval, consultation, use disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc.</i></p>
Type of personal data	<i>Examples here include name, address, date of birth, national insurance number, telephone number pay, images, biometric data etc.</i>
Categories of Data Subject	<i>Examples include staff (including volunteers, agents and temporary workers), Commissioners/clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement to preserve that type of data.	<i>Describe how long the data will be retained for, how it will be returned or destroyed.</i>