

ANNEX A

TERMS AND CONDITIONS OF CONTRACT

FOR

THE PROVISION OF

[INSERT TYPE OF SERVICE]

Revised December 2010

**TERMS AND CONDITIONS OF CONTRACT
FOR THE PROVISION OF SERVICES TO THE COMPETITION COMMISSION (CC)**

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TERMS AND CONDITIONS OF CONTRACT FOR THE PROVISION OF SERVICES TO THE COMPETITION COMMISSION

These Terms and Conditions may only be varied with the written agreement of the Competition Commission (CC).

1. Definitions and interpretations

1.1 In these Conditions:

'Authority Data' means a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media and which are supplied to the Service Provider by or on behalf of the CC or which the Service Provider is required to generate, process, store or transmit pursuant to this Contract; or b) any Personal Data for which the CC is the Data Controller;

'Commercially Sensitive Information' means the information (i) listed in the Commercially Sensitive Information Schedule; or (ii) notified to the CC in writing (prior to the commencement of this Agreement) which has been clearly marked as Commercially Sensitive Information comprised of information:

(a) which is provided by the Service Provider to the CC in confidence for the period set out in that Schedule or notification; and/or

(b) which constitutes a trade secret.

'Contract Commencement Date' shall have the meaning attributed to it in Condition 3 Duration of Contract and Commencement of Services;

'CC' means the Competition Commission;

'Contract' means the contract between the CC and the Service Provider consisting of the Specification, these Conditions, and any other documents (or parts thereof) specifically identified as forming part of the Contract;

'Contract Completion Date' shall have the meaning attributed to it in Condition 3 Duration of Contract and Commencement of Services;

'CC's Representative' means the member of staff of the CC named as acting as such in the CC's offer of a contract;

'Confidential Information' means all information obtained by the Service Provider from the CC or any other department, agency or office of Her Majesty's Government relating to and connected with the Contract and the Services, including but not limited to the Contract itself and the provisions of the Contract;

'Contracting Authority' means any contracting authority as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the CC;

'Crown Body' means any department, office or agency of the Crown;

'Data Controller' shall have the same meaning as set out in the Data Protection Act 1998;

'Data Processor' shall have the same meaning as set out in the Data Protection Act 1998;

'Data Protection Legislation' means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

'Data Subject' shall have the same meaning as set out in the Data Protection Act 1998;

'Good Industry Practice' means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;

'Intellectual Property Rights' means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or not), applications for any of those rights, copyright, database rights, know how, trade or business names and other similar rights or obligations, whether registrable or not, in any country, including but not limited to, the United Kingdom;

'Parties' mean the CC and the Service Provider;

'Personal Data' shall have the same meaning as set out in the Data Protection Act 1998;

'Personnel' means the members of staff, subcontractors and/or secondees employed by the Service Provider to meet the requirements of the Contract;

'Premises' means Victoria House, Southampton Row, London WC1B 4AD or any other Premises that the CC shall occupy;

'Purchase Order' means the document so described by the CC to purchase the Services which makes reference to the Conditions;

'Request for Information' means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;

'Security Policy' means the CC's security policy as updated from time to time;

'Service' means the services to be provided as detailed within the Specification and shall, where the context so admits, include any materials, articles and services to be supplied thereunder;

'Services' means the services referred to in Schedule 1 Part A (Title and Description of Services) as amended from time to time in accordance with Condition 42 Variations and Cancellations and any goods or materials supplied in connection with such services. For the avoidance of doubt all software and the media in which software is contained and material in machine readable form and all data provided shall be deemed to comprise goods and shall constitute part of the Services;

'Services Start Date' shall have the meaning attributed to it in Condition 3 Duration of Contract and Commencement of Services;

'Service Level Agreement' means the service level agreement set out in Schedule 1 Part B Service Level Agreement;

'Service Provider' means the person, partnership or company who undertakes to render such services to the CC as is provided in the Contract;

'Service Provider's Representative' shall have the meaning attributed to it in Condition 6 (Authorisation);

'Specification' means the description of and/or requirements (if any) of the Services to be performed by the Service Provider, including without limitation the scope of the services, the start date of the Service, the milestones, any other issues of a similar nature as set out in Schedule 1 Scope Of Services And Service Level Agreement;

'Staff Vetting Procedure' means the CC's procedures for the vetting of personnel and as advised to the Service Provider by the CC.

1.2 The interpretation and construction of the Contract shall be subject to the following provisions:

1.2.1 a reference to any statute, enactment, order, regulation or similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;

1.2.2 the headings in these Conditions are for ease of reference only and shall not affect the interpretation or construction of the Contract; and

1.2.3 references to 'person', where the context allows, includes a corporation or an unincorporated association.

2. **Scope of Services**

2.1 The Service Provider shall provide to the CC the Services as set out in Schedule 1 Scope of Services and Service Level Agreement subject to the terms and conditions of this Contract.

2.2 The Services shall be provided at Victoria House Southampton Row London WC1B 4AD and any other location agreed in writing from time to time.

3. **Duration of Contract and Commencement of Services**

3.1 This Contract shall enter into effect on the date of signature by both parties or the Services Start Date whichever is the sooner ('Contract Commencement Date').

3.2 The Service Provider shall commence provision of the Services on [insert date] ('Services Start Date'). Unless previously terminated in accordance with its terms, this Contract shall terminate on the date the CC gives notice of completion of the Services. [Unless previously terminated in accordance with its terms, this Contract shall terminate on [insert date] either/or the date the CC gives notice of completion of the services [insert date]. This Contract shall not be extended without agreement in writing signed by the parties.

4. **Documents comprised in this Contract**

4.1 This Contract includes the Schedules and other documents as follows:

[Specify any documents CC wishes to rely on, for example Service Provider's tender documentation].

5. **Service Provider's Status**

5.1 In carrying out the Services the Service Provider shall be acting as a principal and not as the agent of the CC. Accordingly:

5.1.1 the Service Provider shall not, and shall procure that his agents and servants do not, say or do anything that might lead any other person to believe that the Service Provider is acting as the agent of the CC; and

5.1.2 nothing in this Contract shall impose any liability on the CC in respect of any liability incurred by the Service Provider to any other person but this shall not be taken to exclude or limit any liability of the CC to the Service Provider that may arise by virtue of either a breach of this Contract or any negligence on the part of the CC, its staff or agents.

6. **Authorisation**

6.1 The following person(s) (including any successor in office from time to time of such person/s) is/are authorised to act as the CC's Representative on all matters concerning this Contract:

[Insert name, telephone number and email address of CC's Representative(s)]

6.2 The following person(s) (including any successors in office from time to time of such person/s) is/are authorised to act as the Service Provider's Representative on all matters concerning this Contract:

[Insert name, telephone number and email address of Service Provider's Representative(s)]

6.3 Each of the CC and the Service Provider may from time to time by notice in writing to the other party appoint another person to act as its authorised representative. Both parties shall use their reasonable endeavours to ensure that any such substitutions and or additions do not have any adverse impact on the Services.

7. **Warranties and Representations**

7.1 The Service Provider warrants and represents that:

7.1.1 it has carefully examined all parts of the Premises where the Services are to be performed or which are otherwise relevant to performance Services;

7.1.2 it has fully informed itself by all such tests and examinations as are reasonably necessary of any conditions and limitations that might affect its ability to perform the Services in accordance with the terms of this Contract;

7.1.3 it has carefully examined the Contract;

- 7.1.4 it has the experience, qualifications, staff and capability to and will execute the Services efficiently and expeditiously to the CC in accordance with the specification and best professional standards and the terms of this Contract;
 - 7.1.5 it has the power to enter into and perform its obligations under this Contract, and its obligations under this Contract constitute its legal, valid and binding obligations enforceable in accordance with its terms;
 - 7.1.6 all personnel used to provide the Services will be vetted in accordance with Good Industry Practice, the Security Policy and the Standards;
 - 7.1.7 it has, will retain and will keep in force all titles, permits, licences, and certificates necessary for it to perform its obligations and duties under this Contract and shall comply with all applicable laws, rules and regulations relating to the Services; and
 - 7.1.8 the CC's use and possession of the Services or any part thereof in accordance with the terms of this Contract shall not infringe any Intellectual Property Rights of any third party.
- 7.2 The Service Provider warrants that the Services supplied by it and/or used by it to perform and/or support the Services:
- 7.2.1 with respect to all date-related data and functions, will accept input, perform processes and provide output that is:
 - (a) consistent with the intended use and all applicable specifications;
 - (b) prevents ambiguous or erroneous results; and
 - (c) does not result in any adverse effect on functionality or performance of the Service or other hardware or software.
 - 7.2.2 shall not contain any computer code:
 - (a) designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetically disrupting or distorting, the operation of the Services, or any of the CC's other associated software, firmware, hardware, computer system or network (sometimes referred to as 'viruses' or 'worms');
 - (b) that would disable the Services or impair in any way its operation based on the elapsing of a period of time, exceeding an authorised number of copies, advancement to a particular date or other numeral (sometimes referred to as 'time bombs', 'time locks', or 'drop dead' devices); or
 - (c) that would permit the Service Provider or others to access the Services to cause such disablement or impairment (sometimes referred to as 'traps', 'access codes' or 'trap door' devices), or any other similar harmful, malicious or hidden procedures, routines or mechanisms which would cause such programs to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with operations.
 - 7.2.3 shall perform in accordance with any relevant specification and/or in accordance with specification.

8. **Service Provider's Personnel**

- 8.1 The Service Provider shall take the steps reasonably required by the CC to prevent unauthorised persons being admitted to the Premises. If the CC gives the Service Provider notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Service Provider shall take all reasonable steps to comply with such notice and if required by the CC the Service Provider shall replace any person removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered to the CC.
- 8.2 If and when instructed by the CC, the Service Provider shall give to the CC a list of names and addresses of all personnel who are or may be at any time concerned with the provision of the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the CC may reasonably require.
- 8.3 The decision of the CC as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Service Provider has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.
- 8.4 The Service Provider shall bear the cost of any notice, instruction or decision of the CC under this Condition.
- 8.5 The Service Provider's Personnel, engaged within the boundaries of the Premises, shall comply with such rules, regulations, requirements and advisory notices (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises. Details of such rules, regulations, requirements and advisory notices shall be provided, on request, by the CC.
- 8.6 The Service Provider shall comply with the Staff Vetting Procedures in respect of all Service Provider Personnel employed or engaged in the provision of the Services. The Service Provider confirms that all Service Provider Personnel employed or engaged by the Service Provider at the Effective Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 8.7 The Service Provider Personnel employed or engaged in the provision of the Services [may/will] be required to undergo or have already undergone Baseline Personnel Security Standard (Baseline Standard) checking. The Service Provider shall contact the CC's HR department for further details and advice regarding this procedure.
- 8.8 The Service Provider shall provide training on a continuing basis for all Service Provider Personnel employed or engaged in the provision of the Services in compliance with the CC's Security Policy and Security Plan (shortly to be replaced by the CC's Security Policy Framework).
- 8.9 If the Service Provider fails to comply with this Condition and the CC decides that such failure is prejudicial to its interests, the CC may immediately terminate the Contract by notice in writing to the Service Provider, provided that such termination shall be without prejudice to any accrued rights of, or to any rights that shall accrue thereafter to, the CC.

9. **Payment**

- 9.1 The Service Provider shall submit invoices at times or intervals agreed by the CC in the Contract or otherwise. The Service Provider shall ensure that any invoice it submits sets out the CC's Purchase Order and Contract number (if applicable), the amount and, where not all of the Services to which the invoice relates have been supplied, confirmation when those Services will be completed and its confirmation that the Services have been supplied.
- 9.2 Unless otherwise agreed, payment will be made within 30 days of receipt and agreement of invoices for the relevant cost of the Service, such invoices to be submitted monthly in arrears.
- 9.3 The Service Provider shall make available to the CC such evidence thereof as the CC may reasonably require to indicate the activities, fees and expenses for which payment is sought.

10. **Prices**

- 10.1 Unless otherwise stated in this Contract, the price for the Services shall not vary from that stated in Schedule 2 Contract Price
- 10.2 The price for the Services stated in Schedule 2 Contract Price shall include labour, insurance, materials and any required equipment, unless otherwise stated in the Schedule 2.

11. **Value Added Tax**

- 11.1 The CC shall pay to the Service Provider, in addition to the charges, a sum equal to the Value Added Tax chargeable on the value of the Services provided in accordance with the Contract.
- 11.2 Any invoice or other request for payment of monies due to the Service Provider under the Contract shall, if he is a taxable person, be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Value Added Tax Act 1994.
- 11.3 The Service Provider shall, if so requested by the CC, furnish such information as may reasonably be required by the CC relating to the amount of Value Added Tax chargeable on the Services.

12. **Audit and Accounts**

- 12.1 For the purpose of the examination and certification of the accounts relating to the CC, the National Audit Office Comptroller and Auditor General of the United Kingdom or other duly appointed auditors may examine documents evidencing expenditure incurred and income received by the CC which are owned, held or otherwise within the control of the Service Provider and may require the Service Provider to produce such oral or written explanations as it considers necessary. The Service Provider, shall, so far as it is able, secure the cooperation of its personnel and any sub-contractors engaged on the Contract in the above process.
- 12.2 The Service Provider shall keep and maintain accounts and records to the satisfaction of the CC of all expenditures which are reimbursable by the CC and of the hours worked and costs incurred by the Service Provider or in connection with

any employees or subcontractors of the Service Provider paid for by the CC on a time charge basis. The Service Provider shall on request afford the CC or its representatives such access to those records as may be required by the CC in connection with the Contract.

- 12.3 The Service Provider shall ensure that the said accounts and records are available for a period of six years after termination or expiry of the Contract.

13. **Recovery of Sums Due**

- 13.1 Wherever under the Contract any sum of money is recoverable from or payable by the Service Provider, that sum may be deducted from any sum then due, or which at any later time may become due, to the Service Provider under the Contract or under any other agreement or contract with the CC. If sufficient monies are not due to the Service Provider then the Service Provider will make good the deficit within 30 days of notice being given.

- 13.2 Any over-payment by the CC to the Service Provider whether in respect of the charges or Value Added Tax shall be a sum of money recoverable from the Service Provider pursuant to paragraph 13.1 of this Condition or otherwise.

14. **Failures in Performance**

- 14.1 If at any time during the Contract Period the Service Provider shall fail to provide the Service or any part thereof to the Contract Standard in accordance with Schedule 1 Scope of Services and Service Level Agreement the CC may:

14.1.1 withhold payment until such time as the Service Provider provides the Service to the satisfaction of the CC's representative;

14.1.2 deduct such amount from any sums payable to the Service Provider as the CC's representative shall reasonably determine to provide or employ other persons to provide the Service or any part thereof and charge to the Service Provider any additional costs incurred by the CC;

14.1.3 suspend the Contract in whole or in part until such time as the CC's representative is satisfied that the Service Provider can properly provide the Service or such part of the Service as has been suspended;

14.1.4 determine the Contract in respect of part of the Service and thereafter provide or procure a third party to provide such part of the Service; and

14.1.5 determine the Contract in accordance with Condition 30 Termination.

15. **Provision and use of CC's Accommodation Area**

- 15.1 The CC grants to the Service Provider a licence to occupy the CC's accommodation area for the purposes only set out in this Contract. This licence and the occupation of the CC's accommodation area by the Service Provider shall not create a tenancy or any other interest in the CC's accommodation area or any other part of the Premises.

- 15.2 Before using any of the CC's accommodation area the Service Provider shall give the CC a written receipt for all fixtures, fittings and contents.

- 15.3 The Service Provider shall maintain the CC's accommodation area in a clean and presentable condition throughout the duration of its use.
- 15.4 The CC reserves the right to require the relocation of any the CC's accommodation area for any reason to another area within the Premises.
- 15.5 The Service Provider shall not make any alterations or additions to the accommodation area.
- 15.6 This licence to occupy shall be personal to the Service Provider and accordingly the Service Provider shall not assign, underlet, charge, part with possession, occupation or otherwise dispose of the CC's accommodation area or any part of them or the Service Provider's rights under this licence.
- 15.7 No security of tenure of whatsoever nature is hereby granted. This licence will not entitle the Service Provider to enjoy the exclusive use and occupation of the CC's accommodation area which is subject to all necessary rights of access by the CC.
- 15.8 This licence to occupy shall terminate automatically without any notice if the Service Provider ceases to occupy the CC's accommodation area or upon termination of this Contract.
- 15.9 The Service Provider shall use the CC's accommodation area only for the purpose of the provision of the Services provided for in this Contract and shall not do anything which may be or become a nuisance or annoyance or cause damage or inconvenience to the CC or any of its personnel, employees or visitors.
- 15.10 The Service Provider shall not do anything which may cause the insurance of the CC's accommodation area or any part of the Premises effected on behalf of the CC to be rendered void or voidable or to be in any other way affected.
- 15.11 The Service Provider shall comply with any statutory requirements affecting the CC's accommodation area or its use and shall not in occupying or using the CC's accommodation area under this licence do or permit anything to be done which shall cause the CC to be in breach of its obligations in relation to the Premises or any part of it.
- 15.12 Upon termination of this Contract or otherwise if reasonably required by the CC the Service Provider shall deliver up all the CC's accommodation area (including the fixtures and fittings) with vacant possession and in the state of condition which accords with this Condition 15 in all respects.
- 15.13 The CC reserves the right to dispose of anything left by the Service Provider on the premises which has not been removed within one week after vacation of the Premises. The CC will have no liability to the Service Provider concerning anything disposed of by the CC in accordance with this condition.
- 15.14 The Service Provider will ensure that all electrical items brought to the premises (including the equipment of any subcontractor) comply with the Electricity at Work Regulations 1989 and all other applicable regulations relating to electrical appliances and are at all times covered by valid test certificates which will be available at all times for inspection by the CC on request.

16. Use of CC's Equipment

- 16.1 The CC shall make available to the Service Provider solely for the purpose of the provision of the Services, and subject to the terms of this Contract, the equipment and materials specified in Schedule 4 The CC's Equipment. If any of such equipment is subject to third-party maintenance contracts the Service Provider undertakes to comply with such maintenance contracts.
- 16.2 Any equipment provided by the CC to assist the Service Provider in executing the Services shall be held by the Service Provider as bailee and fiduciary trustee for the CC until either returned to the CC or (if not promptly returned, at the CC's option) paid for. Such equipment, once provided to the Service Provider, shall be held at the risk of and maintained in good condition by the Service Provider. Under no circumstances shall the Service Provider seek to move or dispose of any such equipment or permit any such equipment to be subject to any charge, lien or other interest of the Service Provider or any third party.
- 16.3 The Service Provider shall deliver up all such equipment to the CC forthwith on termination of this Contract for any reason (or forthwith on the CC's request to do so earlier). Without prejudice to the provisions of Condition 16.2 failure to deliver up such equipment within 24 hours of such termination or request shall entitle the CC to payment in respect of such equipment and to issue a debit note or issue an invoice as it deems necessary.

17. Corrupt Gifts or Payments

- 17.1 The Service Provider shall not:
- 17.1.1 Offer or give, or agree to give, to any employee or representative of the CC any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the CC or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract. The attention of the Service Provider is drawn to the criminal offences created by the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916.
- 17.1.2 Enter into this Contract or any other contract with a person in Her Majesty's Service in connection with which commission has been paid or agreed to be paid by him or on his behalf, or to his knowledge, unless before this Contract is made particulars of any such commission and of the terms and conditions of any Contract for the payment thereof have been disclosed in writing to the CC.
- 17.2 Any breach of this Condition 17 by the Service Provider or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Service Provider) or the commission of any offence by the Service Provider or by anyone employed by him or acting on his behalf under the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916, in relation to this Contract or any other contract with Her Majesty's Service shall entitle the CC to terminate this Contract and recover from the Service Provider the amount of any direct loss resulting from such termination and/or to recover from the Service Provider the amount or value of any such gift, consideration or commission.

17.3 Any dispute, difference or question arising in respect of the interpretation of this Condition 17, the right of the CC to terminate this Contract or the amount or value of any such gift, consideration or commission shall be decided by the CC, whose decision shall be final and conclusive.

18. **Publicity**

18.1 The Service Provider agrees not to disclose the identity of CC as a client of the Service Provider, nor to use the CC's name nor refer to the CC directly or indirectly in any advertisement or other publication without receiving the CC's prior written approval for such use or reference and to the form and Context in which the reference to the CC is to appear. The Service Provider shall abide by any conditions or limitations imposed by the CC in such approval, if given.

18.2 The Service Provider further agrees not to disclose the existence of this Contract, or the nature of the relationship established by this Contract.

19. **Copyright**

19.1 Subject to any prior rights and to the rights of third parties, all reports and other documents and materials and the copyright or similar rights therein arising out of the performance by the Service Provider of his duties under the contract are hereby assigned to and shall vest in the CC absolutely.

19.2 Immediately upon termination of the Contract and on payment or tender of all outstanding fees and expenses, all reports, schedules and other documentation produced by the Service Provider and information unique to the Contract and exclusively for the purpose of fulfilling the Contract shall be delivered to the CC. Any like information held on a computerised database shall be copied on to electronic media and delivered to the CC. Any remaining copies held on electronic media shall be erased.

20. **Secrecy and Confidentiality**

20.1 The Service Provider undertakes to abide by, and procure that his employees abide by the following sections of legislation, which form part of the CC Policy on Security of Information;

20.1.1 Part 9 of the Enterprise Act 2002, this applies to information obtained in the course of merger and market investigations and contains:

- a general prohibition on disclosure of specified information;
- the exceptions to the prohibition;
- the considerations which the CC must have regard to before disclosing any specified information; and
- a criminal offence of improperly disclosing or using specified information.

20.1.2 The provisions on non-disclosure of information in the various regulatory statutes which apply to price control and other regulatory references:

- (i) The Airports Act 1986, section 74.

- (ii) The Airports (Northern Ireland) Order 1994, Article 49.
- (iii) The Communications Act 2003, article 393.
- (iv) The Electricity (Northern Ireland) order 1992, Article 61.
- (v) The Energy Act 2004.
- (vi) The Financial Services & Markets Act 2000, section 348.
- (vii) The Gas (Northern Ireland) Order, Article 44.
- (viii) The Postal Services Act 2000, Schedule 7.
- (ix) The Railways Act 1993, section 145.
- (x) The Regulation of Investigatory Powers Act 2000.
- (xi) The Telecommunications Act 1984, section 101.
- (xii) The Transport Act 2000, Schedule 9.
- (xiii) The Utilities Act 2000, section 105.
- (xiv) The Water Industry Act 1991, section 206.
- (xv) The Water Services etc (Scotland) Act 2005 (Consequential Provisions and Modifications).
- (xvi) The Water and Sewerage Services (Northern Ireland) Order 2006, Article 265.

20.1.3 Other legislation imposing general non-disclosure or use of information obligations

- (i) The Computer Misuse Act 1990.
- (ii) The Copyright, Designs and Patents Act 1988.
- (iii) The Data protection Act 1998.
- (iv) The Human Rights Act 1998.
- (v) The Official Secrets Act 1989, section 5.

Guidance on this Condition 20 will be provided to the Service Provider by the CC on request.

20.2 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:

- 20.2.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and
- 20.2.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

- 20.3 Clause 20.2 shall not apply to the extent that:
- 20.3.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to clause 23 (Freedom of Information);
 - 20.3.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 20.3.3 such information was obtained from a third party without obligation of confidentiality;
 - 20.3.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
 - 20.3.5 it is independently developed without access to the other party's Confidential Information.
- 20.4 The Service Provider may only disclose the CC's Confidential Information to the Service Provider's Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Service Provider Personnel are aware of and shall comply with these obligations as to confidentiality.
- 20.5 The Service Provider shall not, and shall procure that the Service Provider Personnel do not, use any of the CC's Confidential Information received otherwise than for the purposes of this Agreement.
- 20.6 The Service Provider shall procure that those members of the Service Provider Personnel engaged in the provision of the Services sign a Confidentiality Undertaking prior to commencing any work in accordance with this Agreement.
- 20.7 Nothing in this agreement shall prevent the CC from disclosing the Service Provider's Confidential Information:
- 20.7.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
 - 20.7.2 to any consultant, contractor or other person engaged by the Authority or any person conducting an Office of Government Commerce gateway review;
 - 20.7.3 for the purpose of the examination and certification of the CC's accounts; or
 - 20.7.4 for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the CC has used its resources.

- 20.8 The CC shall use all reasonable endeavours to ensure that any government department , Contracting Authority, employee, third party or Sub-contractor to whom the Service Provider's Confidential Information is disclosed pursuant to clause 20.7 is made aware of the CC's obligations of confidentiality.
- 20.9 Nothing in this clause 20 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.
- 20.10 The Service Provider and his employees shall not comment on the conclusions of any CC report, nor on the reasons for those conclusions, contained in any such report, in respect of which the Service Provider and its employees rendered services under a contract with the CC.
- 20.11 The Service Provider shall use its best endeavours to incorporate conditions in all subcontracts or other business arrangements into which it may enter in the course of providing the Service so as to ensure that all persons concerned with the provision of the Services are bound by provisions replicating the intent and effect of this Condition 20.

21. **Authority Data**

- 21.1 The Service Provider shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 21.2 The Service Provider shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Service Provider of its obligations under this Contract or as otherwise expressly authorised in writing by the CC.
- 21.3 To the extent that Authority Data is held and/or processed by the Service Provider, the Service Provider shall supply that Authority Data to the CC as requested by the CC in the format specified.
- 21.4 The Service Provider shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- 21.5 The Service Provider shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the CC's Business Continuity and Disaster Recovery Plan. The Service Provider shall ensure that such back-ups are available to the CC at all times upon request.
- 21.6 The Service Provider shall ensure that any system on which the Service Provider holds any Authority Data, including back-up data, is a secure system that complies with the CC's Security Policy.
- 21.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Service Provider's Default so as to be unusable, the CC may:
- 21.7.1 require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery Provisions and the Service Provider shall do so as soon as practicable; and/or

- 21.7.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery Provisions.
- 21.8 If at any time the Service Provider suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Service Provider shall notify the CC immediately and inform the CC of the remedial action the Service Provider proposes to take.

22. **Protection of Personal Data**

- 22.1 With respect to the parties' rights and obligations under this Contract, the parties agree that the CC is the Data Controller and that the Service Provider is the Data Processor.
- 22.2 The Service Provider shall:
- 22.2.1 Process the Personal Data only in accordance with instructions from the CC (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the CC to the Service Provider during the Term);
 - 22.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
 - 22.2.3 implement 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 shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - 22.2.4 take reasonable steps to ensure the reliability of any Service Provider Personnel who have access to the Personal Data;
 - 22.2.5 obtain prior written consent from the CC in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services;
 - 22.2.6 ensure that all Service Provider Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 22;
 - 22.2.7 ensure that none of the Service Provider Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the CC;
 - 22.2.8 notify the CC within five Working Days if it receives:
 - 22.2.8.1 a request from a Data Subject to have access to that person's Personal Data: or
 - 22.2.8.2 a complaint or request relating to the CC's obligations under the Data Protection Legislation;

- 22.2.9 provide the CC with full cooperation and assistance in relation to any complaint or request made, including by:
 - 22.2.9.1 providing the CC with full details of the complaint or request;
 - 22.2.9.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the CC's instructions;
 - 22.2.9.3 providing the CC with any Personal Data it holds in relation to a Data Subject (within the timescales required by the CC); and
 - 22.2.9.4 providing the CC with any information requested by the CC;
- 22.2.10 permit the CC or the CC's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause 12 (Audit and Accounts), the Service Provider's data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the CC to enable the CC to verify and/or procure that the Service Provider is in full compliance with its obligations under this Contract;
- 22.2.11 provide a written description of the technical and organisational methods employed by the Service Provider for processing Personal Data (within the timescales required by the CC); and
- 22.2.12 not Process Personal Data outside the European Economic Area without the prior written consent of the CC and, where the CC consents to a transfer, to comply with:
- 22.2.13 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
- 22.2.14 any reasonable instructions notified to it by the CC.
- 22.3 The Service Provider shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the CC to breach any of its applicable obligations under the Data Protection Legislation.
- 22.4 Upon the termination of this Contract for whatever reason the Service Provider shall, unless notified otherwise by the CC or required by law, immediately cease any processing of the Personal Data on the CC's behalf and as requested by the CC destroy or provide the CC with a copy on suitable media.
- 22.5 The Service Provider shall promptly carry out any request from the CC requiring it to amend, transfer or delete the Personal Data or any part of the Personal Data.
- 22.6 Where the Service Provider is required to collect any Personal Data on behalf of the CC, it shall ensure that it provides the Data Subjects from whom the Personal Data are collected with a data protection notice in a form to be agreed with the CC.

23. **Freedom of Information**

23.1 The Service Provider acknowledges that the CC is subject to the requirements of the Code of Practice on Government Information, Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) and shall assist and cooperate with the CC, at the Service Provider's expense, to enable the CC to comply with its Information disclosure obligations.

23.2 In this Condition:

'Information' has the meaning ascribed to it in section 84 of the FOIA; and

'Request for Information' has the meaning ascribed to it in section 8 of the FOIA, or any apparent request for information under the FOIA or EIR.

23.3 The Service Provider shall (and shall procure that its subcontractors shall):

23.3.1 transfer any Request for Information to the CC as soon as practicable after receipt and in any event within two working days;

23.3.2 provide the CC with a copy of all Information in its possession or power in the form that the CC requires within five working days (or such other period as the CC may specify) of the CC requesting that Information; and

23.3.3 provide all necessary assistance as reasonably requested by the CC to enable it to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.

23.4 The CC shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or, any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the EIR.

23.5 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so in writing by the CC.

23.6 The Service Provider acknowledges that (notwithstanding the provisions of Clause 23) the CC may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA ("the Code"), be obliged under the FOIA or the EIR to disclose information concerning the Service Provider or the Services:

23.6.1 in certain circumstances without consulting the Service Provider; or

23.6.2 following consultation with the Service Provider and having taken their views into account;

provided always that where 23.6.1 applies the CC shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

23.7 The Service Provider shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the CC to inspect such records as requested from time to time.

23.8 The Service Provider acknowledges that any lists or schedules provided by it outlining information it deems confidential or commercially sensitive are of indicative value only and that the CC may nevertheless be obliged to disclose information which the Service Provider considers confidential in accordance with Conditions 23.4 and 23.6.

24. **Transparency**

24.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The CC shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, the Service provider hereby gives his consent for the CC to publish the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the contract, to the general public.

24.2 The CC may consult with the Service Provider to inform its decision regarding any redactions but the CC shall have the final decision in its absolute discretion.

24.3 The Service Provider shall assist and cooperate with the CC to enable the CC to publish this Contract.

25. **Indemnities and Insurance**

25.1 The Service Provider shall hold harmless and indemnify the CC on demand from and against all claims, demands, proceedings, actions, damages, costs (including legal costs), expenses and any other liabilities arising from claims made by the CC's staff or agents, or by third parties, in respect of any death or personal injury, or loss or destruction of or damage to property, or any other loss, destruction or damage, including but not limited to financial losses which are caused, whether directly or indirectly, by the breach of contract or breach of duty (whether in negligence, tort, statute or otherwise) of the Service Provider, its employees, agents or sub-contractors.

25.2 The Service Provider shall be liable to the CC for any loss, damage, destruction, injury or expense, whether direct or indirect, (and including but not limited to loss or destruction of or damage to the CC's property, which includes data) arising from the Service Provider's breach of contract or duty (whether arising in negligence, tort, statute or otherwise).

25.3 The Service Provider shall effect with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Service Provider in respect of the indemnities provided under the Contract, which in any event shall not be less than [£1,000,000], and shall at the request of the CC produce the relevant policy or policies together with receipt or other evidence of payment of the latest premium due there under.

25.4 Nothing in these Conditions or in any part of the Contract shall impose any liability on any member of the staff of the CC or its representatives in their personal capacity.

25.5 The Service Provider shall indemnify the CC against all proceedings, actions, claims, demands, costs (including legal costs), charges, expenses and any other liabilities arising from or incurred by reason of any infringement or alleged infringement of any

third party's Intellectual Property Rights used by or on behalf of the Service Provider for the purpose of the Contract, providing that any such infringement or alleged infringement is not knowingly caused by, or contributed to, by any act of the CC.

- 25.6 The CC shall indemnify the Service Provider against all proceedings, actions, claims, demands, costs (including legal costs), charges, expenses and any other liabilities arising from or incurred by reason of any infringement or alleged infringement of any third party's Intellectual Property Rights used at the request of the CC by the Service Provider in the course of providing the Services, providing that any such infringement or alleged infringement is not knowingly caused by, or contributed to by, any act of the Service Provider.
- 25.7 Except in relation to death or personal injury as referred to in Condition 25.1 and subject to Conditions 25.5 and 25.6 the amount of liability under this Condition shall be limited to a sum of [£4,000,000] or twice the contract value, whichever is the greater, or such other sum as may be agreed in writing between the CC and the Service Provider.

26. **Conflicts of Interest**

- 26.1 The Service Provider shall disclose to the CC's Representative as soon as is reasonably practical after becoming aware of any actual or potential conflict of interest relating to provision of the Services by the Service Provider or any event or matter (including without limitation its reputation and standing) of which it is aware or anticipates may justify the CC taking action to protect its interests.

27. **Intellectual Property Rights**

- 27.1 Subject to any pre-existing rights of third parties and of the Service Provider, the Intellectual Property Rights (other than copyright) in all reports, documents and other materials which are generated or acquired by the Service Provider (or any of its sub-contractors or agents) ('the Service Provider's Materials') in the performance of the Services shall belong to and be vested automatically in the CC.
- 27.2 The Service Provider hereby assigns any copyright that it owns in the Service Provider's Materials to the CC. The Service Provider waives all moral rights relating to the Service Provider's Materials.
- 27.3 The Service Provider warrants to the CC that all of their staff, agents and sub-contractors are and will be engaged in relation to the Contract on terms which do not entitle any of them to any Intellectual Property Rights in the Service Provider's Materials, and which require them to waive all moral rights.
- 27.4 If the Service Provider in providing the Services uses any materials in which there are pre-existing Intellectual Property Rights owned by itself, its agents, sub-contractors or third parties, it shall itself provide, or procure from such agent, subcontractor or third party a non-exclusive licence for, or, if the Service Provider is itself a licensee of those Intellectual Property Rights, it shall grant a sub-licence to, the CC to use, reproduce, modify, adapt and enhance the material as the CC sees fit. Such licence or sub-licence shall be perpetual and irrevocable and granted at no cost to the CC.
- 27.5 The CC shall have the sole right to use any information (whether or not it is Confidential Information) collected or collated pursuant to the Contract (excluding any information which in the opinion of the CC is confidential to the Service Provider or

which has been communicated to the Service Provider under a condition that it shall be confidential to the Service Provider), and all original documents in whatever form which contain that information, including any computer tape or disk, any voice recording and any special computer program written to give access to the information, shall on request be deposited with the CC.

- 27.6 Nothing in this Contract or done under the Contract shall be taken to diminish any copyright, patent rights or any other Intellectual Property Rights which would, apart from this Contract, vest in the CC.
- 27.7 The Service Provider shall ensure that all royalties licence fees or similar expenses in respect of Intellectual Property Rights in materials used in connection with the Contract have been paid and are included in the Charges.
- 27.8 If the CC reimburses the Service Provider for the cost of any equipment, such equipment shall become the property of the CC and the Service Provider shall on request deliver such equipment to the CC. The Service Provider shall keep a proper inventory of such equipment and shall deliver that inventory to the CC on request and on completion of the Services.

28. **Contract and Service Management**

- 28.1 If formal progress reports are required these will be as defined in Section 2 of Schedule 3 Contract and Service Management. The Service Provider shall render such reports at such time and in such form as may be specified by the CC, or as otherwise agreed between the Parties.
- 28.2 The submission and acceptance of progress reports shall not prejudice any rights of the CC under the Contract.
- 28.3 When meetings are required these will be as defined in Section 3 of Schedule 3, Contract and Service Management.
- 28.4 The CC shall give Service Provider reasonable notice of required attendance. Such attendance shall be at the Service Providers expense.

29. **Default**

- 29.1 If the Service Provider shall default in carrying out any of his obligations under the Contract the CC may give the Service Provider notice specifying the default; and if the Service Provider continues in default at the end of such period as is specified in the notice, the CC shall be at liberty, without prejudice to any other remedy for breach of contract forthwith to terminate the Contract either wholly or to the extent of such default.
- 29.2 In the event of the Contract being terminated either wholly or in part under paragraph 29.1 all sums of money that were then due or accruing from the CC to the Service Provider in respect of the Contract shall cease to be due or accruing to the extent of the termination.
- 29.3 In the event of the Contract being terminated either wholly or in part under paragraph 29.1:
- 29.3.1 the CC may take such steps as appear to it to be necessary or expedient to secure alternative provision of services; and

- 29.3.2 the CC shall have the right to recover from the Service Provider all fees paid in respect of work rendered useless by reason of the termination. Any travel and subsistence expenses properly incurred by the Service Provider up to that date will not be recovered from him.
- 29.4 A termination under paragraph 29.1 shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the CC.
30. **Termination**
- 30.1 The Service Provider shall notify the CC in writing immediately upon the occurrence of any of the following events:
- 30.1.1 where the Service Provider is an individual if a petition is presented for the Service Provider's bankruptcy or a criminal bankruptcy order is made against the Service Provider, or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs; or
- 30.1.2 where the Service Provider is not an individual but is a firm or a number of persons acting together in any capacity, if any event in 30.1.1 or 30.1.3 of this Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Service Provider to be wound up as an unregistered company; or
- 30.1.3 where the Service Provider is a company, if the company passes a resolution for winding-up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.
- 30.2 On the occurrence of any of the events described in Condition 30.1 or, if the Service Provider shall have committed a material breach of the Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days of being required by the CC in writing to do so or, where the Service Provider is an individual, if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983, the CC shall be entitled to terminate the Contract by notice to the Service Provider with immediate effect.
- 30.3 Thereupon, without prejudice to any other rights, the CC may complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefore in any payment subsequently made to the Service Provider) all materials, plant and equipment on the premises belonging to the Service Provider, and the CC shall not be liable to make any further payment to the Service Provider until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to recover from the Service Provider all fees paid to him prior to the occurrence of any of the events described in Condition 30.1.
- 30.4 All travel and subsistence expenses properly incurred by the Service Provider prior to the event in question shall not be recovered from him.

30.5 In addition to its rights of termination under Condition 30.2, the CC shall be entitled to terminate the Contract by giving to the Service Provider not less than 30 days' notice to that effect.

30.6 Termination under Conditions 30.2 or 30.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the CC and shall not affect the continued operation of Condition 20 (Secrecy and Confidentiality).

31. **Assignment and Subcontracting**

31.1 Unless otherwise agreed, the Service Provider shall not assign or subcontract any portion of the Contract without the prior written consent of the CC. Subcontracting any part of the Contract shall not relieve the Service Provider of any obligation or duty attributable to him under the Contract.

31.2 Where the Service Provider employs a subcontractor for the purpose of performing the Contract, he shall cause a term to be included in such subcontract which requires payment to be made to the subcontractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the subcontract requirements.

32. **Force Majeure**

32.1 Neither party shall be liable for any breach of its obligations under this Contract resulting from causes beyond its reasonable control including, but not limited to, fires, strikes (excluding strikes by its own employees), insurrection or riots, embargoes or delays in transportation, inability to obtain supplies and raw materials requirements or regulations of any civil or military authority (Event of Force Majeure).

32.2 Each of the parties agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure, the said notice to contain details of the circumstances giving rise to the Event of Force Majeure.

32.3 If the Event of Force Majeure shall continue for more than 30 days either party shall be entitled to terminate the Contract at any time thereafter without notice. Neither party shall have any liability to the other in respect of the termination of this Contract as a result of an Event of Force Majeure. Neither party will be under any obligation to the other in the event that Force Majeure applies and that this shall include any of the following circumstances: closure of part, or all, of the public transport systems or road network as a result of : Fire, Flood, other Natural Disaster, Accident, Terrorist Activity (whether real or hoax), Industrial Action (whether Official or not), Public Disorder, Civil Disobedience, War (including but not limited to actions of an enemy), Act of God or inclement weather. In addition Force Majeure may be held to apply in the event of a catastrophic or partial failure of any part of the telecommunications or power supply networks.

33. **Notices**

33.1 Any notice given under or pursuant to the Contract may be sent by hand or by post or by recorded delivery service or transmitted by email, facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address or the email or facsimile number shown in the Contract of the party on whom the notice is served, or to such other address or email or facsimile number as that party may by notice in writing to the other have substituted therefore, shall be deemed effectively given on the day

when, in the ordinary course of the means of transmission which are utilised, it would first be received by the addressee in normal business hours.

34. Dispute Resolution

- 34.1 The Parties' designated representatives shall use all reasonable endeavours to negotiate in good faith and settle amicably any disputes, differences or questions (the disputes) that arise during the continuance of the Contract.
- 34.2 In the event the Parties' designated representatives are unable to resolve the disputes raised, they shall be formally escalated to the Chief Executives of both the Parties for resolution.
- 34.3 If within 10 working days of such escalation the Chief Executives are unable to amicably resolve such disputes then the disputes shall be settled as far as reasonably practicable by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.

35. Headings

- 35.1 The headings to Conditions shall not affect their interpretation.

36. Working Time Directive

- 36.1 The Service Provider shall ensure that the Working Time Directive Employment Regulations will be applied in the proper manner to all personnel supplied via this Contract.
- 36.2 The Service Provider shall ensure that commensurate with good employment practices and policies observed by the CC, that all employment legislation is applied appropriately to all workers employed in providing the Services.

37. Observance of Statutory Requirements

- 37.1 The Service Provider insofar as it is legally liable shall comply with all statutory requirements to be observed and performed in connection with the Contract and shall indemnify the CC against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach of statutory obligations.

38. Equal Opportunities and Harassment

- 38.1 The Service Provider shall adopt a policy to comply with the requirements of the Race Relations Act 1976, the Race Relations (Amendment) Act 2000, the Employment Equality (Religion or Belief) Regulations 2003, the Sex Discrimination Act 1975 as amended, Equal Pay Act 1970, Employment Equality (Sexual Orientation) Regulations 2003, Sex Discrimination (Gender Reassignment) Regulations 1999, and the Disability Discrimination Act 1995 and the Disability Discrimination Act 2005, and accordingly, shall not treat one individual or group of people less favourably than others because of colour, race, nationality, ethnic origin, religion, gender, sexual orientation or disability and, further, shall seek to promote equality among its workers and generally. The Service Provider will note the CC's current and future obligations under these Acts and under the Data Protection Act 1998, Freedom of Information Act 2000, Human Rights Act 1998, and any codes of

practice and best practice guidance issued by the Government and the appropriate enforcement agencies.

- 38.2 The Service Provider will comply with the above legislation in so far as it places obligations upon the Service Provider in the performance of its obligations under this Contract. The Service Provider will facilitate the CC's compliance with the CC's obligations under these provisions and comply with any request from the CC for that purpose.
- 38.3 In the event of any finding of unlawful racial, disability or sexual discrimination being made against the Service Provider by any court or industrial tribunal, or of an adverse finding in any formal investigation by the Equality and Human Rights Commission the Service Provider shall take appropriate steps to prevent repetition of the unlawful discrimination and shall on request provide the CC with details of any steps taken.
- 38.4 The Service Provider shall set out its policies on race relations, sex discrimination and disability discrimination:
- 38.4.1 in instructions to those concerned with recruitment, training and promotion;
 - 38.4.2 in documents available to its personnel, recognised trade unions or other representative groups of its personnel; and
 - 38.4.3 in recruitment advertisements and other literature.
- 38.5 The Service Provider shall, on request provide the CC with copies of its policies, examples of the instructions and other documents, recruitment advertisements and other literature.
- 38.6 The Service Provider shall provide such information as the CC may reasonably request for the purpose of assessing the Service Provider's compliance with this Condition 38.
- 38.7 The Service Provider shall take all reasonable steps to ensure that Service Provider's personnel engaged in the performance of the Contract do not act towards either CC staff or members of the public in a manner that could amount to harassment on any of the grounds mentioned in 38.1. In the event of any finding of unlawful discrimination being made against the Service Provider by any court or tribunal, or of any adverse finding in any formal investigation, the Service Provider shall take appropriate steps to prevent repetition of the unlawful discrimination and shall, on request, provide the CC with details of any steps taken.

39. **Invalidity and Severability**

- 39.1 If any provision of this Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Contract and all provisions not affected by such invalidity shall remain in full force and effect.

40. **Rights of Third Parties**

- 40.1 Except where it is expressly provided elsewhere, no person who is not a party to the Contract shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

41. **Right of Set-Off**

- 41.1 Wherever under this Contract any sum of money shall be recoverable from or payable by the Service Provider to the CC, the same may be deducted from any sum then due or which at any time thereafter may become due to the Service Provider under this Contract.

42. **Variations and Cancellation**

- 42.1 The Service Provider shall not vary any of the Services as detailed in Schedule 1 Scope Of Services And Service Level Agreement, except as directed in writing by the CC. The Service Provider shall carry out any such variations and be bound by the same conditions, so far as applicable, as though the said variations were stated in the original Contract.

- 42.2 Where the Service Provider receives any such direction from the CC pursuant to Condition 42.1 which would require an amendment to the price for the Services or which would prevent the Service Provider from fulfilling any of its obligations under the Contract, the Service Provider shall promptly notify the CC in writing to that effect. The CC shall confirm in writing any amendments to the price for the Services or any modifications to the Service Provider obligations to which it agrees.

- 42.3 In respect of Services, if the CC shall not agree to any such amendments or modifications, the CC may at its sole discretion either elect to continue with the Contract without such variations or to terminate the Contract on 30 days' notice (in which event the CC will pay a reasonable price for all work carried out up to the date of termination but will not be liable for any other direct or indirect costs, damages or expenses of the Supplier).

43. **Survival of the Contract**

- 43.1 Insofar as any of the rights and obligations of the parties in this Contract shall or may be exercised after expiry or termination of the Contract, the provisions of the Contract conferring such rights and powers shall survive and remain in full force and effect notwithstanding such termination or expiry or any other contract with the CC.

44. **Delay Payments (Optional)**

- 44.1 If the service provider fails to deliver, install and commission the first or any subsequent phase of the service and the CC have suffered a loss, the CC shall have the right to deduct from the Contract Price Delay payments detailed in condition 44.2.

- 44.2 In the event that delivery of the services are delayed, for each phase (or any phase) the Service Provider shall pay the CC Delay Payments to the sum of [£xxxxx] for each day of delay until the day of delivery (or installation/commissioning) to a maximum of [£xxxxx] per occurrence. (Day of Delivery means the date the Certificate in Schedule 5 CC's Acceptance Certificate is completed and approved by a representative of CC.

45. **Handover Provisions (Optional)**

- 45.1 At the end of the Contract Period the Service Provider shall cooperate with any subsequent Service Provider and with the CC's representative to ensure a smooth continuation of the Service.
- 45.2 At the end of the Contract Period the Service Provider shall promptly return all documents, data, records and other information belonging to the CC (in whatever media they may be held) to the CC's representative.

46. **Escrow (Optional)**

- 46.1 Prior to the Services Commencement Date both Parties shall have executed an Escrow Agreement (Schedule 8).

47. **Non-Solicitation**

- 47.1 For the duration of this Contract and for a period of six months thereafter, the Service Provider shall not directly or indirectly employ, engage or enter into any contract for works or services with any employee of the CC with whom the Service Provider has had contact during this Contract without the prior written consent of the CC.
- 47.2 The Service Provider acknowledges that breach of Condition 47.1 shall give rise to considerable cost being incurred by the CC. In the event of any such breach (and for the avoidance of doubt and without limitation), the Service Provider agrees to make the following payments to the CC:
 - 47.2.1 the full recruitment costs associated with the recruitment of a replacement for the CC employee including but not limited to advertising, agency fees and reasonable internal management time;
 - 47.2.2 any additional costs incurred by the CC in the employment of temporary staff to provide cover in whole or in part for the said employee during any recruitment period; and
 - 47.2.3 where in the reasonable opinion of the CC the employee has received special training funded by the CC, the Service Provider shall pay the reasonable costs associated with providing additional training to any new employee.
- 47.3 If the CC gives its consent to the employment of any of its employees by the Service Provider such consent shall not vary or amend the duties of confidentiality owed by the said employee to the CC or the Service Provider obligations under this Contract. The CC may at its reasonable discretion make such consent conditional on the receipt by the CC of the payments described in Condition 47.2 above.

48. **Governing Law**

- 48.1 The contract shall be considered as a contract made in England and shall be governed by, and construed in accordance with, the provisions of English Law and the Service Provider hereby irrevocably submits to the jurisdiction of the English Courts. Submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the CC to take proceedings against the Service Provider in any other Court of competent jurisdiction, nor shall the taking of proceedings in any one or

more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

Schedule 1

Scope of Services and Service Level Agreement

(This example is for guidance only and CC's actual requirements must be entered)

(Part A) Title and description of Services.

(Part B) Service Level Agreement

- Quality assurance.
- Performance and inspection [To include monitoring/review procedure].
- Special requirements, ie Service Provider's Staff on duty at the Premises must be literate and able to communicate verbally and fluently in English.
- Manning Levels and Shift Patterns.
- Maintenance levels and performance, ie 24/7 per year, 4-hour response time etc.

**Schedule 2
Contract Price**

[In consideration of the Services, the fees payable to the Service Provider shall be as follows:

(list all items)

or

[The total price for the Services shall be **[insert price]** exclusive of VAT.]

Schedule 3

Contract and Service Management

(This example is for guidance only and CC's actual requirements must be entered)

Introduction

1. This Schedule specifies the requirements in respect of Contract and service management issues.

Management information reports and general reports

2. The Service Provider shall provide Management Information Reports electronically to the CC to ensure that the CC is provided with the following information on a monthly basis:
 - 2.1 Summary Information.
 - 2.2 Monthly Spend by the CC.
 - 2.3 Any achievements.
 - 2.4 A record of any failures to provide Ordered Services in accordance with the Contract.
 - 2.5 Details of the number and nature of any complaints from the CC.
 - 2.6 Any areas of concern or any weaknesses in the Services provided together with any corresponding actions being taken.
 - 2.7 The identification of any future key events and actions.
 - 2.8 Any interface problems.
 - 2.9 Any unexpected problems and emergencies resolved by the Service provider on his own initiative.
 - 2.10 Such Reports, in respect of each Month shall be submitted by the 15th day of the following Month.

Review meetings

3. When requested by the CC, the CC's representative and Service Provider's representative shall meet to review the provision of the Services.
4. These meetings will be [weekly] [bi-weekly] for the first [month] and then [monthly][quarter] thereafter.

Schedule 4
The CC's Equipment

To be completed as required

Schedule 5
The Competition Commission's Acceptance Certificate

We hereby confirm that the Services provided under the Contract Reference **[Insert ref]** dated **[Insert date]** conform to the relevant specification and have been provided in accordance with the Agreement to the reasonable satisfaction of the CC. The Services are hereby accepted by the CC and we confirm that there are no outstanding defects that we require the Service Provider to correct.

Signed for and on behalf of

Signed for and on behalf of

The Competition Commission

[Supplier]

.....
Name

.....
Name

.....
Title

.....
Title

.....
Date

.....
Date

Schedule 6 Non-Performance Charges

EXAMPLE ONLY—Actual requirement to be inserted as required

Should the Service Provider fail to carry out its obligations under Part B of Schedule 1 regarding a reported fault within the time periods specified below then the following non-performance charge shall become payable by the Service Provider to the CC as a genuine pre-estimate of the loss caused to the CC as a result of the non performance:

- (i) the first excess period (or part thereof) of 4 hours [£xxx]*
- (ii) each subsequent excess period (or part thereof) of 4 hours [£xxx]*

Each failure will be separately monitored so that a continuing non-performance could result in more than one charge running concurrently, in the event of separate but concurrent failures. The non performance charge will be limited to £[xxxx] for any one failure.

Should the Service Provider fail to carry out the programmed bulk lamp change or annual inspection of any installation by the end of the following month following its programmed month, then a non-performance charge shall be payable by the Service Provider of [£xxxx] per week (or part) per Location by which it is further delayed.

Should the Service Provider be instructed to carry out modifications to software for equipment then visits for factory acceptance will b required by CC and may be required for any other equipment at the CC's representative's discretion.

The Service provider shall give the CC's representative at least 5 working days' notice of equipment being ready for factory acceptance testing in order to confirm compliance with the operational specification. Only after the tests have proved satisfactory shall the CC's representative be asked to attend the factory acceptance tests. If in the opinion of the CC's representative these prior tests have not been carried out to a satisfactory standard then the Service provider shall reimburse costs incurred by CC's representatives in attendance of any abortive test at the rate of [£xxxx] per test. The decision of the CC's representative regarding the prior tests being carried out to a satisfactory standard shall be final.

Schedule 7
Commercially Sensitive Information Schedule

[insert commercially sensitive information as appropriate and if known the dates that the information will remain commercially sensitive]

**Schedule 8
Escrow Agreement**

(copy of signed agreement to be inserted)