

DATED

2016

**THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF CAMDEN**

and

VEOLIA ES (UK) LIMITED

ENVIRONMENT SERVICES CONTRACT

Legal Services Department
London Borough of Camden
Town Hall
Judd Street
London WC1H 9LP

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DATE

2016

PARTIES

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London, WC1H 9JE (the "**Authority**"); and
 - (2) **VEOLIA ES (UK) LIMITED** (incorporated and registered in England and Wales under Company Registration Number **02481991**) the registered office of which is at 210 Pentonville Road, London, N1 9JY (the "**Contractor**"),
- the "**parties**" and each a "**party**".

RECITALS

- (A) The Authority, a waste collection authority under section 30(3) of the Environmental Protection Act 1990, carried out a procurement following an OJEU dated 3rd August 2015 for provision of Environment Services ("Services") in the Authority Area.
- (B) On 16 June 2016, the Authority appointed the Contractor as preferred bidder under this procurement on the basis of the tender documents.
- (C) In this contract, the Contractor agrees to provide the Services.

IT IS AGREED AS FOLLOWS:

PART 1 – PRELIMINARY

1. DEFINITIONS INTERPRETATION AND PRECEDENCE OF DOCUMENTATION

- 1.1 The provisions of **Schedule 1 (Definitions)** shall apply to the interpretation of this contract (the "**Contract**"). In this Contract, except where the context otherwise requires:
 - 1.1.1 the masculine includes the feminine and vice-versa;
 - 1.1.2 the singular includes the plural and vice versa;
 - 1.1.3 a reference to any recital, clause, sub-clause, or appendix is, except where expressly stated to the contrary, a reference to such recital, clause, sub-clause, or appendix of this Contract;
 - 1.1.4 any reference to any other document shall include any permitted variation, amendment or supplement to such document;
 - 1.1.5 any reference to any enactment, order, regulation, or other similar instrument shall be construed as a reference to the enactment, order, regulation, or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
 - 1.1.6 a reference to a person includes firms, partnerships, and corporations and their successors and permitted assignees or transferees;
 - 1.1.7 headings are for convenience of reference only;
 - 1.1.8 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words; and
 - 1.1.9 the schedules and appendices to this Contract form part of this Contract.

1.2 Precedence of documentation

In the event of any inconsistency between the provisions of the main body of this Contract and the schedules, or between any of the schedules, the conflict shall be resolved according to the following descending order of priority:

- 1.2.1 the main body and **Schedule 1 (Definitions)** of this Contract;
- 1.2.2 **Schedule 4 (Payment and Performance), Schedule 9 (Key-Subcontractors) and Schedule 7 (Assets and Equipment)**;
- 1.2.3 **Schedule 2 (Service Specification)**;
- 1.2.4 **Schedule 3 (Method Statements)**; and
remaining **Schedules**

2. COMMENCEMENT AND DURATION

- 2.1 This Contract and the rights and obligations of the parties shall take effect on the Commencement Date and shall continue until the earlier of:
 - 2.1.1 the Expiry Date (subject to Change when the option to extend is exercised by the Authority (if agreed by the Contractor)); or
 - 2.1.2 the Termination Date.
- 2.2 The Services shall commence on the Service Commencement Date and shall continue in force (subject as hereinafter provided and to earlier termination in whole or in part in accordance with these Conditions) for a period of 8 years until the Expiry Date unless extended by up to a further 8 years, the duration of which may range from 1 year to 8 years with no lower or upper limit to the number of extensions, subject to not exceeding the maximum service length of 16 years from the Service Commencement Date. The option(s) to extend shall be by mutual agreement of the parties and shall be upon the same terms by written notice no later than:
 - 2.2.1 6 months before the Expiry Date, where the extension period does not exceed one year; and
 - 2.2.2 9 months before the Expiry Date, where the extension period exceeds one year.
- 2.3 Where parties agree in accordance with this **clause 2** to an extension of the Contract, the Authority shall serve a notice in writing at least 20 Working Days prior to the Expiry Date for the time being on the Contractor requiring a variation to the Expiry Date and for this Contract to continue on the same terms (subject always to any Changes and/or any price adjustments in accordance with the Annual Price Review) until the new Expiry Date and the Contractor shall within 5 Working Days of receipt of a notice accept the variation to the Expiry Date in which case the Expiry Date shall be varied in accordance with such notice.
- 2.4 If the parties are unable to agree any proposed variation to the Expiry Date in accordance with this **clause 2**, this Contract shall terminate on the existing Expiry Date for the time being.

3. PARENT COMPANY GUARANTEE AND COLLATERAL WARRANTY

- 3.1 Prior to the Commencement Date, the Contractor shall procure the execution of and delivery to the Authority as a condition of this Contract:
 - 3.1.1 a Parent Company Guarantee by the Guarantor in favour of the Authority in the form set out in **Schedule 5**; and/or
 - 3.1.2 a Collateral Warranty in favour of the Authority in the form set out in **Schedule 6** from each of the Key-Subcontractors.
- 3.2 Unless and until otherwise agreed by the parties, the form of Parent Company Guarantee set out in **Schedule 5** shall be the relevant specified form for the purposes of this Contract.

- 3.3 If at any time during the Contract Period the Authority is of the opinion, acting reasonably and in good faith, that the Guarantor does not have adequate financial standing to provide a meaningful guarantee, the Contractor shall procure that another company within the Contractor's Group, which at the relevant time and thereafter shall meet with the approval of the Authority, shall provide as soon as reasonably practicable a Parent Company Guarantee substantially in the form referred to in **clause 3.1** (any amendment to such form to be agreed by the Authority and such agreement not to be unreasonably withheld or delayed) to secure due performance by the Contractor of its obligations to the Authority. Without prejudice and in addition to the foregoing in the event that a Parent Company Guarantee is to be entered into pursuant to this **clause 3.3**, the Authority shall have an absolute discretion and right to update and amend the form of Parent Company Guarantee to overcome any changes in law since the date of this Contract that may adversely affect its ability to enforce and/or recover under the Parent Company Guarantee.
- 3.4 In the event that the Contractor shall have failed to comply with **clause 3.3** within 3 months of a written notice to do so, the Contractor shall provide to the Authority such alternative form of security to cover the value of the requirements set out in **clause 3.3** (which may take the form (without limitation) of an alternative guarantee, the provision of funds or reserves by a third party (in the form of bond, cash, deposit or escrow account) as the Authority may approve (such approval not to be unreasonably withheld or delayed)).
- 3.5 If the Contractor shall provide alternative security under **clause 3.4** and at any time thereafter the Authority agrees (such agreement not to be unreasonably withheld or delayed) that the Guarantor or other company within the Contractor's Group does have sufficient financial standing to provide a meaningful guarantee, the Contractor shall have the right by notice to the Authority to provide a Parent Company Guarantee substantially in the form set out in **Schedule 5** by such company as aforesaid and if the Contractor shall provide such Parent Company Guarantee within 20 Working Days of such notice, the Authority shall accept such Parent Company Guarantee in place of any then existing alternative security provided under **clause 3.4**.
- 3.6 Without prejudice and in addition to the foregoing in the event that a Parent Company Guarantee is to be entered into pursuant to **clause 3.5**, the Authority shall have an absolute discretion and right to update and amend the form of Parent Company Guarantee to overcome any changes in law since the date of this Contract that may adversely affect its ability to enforce and/or recover under the Parent Company Guarantee.
- 3.7 The Contractor shall not engage any new or any replacement Key-Subcontractor(s) in connection with the Services unless such person has delivered to the Authority a duly executed agreement in favour of the Authority substantially in the form of the Collateral Warranty set out in **Schedule 6** duly executed as a deed and in each case such Collateral Warranty must be delivered to the Authority before such entity carries out or commences any of its obligations under the relevant contract or appointment.
- 3.8 If the Contractor fails to comply with its obligations under any of **clauses 3.1, 3.3 and 3.4**, the Authority shall have the right to terminate this Contract with immediate effect in accordance with **clause 37**.
- 3.9 Any dispute arising under this **clause 3** may be referred by either party to determination under **clause 35**.

4. GENERAL WARRANTIES AND INDEMNITIES

4.1 Contractor warranties

4.1.1 The Contractor warrants, represents and undertakes to the Authority that:

- (a) it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (b) it has the power to enter into and to exercise its rights and perform its obligations under this Contract;

- (c) all necessary action to authorise the execution of and the performance of its obligations under this Contract has been taken;
- (d) the execution, delivery and performance by it of this Contract does not contravene any provision of:
 - (i) any existing Legislation either in force, or enacted but not yet in force binding on the Contractor;
 - (ii) the memorandum and articles of association of the Contractor;
 - (iii) any order or decree of any court or arbitrator; or
 - (iv) any obligation which is binding upon the Contractor or upon any of its assets or revenues;
- (e) the information, representation and other matters of fact committed in writing to the Authority by the Contractor in connection with or arising out of its tender are true and complete in all material respects in the context of this Contract;
- (f) the Contractor Warranted Data is true and accurate in all respects;
- (g) no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
- (h) it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
- (i) as far as it is aware no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer to it or in relation to any of its assets or revenues;
- (j) no Contractor Default has occurred which is continuing;
- (k) there are no material facts or circumstances in relation to the financial position or operational constitution of the Contractor which have not been fully and fairly disclosed to the Authority and which if disclosed might reasonably have been expected to affect the decision of the Authority to enter into this Contract;
- (l) it has and will throughout the duration of this Contract have in place adequate procedures (as referred to in section 7(2) of the Bribery Act 2010) designed to prevent persons associated with the Contractor from bribing any person with the intention of obtaining or retaining business for the Contractor or with the intention of obtaining or retaining an advantage in the conduct of business for the Contractor,

and the Authority relies upon such warranties, representations and undertakings.

4.2 **Contractor undertakings**

The Contractor undertakes with the Authority that for so long as this Contract remains in full force:

- 4.2.1 it will give the Authority notice of all litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or relevant authority which would adversely affect, to an extent which is material in the context of this Contract, the Contractor's ability to perform its obligations under this Contract; such notice shall be given as soon as the Contractor becomes aware that the proceedings may be threatened or pending and immediately after they are commenced;
- 4.2.2 it will not undertake the performance of its obligations under this Contract otherwise than through itself or a Sub-Contractor approved by the Authority in accordance with **clause 50**; and

4.2.3 it will give the Authority notice of the occurrence of any Insolvency Event of Default.

4.3 **Status of warranties**

4.3.1 All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in this Contract are cumulative and none shall be given a limited construction by reference to any other.

4.4 **Authority warranties**

4.4.1 No warranty by the Authority

Except where it is otherwise stated in this Contract, the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Data.

4.4.2 No liability to Contractor

Subject to **clause** 4.4.1, none of the Authority, its agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

- (a) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Disclosed Data; or
- (b) any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to this Contract.

4.4.3 Fraudulent statements

Nothing in this **clause** 4.4 shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Contractor in respect of any statements made fraudulently prior to the date of this Contract.

4.4.4 Contractor's due diligence

The Contractor shall be deemed to have:

- (a) satisfied itself as to the resources required for the delivery of the Services taking account of factors including (but not limited to) waste arisings and participation in dry recycling, food waste and garden waste collection services;
- (b) satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Contract; and
- (c) gathered all information necessary to perform its obligations under this Contract and other obligations assumed, including (but not limited to):
 - (i) information as to the nature, location and condition of the Depots (including hydrological, geological, geo-technical, contamination and sub-surface conditions);
 - (ii) information relating to archaeological finds, areas of archaeological, scientific or natural interest, local conditions and facilities and the quality of existing structures;
 - (iii) information relating to the Relevant Employees and the operation of TUPE;
 - (iv) information relating to the number and nature of properties involved in the provision of the Services;
 - (v) relevant information relating to Delivery Sites;
 - (vi) the nature of the services and waste arisings prior to the Commencement Date;
 - (vii) the socio-economic demography of the Authority Area; and
 - (viii) the nature of the road network within the Authority Area, including that relating to traffic flows and access issues.

4.4.5 Contractor's warranty

The Contractor warrants and represents to the Authority that it has conducted its own analysis and review of the Disclosed Data and that it has satisfied itself as to the accuracy, completeness and fitness for purpose of any Disclosed Data on which it places reliance.

4.4.6 No relief

The Contractor shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information save in respect of any information expressly warranted as correct by the Authority in this Contract.

PART 2 – THE SERVICES

5. PROVISION OF THE SERVICES

5.1 Obligation to provide

Subject to the terms of this Contract, the Contractor shall provide the Services (as may be varied from time to time in accordance with this Contract) to the Authority during the Contract Period in a safe and skilful manner and in accordance with:

5.1.1 this Contract;

5.1.2 all applicable Legislation;

5.1.3 all Necessary Consents;

5.1.4 all applicable policies of the Authority notified and made available to the Contractor by the Authority;

5.1.5 the Authority Depot Lease(s);

5.1.6 the Authority Depot Licence(s); and

5.1.7 Good Industry Practice.

5.2 Contractor's Obligations

5.2.1 The Contractor shall provide the Services in compliance with the Contract.

5.2.2 The Contractor shall promptly inform the Authorised Officer (and confirm in writing) if the Services, or any part of it, is not being, or may not be, performed, whether or not as the result of any act or omission of the Authority, giving details, reasons and likely duration. The provision of this information shall not relieve the Contractor from its contractual obligations.

5.2.3 The Contractor shall at all times comply with all relevant Authority's policies, provided a copy has been supplied by the Authority, and provided that any new policies, or changes to existing policies after the Service Commencement Date which affect the Contractor's expenditure or revenues shall be treated as an Authority Change.

5.2.4 The Contractor shall co-operate and co-ordinate its activities with other contractors or sub-contractors engaged by the Authority as appropriate.

5.2.5 The Contractor shall ensure that neither the Contractor nor its Contractor's Staff shall do any act or thing at any premises owned or occupied by the Authority other than the proper performance of the Services.

5.2.6 The Contractor shall not, except with the Authority's prior written consent, during the Contract Period, be involved directly or indirectly in the provision of business recycling and waste services to third parties in the Authority Area which compete with the Business Recycling and Waste Services provided to the Authority under this Contract.

5.3 Authority's Obligations

5.3.1 Subject to the terms of this Contract, the Authority shall during the Contract:

- (a) not hinder the Contractor's provision of the Services; and
- (b) not derogate from the Contractor's exclusive right to provide the Services.

5.3.2 In the event that the Authority is in breach of any of its obligations in **clause** 5.3.1, the Contractor shall on demonstration of any losses or increased costs incurred by it as a result, be entitled to an adjustment of the Service Payment.

5.4 **Health and Safety**

5.4.1 The Contractor shall at all times apply the provisions in the Health and Safety Plan. The first Health and Safety Plan shall be produced by the Contractor and supplied to the Authority within 20 Working Days of the Commencement Date. The Authority shall provide to the Contractor the Authority's comments on the plan within 20 Working Days of the Authority's receipt of the plan. The Contractor shall incorporate the comments and suggestions of the Authority as appropriate.

5.4.2 Before the Service Commencement Date, the Contractor notifies the Authority of the name of the person responsible for health and safety. When on premises owned or occupied by the Authority, the Contractor ensures that his and his Sub-Contractor's employees comply with the Authority's general health and safety policy and with the lawful requirements of the Authorised Officer.

5.4.3 The Contractor shall (and shall procure that that all Sub-Contractors shall) comply fully with the requirements of the Health and Safety at Work Etc. Act 1974 (as may be amended from time to time) and any other Legislation, or applicable policies of the Authority, relating to the health and safety of employees and others who may be affected by the provision of the Services. The Contractor shall provide to the Authority any information relating to the Contractor's compliance with this **clause** 5.4 that the Authority may reasonably request from time to time.

5.4.4 The Contractor shall procure that the Authority is permitted access to the Depots (and/or any other premises used by the Contractor or any Sub-Contractors for the provision of the Services) for the purpose of carrying out an inspection of health, safety and welfare standards.

5.4.5 The Contractor shall (and shall procure that all Sub-Contractors shall) co-operate fully with the reasonable requests of the Authority and provide access to all relevant areas, health and safety documentation, welfare facilities, accident records, training records and certificates, equipment inspection records, statutory registers and notices, plant and equipment for the purposes of inspection. The Authority shall be entitled to take any photographs, measurements, samples, or copies of such documents that the Authority reasonably deems necessary to determine compliance with this **clause** 5.4, and with best practice.

5.4.6 The Contractor shall provide to the Authority, within 5 Working Days of receipt, copies of any communication which the Contractor or any Sub-Contractor receives from any statutory or regulatory body concerning the health, safety, welfare, environmental or fire safety standards of the provision of the Services.

5.4.7 The Authorised Officer may suspend the providing of the Services or any part of the Services if the Contractor does not comply with the Health and Safety Plan.

6. **ENVIRONMENTAL ISSUES**

6.1 Without prejudice to its obligations to comply with all applicable Legislation, the Contractor shall at all times comply with its duty of care under section 34 of the Environmental Protection Act 1990.

6.2 The Contractor shall take all and any reasonable steps as are necessary to ensure that the impact of the Services upon the environment are adequately and sufficiently assessed, considered, supervised, controlled, monitored, mitigated and remedied as required by all appropriate enforcement agencies, Legislation and Good Industry Practice.

- 6.3 The Contractor shall use its reasonable endeavours to enhance the environmental benefits of the Services and shall provide the Services in such a way as to minimise any actual or potential damage to the environment.
- 6.4 Not used.
- 6.5 The Contractor shall use reasonable endeavours to strive to improve the environmental efficiency of the Services and provide a flexible approach to the management of the Services. The Contractor shall at all times throughout the Contract:
- 6.5.1 demonstrate to the Authority or its Authorised Officer a commitment to continuous improvement and to employing the best practicable environmental options in the provision of the Services wherever possible;
- 6.5.2 demonstrate to the Authority or its Authorised Officer a commitment of compliance with environment legislation in place from time to time;
- 6.5.3 incorporate the provisions of this clause into the decision making process of the Contractor;
- 6.5.4 demonstrate to the Authorised Officer a commitment to managing and operating the Services in accordance with best practice; and
- 6.5.5 upon written request by the Authorised Officer, the Contractor shall supply within 28 Working Days to the Authorised Officer, evidence in writing to demonstrate compliance with this clause.
- 6.6 The Contractor shall consider environmental efficiency as part of the operational planning process on an ongoing basis throughout the Contract. In this respect, the Contractor shall have regard to the following:
- (a) Transport Management
 - (i) Use of energy efficient vehicles used in the provision of the Services; and
 - (ii) the efficient use of vehicles whilst providing the Services.
 - (b) Waste Management

Reduce, reuse and recycle waste generated directly by the Contractor in providing the Services.
 - (c) Energy Management

Efficient use of energy for buildings and equipment used in the provision of the Services.
 - (d) Water Management

Efficient use and reuse of water used in the provision of the Services.
 - (e) Resource Management

Efficient use of resources used in the provision of the Services.
- 6.7 The Contractor shall promptly notify the Authority of all circumstances which shall or might reasonably be regarded as a breach of this **clause 6** and shall act at all times in good faith in respect of this **clause 6**.

7. HAZARDOUS SUBSTANCES

7.1 Storage

- 7.1.1 The Contractor shall ensure that any hazardous materials or equipment used or intended to be used in the provision of the Services are kept under control and in safe keeping in accordance with all relevant Legislation and Good Industry Practice, and are properly and clearly labelled on their containers.

7.2 COSHH Register

- 7.2.1 Throughout the Contract Period, the Contractor shall maintain a COSHH Register in relation to each Depot. The Contractor shall update each COSHH Register every 6 months

from the Service Commencement Date and a copy of each COSHH Register and each updated COSHH Register ("Updated COSHH Register") shall be held at the relevant Depot and at the Contractor's registered office. A copy of each COSHH Register and each Updated COSHH Register shall promptly be given to the Authority.

8. OWNERSHIP OF WASTE

- 8.1 The Contractor shall during the Contract Period accept all Waste collected or made available to it pursuant to this Contract.
- 8.2 As between the Authority and the Contractor, all Waste collected, received by or in the possession of the Contractor or any of its Sub-Contractors shall be in the ownership and at the risk of the Authority who shall take full responsibility for it up to and including the point of its delivery to a Delivery Site.
- 8.3 The Authority shall direct the Contractor to dispose of all Waste in accordance with **Schedule 2**.

9. EMERGENCIES

- 9.1 If an Emergency arises during the Contract Period, the Contractor shall comply with the instructions issued by the Authorised Officer or the Emergency Plan as set out in **Schedule 12**. The Authority may during the occurrence of an Emergency exercise its Step-In Rights in accordance with **clause 47** and/or issue a Stop Notice on the Contractor to:
 - 9.1.1 remove all or part of the Services from this Contract; or
 - 9.1.2 require the Contractor to use reasonable endeavours to procure that such additional or alternative services are undertaken by the Contractor as and when required by the Authority to ensure that the Emergency is dealt with and normal operation of the relevant Depot recommences as soon as is reasonably practicable.
- 9.2 The full and reasonable cost incurred by the Contractor of any additional or alternative services provided to the Authority under **clause 9.1** shall be borne by the Authority and paid in accordance with **clause 27** (provided that the Contractor has provided adequate supporting documentation to support the amount claimed) except where the Emergency arises from the act or omission of the Contractor in which case the cost shall be borne by the Contractor.
- 9.3 Where the Authority has issued a Stop Notice in accordance with **clause 9.1**, the Authority shall issue further formal notice when the period of Emergency (the "**Emergency Period**") has ended and the Contractor shall immediately resume the provision of the Services in accordance with the Contract.
- 9.4 Unless and to the extent that any Emergency arises from the act or omission of the Contractor (or any of its Sub-Contractors), the Contractor shall be entitled to invoice the Authority:
 - 9.4.1 in accordance with **clause 27** in respect of the Services which it would, but for the Emergency, have carried out in accordance with the Contract during the period of such Emergency; and
 - 9.4.2 for its reasonable and properly incurred marginal costs arising as a direct result of the Emergency (subject always to the Contractor providing reasonable evidence of steps taken to mitigate such costs), such invoice to be paid by the Authority within 10 Working Days.
- 9.5 If and to the extent that any act or omission of the Contractor (or any of its Sub-Contractors) causes an Emergency, the Contractor shall not be entitled to invoice the Authority for payment of Services in accordance with **clause 9.4.1** or marginal costs in accordance with **clause 9.4.2**, and for the avoidance of doubt, any Deductions accruing prior to any Emergency Period, or any period of poor performance which would but for the Emergency in question count towards a Service Breakdown, shall continue to accrue or count (as the case may be) after the end of any Emergency Period.

9.6 Business Continuity and Disaster Recovery Plan

- 9.6.1 The Contractor shall maintain, regularly update and copy to the Authority a Business Continuity and Disaster Recovery Plan designed to ensure that the Services are maintained in accordance with Good Industry Practice at all times after each period of Services failure or interruption.
- 9.6.2 The first Business Continuity and Disaster Recovery Plan shall be produced by the Contractor and supplied to the Authority within 20 Working Days of the Commencement Date. The Authority shall provide to the Contractor the Authority's comments on the plan within 20 Working Days of the Authority's receipt of the plan. The Contractor shall incorporate the comments and suggestions of the Authority as appropriate.
- 9.6.3 The parties shall review, and the Contractor shall liaise and co-operate with the Authority for the purpose of updating the plan in the manner described in **clause** 9.6.2 every 6 months during the Contract Period so as to ensure that it corresponds to developments and/or changes in risks and circumstances.
- 9.7 Any dispute in relation to costs under this **clause** 9 shall be resolved in accordance with the Dispute Resolution Procedure.

10. CONTINUOUS IMPROVEMENT AND BEST VALUE

- 10.1 The Contractor acknowledges that the Authority is subject to the Best Value Duty.
- 10.2 The Contractor shall, but only to the extent of its obligations in this Contract, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.
- 10.3 The Contractor shall undertake at its cost such actions as the Authority shall reasonably request, only to enable the Authority to comply with Part 1 of the Local Government Act 1999, including:
- 10.3.1 producing and submitting data listed in the Single Data List and complying with requests for any other information, data or other assistance made by the Authority in pursuance of their Best Value Duty;
- 10.3.2 permitting any officer, agent or employee of Public Sector Audit Appointments Ltd, National Audit Office Financial Reporting Authority or Cabinet Office, or other relevant body (including any independent external auditor appointed by the Authority) empowered to inspect the Authority's compliance with Part 1 of the Local Government Act 1999, in connection with the exercise of his statutory powers and duties in relation to Part 1 of the Local Government Act 1999, at all reasonable times and upon reasonable notice, access to the Depots (and/or any other premises used by the Contractor or any of its Sub-Contractors) and any document or data relating to the Services;
- 10.3.3 co-operating in implementing any proposals, recommendations or action plans, which may emerge from the inspections referred to in **clause** 10.3.2;
- 10.3.4 permitting (only insofar as it is justified under Part 1 of the Local Government Act 1999) at all reasonable times and upon reasonable notice, access by Industry Experts working on behalf of the Authority to the Depots (and/or any other premises used by the Contractor or any of its Sub-Contractors) and any document or data relating to the Services; and
- 10.3.5 co-operating in implementing any proposals, recommendations or action plans, which may emerge from any review carried out by Industry Experts referred to in **clause** 10.3.4.

PART 3 – PERFORMANCE MONITORING AND RECORDS

11. CONTRACT MANAGEMENT

- 11.1 The Contractor shall implement **Schedule 11** and use all necessary measurement and monitoring tools and procedures to report performance to a level of detail sufficient to verify its performance of the Services.

- 11.2 The Contractor shall notify the Authorised Officer as soon as is reasonably practicable of the occurrence of any Service Failure.
- 11.3 The Authority may elect, at its own cost, to undertake its own performance monitoring at any stage during the Contract Period for any purpose, including in order to ensure that the Services are being provided in accordance with this Contract.
- 11.4 The Contractor shall use its reasonable endeavours to assist the Authority in undertaking performance monitoring activities under **clause** 11.3.
- 11.5 The Authority shall be entitled to notify the Contractor of the outcome of the performance monitoring activities undertaken under **clause** 11.3 and the Contractor shall have due regard to the Authority's comments in relation to the future provision of the Services.

12. INSPECTION

12.1 Right of inspection

- 12.1.1 The Contractor and any Key-Subcontractor(s) shall procure, and the Contractor shall use reasonable endeavours to procure that any of its other sub-contractors shall procure, that the Authority or any representative or adviser of the Authority shall have, at all reasonable times the right (but not so as to delay or impede the provisions of the Services except as may be necessary in the case of an Emergency) to enter on reasonable notice (save in the case of an Emergency or for statutory or audit purposes where no notice shall be required), any of the Depots (and/or any other premises used in connection with the Services by the Contractor and/or any Key-Subcontractors and/or any of the Contractor's other sub-contractors) in order to inspect the state and progress of the Services and to monitor compliance by the Contractor with its obligations under this Contract.

12.2 Contractor's assistance

- 12.2.1 The Contractor and any Key-Subcontractor(s) shall procure that satisfactory facilities are made available to the Authority and any representative or adviser of the Authority and that reasonable assistance is given for the purposes of **clause** 12.1, subject to the provision of the Services not being adversely affected (save in the case of an Emergency or for statutory or audit purposes).

12.3 Supply of information

- 12.3.1 The Contractor and any Key-Subcontractor(s) shall supply to the Authority and any representative or adviser of the Authority visiting any of the Depots (and/or any other premises used by the Contractor or any Sub-Contractors) pursuant to **clause** 12.1 any such information in respect of the Services as may reasonably be required by the visiting party in question.

12.4 Damages

- 12.4.1 If the Authority or its representative or advisor causes material damage to any of the Depots (and/or any other premises used by the Contractor or any Sub-Contractors) in exercising any right under **clause** 12.1, then the Authority shall be liable to the Contractor for the reasonable costs directly caused by such damage.

13. RECORDS AND AUDIT

13.1 Records

- 13.1.1 The Contractor shall provide the Relevant Information and shall use all reasonable endeavours to provide the Key-Subcontractor Relevant Information from time to time to the Authorised Officer on the Service Commencement Date and as may be reasonably requested by the Authorised Officer from time to time for any purposes in connection with the Contract.
- 13.1.2 The Contractor shall throughout the Contract Period procure that monthly management accounts relating to the performance of the Contract in respect of the Contractor and any Key-Subcontractor(s) are prepared, retained and maintained for inspection by or provision

to the Authority. The Authority may require that the Contractor provide to the Authorised Officer every 6 months, or from time to time upon reasonable request by the Authorised Officer, such monthly management accounts for the Contractor and/or any Key-Subcontractor(s) as the case may be, and the Contractor shall, where such accounts are requested on a regular basis, provide such accounts to the Authorised Officer on the 28th day of each month following the month to which such accounts refer.

13.1.3 For the purpose of **clause** 13.1.1, the Contractor shall use all reasonable endeavours to procure that all Relevant Information in the possession of the Contractor or any Sub-Contractors shall be available to it and the Contractor confirms that it has included or shall include relevant terms in all contracts with Sub-Contractors for this purpose.

13.1.4 The Authority shall be entitled, at any time during the Contract Period, to appoint an agent, or agents, of its choosing for the purpose of reviewing the Key-Subcontractor Relevant Information and the Relevant Information and to monitor the financial position of the Contractor and any Key-Subcontractor(s) and the Contractor shall permit and shall use reasonable endeavours to procure that any Key-Subcontractor(s) shall permit the agent(s) appointed by the Authority to:

- (a) monitor the financial position of the Contractor and any Key-Subcontractor(s); and
- (b) inspect and take copies of the monthly management accounts and all information that the agent(s) acting reasonably shall require for the purpose of monitoring the financial position of the Contractor and any Key-Subcontractor(s),

and to this end the Contractor shall use all reasonable endeavours to assist the agent(s) appointed by the Authority and to make available or procure such information as requested by the agent(s) under this **clause** 13.1.4. For the avoidance of doubt, the rights of the Authority under this clause shall be subject to the Contractor's and Key-Subcontractors' confidentiality and data protection obligations, and the Authority agrees to use any information it has access to under this clause in accordance with those obligations.

13.2 **Audit**

13.2.1 The Audit Agents, any Successor Body and any other relevant body (including any independent external auditor appointed by the Authority) may on reasonable notice and subject to Contractor's and any Sub-Contractor's confidentiality and data protection obligations examine such documents as he or it may reasonably require which are owned, held or otherwise within the control of the Contractor and any Sub-Contractors and the Contractor and any Sub-Contractors shall comply with any such requests from the Audit Agents, any Successor Body or any other relevant body (as the case may be), and shall produce such oral or written explanations as he or it considers necessary for the purposes of:

- (a) to verify the integrity and content of any financial report;
- (b) to verify the accuracy of the charges and any other amounts payable by the Authority under this Contract (and proposed or actual variations to such charges and payments);
- (c) to verify the costs (including the amounts paid to all Sub-Contractors and any third party suppliers);
- (d) to verify the Contractor's and each Key-Subcontractors' compliance with this Contract and applicable Law;
- (e) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Contractor of the purpose or objective of its investigations;
- (f) to identify or investigate any circumstances which may impact upon the financial stability of the Contractor, and/or any Key-Subcontractors or their ability to perform the Services;

- (g) to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (h) to review any books of account and the internal contract management accounts kept by the Contractor in connection with this Contract;
 - (i) to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
 - (j) to enable the National Audit Office to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - (k) to review any performance monitoring reports and/or other records relating to the Contractor's performance of the Services and to verify that these reflect the Contractor's own internal reports and records;
 - (l) to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
 - (m) to inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or
 - (n) to review the integrity, confidentiality and security of the Contract Data.
- 13.3 Any audit, inspection and/or testing by the Authority pursuant to this clause shall not relieve the Contractor (or any of its Sub-Contractors) from any obligation under the Contract or prejudice any of the Authority's rights, powers or remedies against the Contractor.
- 13.4 If as a result of any audit, inspection and/or testing pursuant to this clause the Authority is not satisfied that the Services are conforming or will conform in all respects with the Contract and the Authority so informs the Contractor, the Contractor shall take all steps necessary to ensure compliance.

14. PERFORMANCE REPORT

- 14.1 The Contractor shall provide to the Authority the Performance Report with the monthly invoice pursuant to **clause 27.4**.

PART 4 – PROPERTY ISSUES

15. DEPOTS

15.1 Grant of Authority Depot Leases

- 15.1.1 The Authority and the Contractor shall (acting in good faith) agree the terms of the Authority Depot Leases and enter into the same on the date of this Contract, or at a later date where appropriate.
- 15.1.2 The Authority shall grant to the Contractor, and the Contractor shall accept, the Authority Depot Leases in accordance with this **clause 15**.
- 15.1.3 Exclusion of Authority Depot Leases from sections 24-28 of the Landlord and Tenant Act 1954:
- (a) The Authority shall serve on the Contractor a notice in the form set out in Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (the "**Order**") in relation to each tenancy to be created by the Authority Depot Leases.
 - (b) The Contractor, or a person duly authorised by the Contractor, shall in relation to each notice make a simple declaration in the form set out in paragraph 7 of Schedule 2 to the Order or a statutory declaration in the form set out in paragraph 8 of Schedule 2 to the Order.

15.1.4 The grant of the Authority Depot Leases shall take place at the offices of the Authority or as otherwise agreed between the parties. The term of the Authority Depot Leases shall commence on the date agreed by the parties (the "**Lease Commencement Date**").

15.2 Delivery of engrossments

15.2.1 At the same time as executing this Contract or within 10 Working Days before the Lease Commencement Date (whichever may occur earlier), the Authorised Officer shall deliver engrossments of the counterpart Authority Depot Leases to the Contractor. The Contractor shall execute and deliver the Authority Depot Leases as deeds to the Authorised Officer within a further 5 Working Days of receipt. The Authority shall then execute each original Authority Depot Leases as a deed and on completion of the Authority Depot Leases send each original Authority Depot Lease to the Contractor.

15.3 SDLT

15.3.1 The Contractor shall within 20 Working Days of completion of the Authority Depot Leases respectively arrange payment of SDLT (if any).

15.4 Registration

15.4.1 If appropriate the Contractor shall apply for registration of the Authority Depot Leases within 2 months of completion of the Authority Depot Lease and shall use all reasonable endeavours to assist the land registry in responding to any requisitions. The Contractor shall send a copy of the updated title to the Authority.

15.5 Early termination

If this Contract is terminated for any reason prior to the Expiry Date:

15.5.1 all Authority Depot Leases and/or other interests in or rights to use (and occupy) any Authority Depot(s) (which shall include without limitation any tenancies at will or licences) granted to the Contractor by the Authority in order for the Contractor to provide the Services in accordance with this Contract, shall automatically cease and determine with effect from the date of termination of this Contract (or, if not granted at the time, the obligation to grant the Authority Depot Lease or relevant other interest in or right to land shall automatically cease to apply);

15.5.2 where the Authority Depot Lease has been entered into, the Contractor shall forthwith deliver to the Authority each Authority Depot Lease together with an up to date copy of the register, releases from any charge and a direction to the Chief Land Registrar to cancel the registered titles relating to the Authority Depot Lease; and

15.5.3 the Contractor shall take all steps as may be proper and reasonable to cancel or assist in the cancellation of all entries at the Land Registry and the Land Charges Registry in relation to the Authority Depot Leases.

15.6 No compensation

15.6.1 The Contractor shall not be entitled to any compensation in respect of any variation of the terms of an Authority Depot Lease or the unexpired part of its interest as tenant under an Authority Depot Lease on assignment or surrender or automatic determination in accordance with this **clause** 15.6.

15.7 Compliance with the title deeds

The Contractor shall procure that:

15.7.1 the provision of the Services at each Authority Depot by or on behalf of the Contractor shall be carried out in a manner which does not breach any provisions of the deeds relating to that Authority Depot;

15.7.2 there shall be no action, or omission to act, which shall give rise to a right for any person to obtain title to or any right or interest over an Authority Depot or any part of it (save in accordance with the terms of this Contract); and

15.7.3 the Authority is indemnified in full from and against actions and proceedings and all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses

(including legal expenses) awarded against or incurred or paid by the Authority as a result of or in connection with any breach of this **clause** 15.7.

15.8 Use of Contractor Depots

- 15.8.1 The Contractor shall (acting in good faith) use all reasonable endeavours to ensure that the Authority is included in the negotiations relating to the use of the Contractor Depots.
- 15.8.2 The Contractor shall obtain the approval of the Authority (such approval not to be unreasonably withheld or delayed) to the use of an alternative Contractor Depot prior to entering into any lease.
- 15.8.3 The Contractor shall not cease to use a Contractor Depot without the prior written approval of the Authority.

16. CONDITION OF THE DEPOTS

- 16.1 Subject to **clause** 16.2, the condition of the Depots shall be the sole responsibility of the Contractor and accordingly (but without prejudice to any other obligation of the Contractor under this Contract) the Contractor shall be deemed to have:
 - 16.1.1 carried out any necessary investigations and surveys of the Depots and their surroundings and (where applicable) any structures or works on, over or under the Depots;
 - 16.1.2 satisfied itself as to the condition of the Depots;
 - 16.1.3 satisfied itself as to the adequacy of the means and rights of access to and through the Depots and any accommodation it may require for the purposes of providing the Services; and
 - 16.1.4 satisfied itself as to the precautions, times and methods of operation necessary to prevent any nuisance or interference, whether public or private, being caused to third parties.
- 16.2 The Contractor accepts full responsibility for all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, water or residue (whether in solid, semi-solid or liquid form or a gas or vapour) and including genetically modified organisms except, for any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, water or residue (whether in solid, semi-solid or liquid form or a gas or vapour) and including genetically modified organisms which existed before the Service Commencement Date. The Contractor shall, subject to the aforementioned exception, be responsible for, and hold the Authority harmless from, cleaning up and otherwise dealing with any such matters at the Depots so that it shall at all times comply with its obligations under this Contract including complying with, at its own cost, any applicable Legislation and any Necessary Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor).
- 16.3 The Contractor shall not be entitled to make any claim against the Authority of any nature whatsoever on any grounds including the fact that incorrect or insufficient information on any matter relating to the Depots was given to it by any person.

17. PLANNING PERMISSIONS AND NECESSARY CONSENTS

- 17.1 The Contractor shall be responsible for obtaining all Necessary Consents required or necessary to provide the Services and shall satisfy itself that all such Necessary Consents are in place at the Service Commencement Date and shall maintain existing and obtain any new Planning Permissions and Necessary Consents from time to time required or necessary to provide the Services during the Contract Period.
- 17.2 The Contractor shall and shall procure that all Sub-Contractors shall:
 - 17.2.1 comply with the conditions and requirements attached to all Planning Permissions and Necessary Consents;

- 17.2.2 take all reasonable steps to ensure that none of the Planning Permissions or Necessary Consents are revoked due to their conduct and that all Planning Permissions and Necessary Consents continue in full force and effect;
- 17.2.3 notify the Authority immediately of any complaints, investigative procedures or enforcement notices received by the Contractor relating in any way to the Depots and supply a copy of every such notice to the Authority within 5 Working Days after the receipt of the same;
- 17.2.4 notify the Authority promptly of any notices received relating in any way to any Planning Permission or Necessary Consent and shall provide a copy of any such notice within 2 Working Days of receipt of the same to the Authority by email and by post; and
- 17.2.5 not without the prior consent of the Authority (such consent not to be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Planning Permission or Necessary Consent (whether obtained before or after the date of this Contract) or of any condition attached to it.

PART 5 – ASSETS AND EQUIPMENT

18. PROVISION OF ASSETS AND EQUIPMENT

18.1 Authority Assets and equipment

- 18.1.1 The Contractor acknowledges that the Authority Assets are owned by the Authority and shall remain so owned and controlled for the Contract Period. The parties shall enter into a Master Operating Lease as set out in **Schedule 16** in respect of any Authority Assets made available to the Contractor.
- 18.1.2 The Authority permits the Contractor to use the Authority Assets for the Contract Period solely for the purpose of providing the Services. No later than 3 months following the Service Commencement Date, the Contractor shall prepare a schedule of condition of the Authority Assets for approval by the Authority.
- 18.1.3 The Contractor acknowledges that the Authority Assets are supplied by the Authority on an "as is" basis and the Authority makes no representation or warranty as to the condition, quality, suitability or fitness for any purpose of the Authority Assets.
- 18.1.4 The Contractor acknowledges that the Authority may deduct the relevant amount in accordance with **Schedule 4** where appropriate to reflect the Contractor's use of the Authority Assets for the provision of the Services.
- 18.1.5 The Contractor shall satisfy itself in relation to each of the Authority Assets as to whether it is suitable for use in providing the Services.
- 18.1.6 Where the Authority grants the right to access and use any Authority Assets to the Contractor:
 - (a) the Authority grants such right to access and use those Authority Assets solely to the extent necessary for providing the Services;
 - (b) such right to access and use those Authority Assets shall terminate automatically without notice from the Authority upon the expiry or termination of this Contract;
 - (c) the Contractor shall be responsible for the safe return of the Authority Assets to the Authority;
 - (d) at all times:
 - (i) the Contractor shall ensure that the Authority Assets are used in a skilful and proper manner (and in accordance with Good Industry Practice and any operating instructions issued for such Authority Assets) by properly skilled and trained persons;

- (ii) whilst such Authority Assets are in the Contractor's possession, custody or control:
 - (A) such Authority Assets shall be at the Contractor's sole risk and the Contractor shall procure that they are kept safe and secure in accordance with the provisions of this Contract; and
 - (B) the Contractor shall ensure that the Authority Assets are only located or stored (temporarily or otherwise) in premises owned or controlled by the Authority or in premises owned or controlled exclusively by the Contractor (and details of any such premises shall be notified to the Authority prior to such location or storage of the Authority Assets); and
 - (e) the Authority shall have access on reasonable notice (save in an emergency) to all or any of the Authority Assets for the purpose of viewing, inspecting or testing any of the Authority Assets.
- 18.1.7 In respect of all Authority Assets:
- (a) the Contractor acknowledges that neither it nor any Sub-Contractor has any legal or equitable claim to such Authority Assets, and agrees not to contest ownership of such Authority Assets;
 - (b) the Contractor shall not create (or attempt to create) any legal or equitable interest in such Authority Assets in its favour or otherwise (and shall ensure that no Sub-Contractor will do so);
 - (c) to the fullest extent permitted by law, the Contractor waives any rights which it may have to take or seek to take a lien over such Authority Assets in respect of any sums due from the Authority to the Contractor pursuant to this Contract;
 - (d) the Contractor shall notify the Authority as soon as reasonably practicable in the event of any loss or damage to the Authority Assets and such loss or damage shall be recorded in the Assets and Equipment Register; and
 - (e) the Contractor shall not (and shall procure that all and any of the Sub-Contractors shall not) delete, remove or deface any labelling or other markings placed on the Authority Assets by or on behalf of the Authority.
- 18.2 **Contractor Assets and equipment**
- 18.2.1 The Contractor shall provide the Contractor Assets and all other equipment required in addition to the Authority Assets to provide the Services and as set out in the Assets and Equipment Register.
- 18.3 **Containers**
- 18.3.1 The parties shall consult and agree on the need to procure Containers. Subsequent to such agreement, the Contractor shall be responsible for the procurement of such Containers and the Authority shall fund the purchase of the Containers.
- 18.4 **Green Vehicle Fleet Standard**
- 18.4.1 The Contractor shall comply with the Authority's Green Vehicle Fleet Standard as detailed in **Schedule 13** and shall be updated by the Authority from time to time.
- 19. MAINTENANCE, REPAIR AND REPLACEMENT OF ASSETS AND ASSETS AND EQUIPMENT REGISTER**
- 19.1 **Maintenance and repair**
- 19.1.1 The Contractor shall maintain and keep the Assets in good repair condition and working order, serviced, cleaned and maintained in accordance with Good Industry Practice and any manufacturer's recommendations.
- 19.1.2 The Contractor shall not without the prior written consent of the Authority use the Assets to provide services to any third party or for any purpose other than providing the Services to the Authority.

19.2 Replacement

- 19.2.1 The Contractor shall replace at its cost, any of the Assets where such Assets require replacement in order to provide the Services to a standard required by this Contract.
- 19.2.2 The Contractor shall ensure that all replacement Assets are of a standard which is at least that which meets Good Industry Practice and is fit for the purpose of providing the Services in accordance with this Contract.
- 19.2.3 The Contractor shall dispose of any defunct Assets that are replaced during the Contract Period, provided that the Contractor shall not dispose of any Authority Assets without the prior written consent of the Authority and shall account to the Authority for the disposal of any Assets.
- 19.2.4 In the event that the Contractor wishes to dispose of any Contractor Assets during the term of this Contract, it shall give the Authority a first right to acquire such Contractor Assets at their current market value (such market value to be agreed by the parties both acting reasonably).
- 19.3 The Contractor shall compile and maintain the Assets and Equipment Register so that it is at all times complete, accurate and up to date.
- 19.4 The Contractor shall make the then current Assets and Equipment Register available to the Authority on demand and in any event upon the earlier of:
- 19.4.1 six months prior to the Expiry Date;
- 19.4.2 the Termination Date where the Termination Date has arisen by reason of an Insolvency Event of Default or as a result of a Prohibited Act; or
- 19.4.3 two months prior to the Termination Date where the Termination Date has arisen for any other reason.

20. TREATMENT OF CONTRACTOR ASSETS IN EVENT OF INSOLVENCY

- 20.1 Upon the happening of an Insolvency Event of Default and in addition to its Step-In Rights, the Authority shall during the related Insolvency Option Period, have the right to purchase (in its own name or in the name of a nominee designated by it) any or all of the Contractor Assets at market value, such value to be agreed by the parties acting reasonably, or failing agreement, to be determined by an independent valuer experienced in the valuation of similar assets, who, in the absence of agreement between the parties as to the identity of the valuer, will be appointed by the Authority.
- 20.2 The Contractor agrees that it will not at any time during any Insolvency Option Period, offer or agree to sell or otherwise in any way dispose of or transfer or part with possession or control of any part or all of either of its legal or beneficial interest in any or all of the Contractor Assets unless and until it has first offered the same to the Authority to purchase in accordance with the Insolvency Option and received written notification from the Authority that it does not wish to purchase those Contractor Assets.
- 20.3 The Authority may exercise the Insolvency Option by giving written notice to the Contractor that it wishes to exercise the Insolvency Option.
- 20.4 In the event that the Authority wishes to exercise the Insolvency Option, the Contractor shall use all reasonable endeavours and co-operate to procure that the Contractor Assets are sold to the Authority free from any security, charges, lien or other encumbrance.
- 20.5 The Authority's rights under this **clause** 20 are without prejudice to, and in addition to, its rights under **clause** 21 of this Contract.

21. TREATMENT OF ASSETS ON EXPIRY/TERMINATION

- 21.1 Upon the expiry or termination of this Contract, the Contractor shall:
- 21.1.1 ensure that the Contractor Assets are capable of being delivered to either of the Authority or a New Contractor for immediate use; and

- 21.1.2 if required by the Authority:
- (a) make the Authority Assets available for collection by the Authority or a New Contractor; or
 - (b) deliver the Authority Assets to the Authority; or
 - (c) deliver the Authority Assets to a New Contractor,
- in no worse condition (with reference to the schedule of condition carried out in accordance with **clause** 18.1.2 of this Contract and taking into account an allowance for any reasonable wear and tear) than that which existed on the Service Commencement Date and for immediate use by the Authority or any New Contractor (as the case may be).
- 21.1.3 Upon the expiry or termination of this Contract, the Authority shall during the related Termination Option Period, have the right to purchase (in its own name or in the name of a nominee designated by it) any or all of the Contractor Assets at market value, such value to be agreed by the parties acting reasonably, or failing agreement, to be determined by an independent valuer experienced in the valuation of similar assets, who, in the absence of agreement between the parties as to the identity of the valuer, will be appointed by the Authority. Any Contractor Assets which the Authority elects to purchase shall be made available for immediate collection by, or delivered to, the Authority or New Contractor (as the Authority may elect).
- 21.1.4 The Contractor agrees that it will not at any time during the Termination Option Period, offer or agree to sell or otherwise in any way dispose of or transfer or part with possession or control of any part or all of either of its legal or beneficial interest in any or all of the Contractor Assets unless and until it has first offered the same to the Authority to purchase in accordance with the Termination Option and received written notification from the Authority that it does not wish to purchase those Contractor Assets.
- 21.1.5 The Authority may exercise the Termination Option by giving written notice to the Contractor that it wishes to exercise the Termination Option.
- 21.1.6 In the event that the Authority wishes to exercise the Termination Option, the Contractor shall use all reasonable endeavours and co-operate to procure that the Contractor Assets are sold to the Authority free from any security, charges, lien or other encumbrance.
- 21.1.7 The Authority's rights under this **clause** 21 are without prejudice to, and in addition to, its rights under **clauses** 20 and 48 of this Contract.

22. TUPE

- 22.1 The Authority and the Contractor agree that where the identity of a contractor (including the Authority) of any service which constitutes or which will constitute one of the Services, is changed pursuant to this Contract (including upon termination of this Contract), then the change shall constitute a Relevant Transfer.
- 22.2 On the occasion of each Relevant Transfer (except a Relevant Transfer upon termination of this Contract), the Contractor shall and shall procure that any new Contractor of the relevant service shall comply with all of its obligations under the Regulations in respect of the Relevant Employees.
- 22.3 **Employments and Outgoings**
- 22.3.1 The Contractor shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the date of the Relevant Transfer.
- 22.4 **Provision of Information**
- 22.4.1 Notwithstanding the provisions of **clause** 4.4.1, the Authority warrants that the information relating to the Transferring Authority Employees listed in **Schedule 10** is accurate and complete as at the date of this Contract and undertakes to advise the Contractor on a monthly basis up to the transfer date of any changes to the information provided.

22.5 Contractor to inform Authority of any Measures

22.5.1 The Contractor shall within 10 Working Days of receiving a request from the Authority, furnish to the Authority any information deemed by the Authority necessary concerning any measures (within the meaning of the Regulations) that the Contractor intends to take in relation to any Relevant Employee and shall indemnify the Authority against all losses, costs, claims, demands, actions, fines, penalties, liabilities and expenses (including legal expenses) in relation to any breach of this obligation.

22.6 Indemnities for TUPE

22.6.1 The Authority shall indemnify the Contractor from and against all losses, costs, claims, demands, actions, fines, penalties, liabilities and expenses (including legal expenses), which the Contractor shall take all reasonable steps to mitigate, in connection with or as a result of any claim or demand by any Relevant Employee arising out of the employment of any Relevant Employee provided that this arises from any act, fault or omission of the Authority in relation to any Relevant Employee prior to the date of the Relevant Transfer and any such claim is not in connection with the Relevant Transfer.

22.6.2 The Contractor shall indemnify the Authority from and against all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses), which the Authority shall take all reasonable steps to mitigate, in connection with or as a result of any claim or demand by any Relevant Employee arising out of the employment of or termination of the employment of any Relevant Employee provided that this arises from any act, fault or omission of the Contractor in relation to any Relevant Employee, on or after the date of the Relevant Transfer.

22.6.3 The Contractor shall indemnify and hold harmless the Authority from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) which the Authority shall take all reasonable steps to mitigate, in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Contractor in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Contractor to comply with any legal obligation to such trade union, staff associated or other employee representative whether under the Regulations or otherwise and, whether any such claim arises or has its origin before or after the date of the Relevant Transfer.

22.6.4 The Contractor shall indemnify the Authority from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) which the Authority shall take all reasonable steps to mitigate, in connection with or as a result of any claim by any Relevant Employee that the identity of the Contractor or Sub-Contractor is to that Relevant Employee's detriment or that the terms and conditions to be provided by the Contractor or any Sub-Contractor or any proposed measures of the Contractor or any Sub-Contractor are to that employee's detriment provided such claim arises on or after the Transfer Date.

22.7 TUPE Compliance on Termination

Handover on Termination

22.7.1 During the 12 months preceding the expiry of this Contract or after the Authority has given notice to terminate this Contract or at any other time as directed by the Authority, and within 15 Working Days of being so requested by the Authority, the Contractor shall fully and accurately disclose to the Authority any and all information in relation to all personnel engaged in providing the Services including all Relevant Employees who are to transfer as a consequence of a Relevant Transfer as the Authority may request, in particular but not necessarily restricted to any of the following:

- a) a list of employees employed by the Contractor;
- b) a list of agency workers, agents and independent Contractors engaged by the Contractor;
- c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those personnel;

- d) the terms and conditions of employment of the Relevant Employees, their age, salary, date continuous employment commenced and (if different) the commencement date, enhancement rates, any other factors affecting their redundancy entitlement and any outstanding claims arising from employment; and
 - e) details of pension scheme and contributions made.
- 22.7.2 The Contractor warrants the accuracy of all the information provided to the Authority pursuant to this clause and authorises the Authority to use any and all of the information as it may consider necessary for the purposes of its business or for informing any tenderer for any services which are substantially the same as the Services (or any part thereof).
- 22.7.3 During the 12 months preceding the expiry of this Contract or where notice to terminate this Contract for whatever reason has been given, the Contractor shall allow the Authority or such other persons as may be authorised by the Authority to communicate with and meet the Relevant Employees and their trade union or employee representatives as the Authority may reasonably request.
- 22.7.4 During the 12 months preceding the expiry of this Contract or where notice to terminate this Contract for whatever reason has been given, the Contractor shall not without the prior written consent of the Authority unless bona fide in the ordinary course of business:
- a) vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
 - b) materially increase or decrease the number of employees employed in connection with the Services; or
 - c) assign or redeploy any employee employed in connection with the Services to other duties unconnected with the Services.

Indemnities

- 22.7.5 The Contractor shall indemnify the Authority and any new Contractor appointed by the Authority and keep the Authority and any new Contractor appointed by the Authority indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) which the Authority and any new Contractor appointed by the Authority shall take all reasonable steps to mitigate, awarded against or incurred or paid by the Authority or any new Contractor appointed by the Authority as a result of or in connection with the employment or termination of employment of any employee of the Contractor during any period prior to the date of expiry or termination of this Contract.

Sub-Contractors

- 22.7.6 In the event that the Contractor enters into any sub-contract, arrangement, requirement in connection with this Contract or agreement in connection with this Contract, it shall impose obligations on its sub-contractor/third party in the same terms as those imposed on it pursuant to this clause and shall procure that the sub-contractor/third party complies with such terms. The Contractor shall indemnify the Authority and keep the Authority indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Authority as a result of or in connection with any failure on the part of the sub-contractor/third party to comply with such terms.

23. PENSIONS

23.1 Contractor to Become An Admission Body

- 23.1.1 Where the Contractor or a Sub-Contractor employs any Eligible Employees from a Relevant Transfer Date and wishes to offer those Eligible Employees membership of the LGPS, the Contractor shall procure that it and/or each relevant Sub-Contractor shall become an Admission Body. Before the Relevant Transfer Date, or as soon as is reasonably practicable thereafter, the Contractor shall execute and procure that each relevant Sub-Contractor executes a "Contractor Admission Agreement" which will have effect from and including the Relevant Transfer Date.

23.2 **Contractor Admission Agreement**

23.2.1 Before the Relevant Transfer Date, or as soon as is reasonably practicable thereafter, the Authority shall execute each of the Contractor Admission Agreements referred to in **clause 23.1** and shall use its reasonable endeavours to ensure that the Administering Authority executes each such Contractor Admission Agreement before the Relevant Transfer Date, or as soon as is reasonably practicable thereafter.

23.3 **Indemnity For A Breach Of The Contractor Admission Agreement**

23.3.1 Subject to the Authority complying with its obligations under the Contractor Admission Agreement, and without prejudice to the generality of the requirements of this **clause 23**, the Contractor hereby indemnifies the Authority and/or any Future Contractor and, in each case, their sub-contractors on demand from and against all losses suffered or incurred by it or them which arise from any breach by the Contractor or any Sub Contractor of the terms of the Contractor Admission Agreement to the extent that such liability arises before or as a result of the termination or expiry of this Contract (howsoever caused).

23.4 **Indemnity Or Bond**

23.4.1 Without prejudice to the generality of the requirements of this **clause 23**, the Contractor shall procure that it and each relevant Sub-Contractor shall as soon as reasonably practicable obtain a Parent Company Guarantee in a form acceptable to the Authority and the Authority shall procure that no indemnity or bond shall be required in accordance with the Contractor Admission Agreement.

23.5 **Right Of Set-Off**

23.5.1 Without prejudice to the Contractor's rights under **clause 23.15**, the Authority shall have a right to set off against any payments due to the Contractor under this Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Contractor or from any relevant Sub-Contractor (as applicable) under the Contractor Admission Agreement. No amount will be set off pursuant to this clause if a valid right of set off has been exercised under clause **[to be determined]** of the Contractor Admission Agreement which would result in a double set off against the payments due to the Contractor.

23.6 **Contractor Ceases To Be An Admission Body**

23.6.1 If the Contractor or any Sub-Contractor employs any Eligible Employees from a Relevant Transfer Date and:

- (a) the Contractor, or any relevant Sub-Contractor, does not wish to offer those Eligible Employees membership of the LGPS; or
- (b) the Authority, the Contractor or any relevant Sub-Contractor are all of the opinion that it is not possible to operate the provisions of **clauses 23.1 to 23.5** inclusive; or
- (c) for any reason after the Relevant Transfer Date, the Contractor or any relevant Sub-Contractor ceases to be an Admission Body, other than on the date of termination or expiry of this Contract or because it ceases to employ any Eligible Employees,

then the provisions of **clauses 23.1 to 23.5** inclusive shall not apply (without prejudice to any rights of the Authority under those paragraphs) and the provisions of **clause 23.7** shall apply.

23.7 **Contractor Scheme**

23.7.1 The Contractor shall, or shall procure that any relevant Sub-Contractor shall, not later than the Relevant Transfer Date or the Cessation Date (as the case may be) nominate to the Authority in writing the occupational pension scheme or schemes which it proposes shall be the "Contractor Scheme" for the purposes of this **clause 23.7**. Such pension scheme or schemes must be:

- (a) established within three months of the Relevant Transfer Date or Cessation Date (as the case may be) and maintained until any payment to be made under any bulk transfer terms is made from the Contractor Scheme;

- (b) reasonably acceptable to the Authority (such acceptance not to be unreasonably withheld or delayed);
- (c) a registered pension scheme for the purposes of section 153 of Part 4 of the Finance Act 2004; and
- (d) certified by the Government Actuary's Department, or an actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department, as providing benefits which are the same as, broadly comparable to or better than those benefits provided by the LGPS. However, in the case of Eligible Employees who are Transferring Original Employees and who are being offered membership of the Contractor Scheme with effect from the Relevant Transfer Date, the Contractor Scheme must be certified as providing benefits which are the same as, broadly comparable to or better than provided under their pension scheme immediately before the Relevant Transfer Date (where this scheme was not the LGPS);

23.7.2 The Contractor undertakes to the Authority (for the benefit of the Authority itself and for the Authority as agent and trustee for the benefit of the Eligible Employees) that it shall, and shall procure that any relevant Sub-Contractor shall, procure that:

- (a) the Eligible Employees shall, within three months of the Relevant Transfer Date or the Cessation Date (as the case may be), be offered membership of the Contractor Scheme with effect from and including the Relevant Transfer Date or Cessation Date (as the case may be);
- (b) the Contractor Scheme shall provide benefits in respect of the Eligible Employees' periods of service on and after the Relevant Transfer Date or Cessation Date (as the case may be) which the Government Actuary's Department, or an actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department, shall certify to be the same as, broadly comparable to or better than the benefits which the Eligible Employees would have been entitled to under the LGPS at the Relevant Transfer Date had they continued in membership of the LGPS. In the case of Eligible Employees who are Transferring Original Employees, the benefits provided from the Relevant Transfer Date must be the same as, broadly comparable to or better than the benefits provided by their pension scheme immediately before the Relevant Transfer Date (where this scheme was not the LGPS);
- (c) on and after the Relevant Transfer Date or Cessation Date (as the case may be) until the earlier of:
 - (i) three months after the date on which the Eligible Employees are first able to join the Contractor Scheme; and
 - (ii) the date on which the Eligible Employee joins the Contractor Scheme,
- (d) the Contractor shall provide death benefits for and in respect of the Eligible Employees which are certified by the Government Actuary's Department, or an actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as being the same as, broadly comparable to or better than those that would otherwise have been provided in respect of those Eligible Employees by the LGPS. In the case of Eligible Employees who are Transferring Original Employees, the benefits provided from the Relevant Transfer Date must be the same as, broadly comparable to or better than the benefits provided by their pension scheme immediately before the Relevant Transfer Date (where this scheme was not the LGPS);
- (e) if the Contractor Scheme is terminated, a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Contractor or relevant Sub-Contractor. The replacement scheme must comply with this **clause** 23.7 as if it were the Contractor Scheme; and
- (f) it shall use reasonable endeavours to procure that before the Relevant Transfer Date or Cessation Date (as the case may be), the trustees of the Contractor Scheme shall undertake by deed to the Authority and to the Administering Authority that they

shall comply with the provisions of **clauses** 23.7 and 23.8 and any bulk transfer terms to the extent applicable to them.

23.7.3 The terms for any bulk transfers from the LGPS to the Contractor Scheme following the Relevant Transfer Date and any subsequent bulk transfers on termination or expiry of this Agreement shall be agreed by the parties in advance of any such transfer.

23.8 **Undertaking From The Contractor**

23.8.1 The Contractor undertakes to the Authority (for the benefit of the Authority itself and for the Authority as agent and trustee for the benefit of the Eligible Employees) that:

- (a) all information which the Authority or the Administering Authority or their respective professional advisers may reasonably request from the Contractor, or any relevant Sub-Contractor, for the administration of the LGPS or concerning any other matters raised in **clauses** 23.7 and 23.8 or any bulk transfer terms shall be supplied to them as expeditiously as possible;
- (b) it shall not, and shall procure that any relevant Sub-Contractor shall not, without the consent in writing of the Authority (which shall only be given subject to the payment by the Contractor or the relevant Sub-Contractor of such reasonable costs as the Authority or the Administering Authority may require) consent to, instigate, encourage or assist, any event which could impose on the LGPS or on the Authority a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given;
- (c) until the Relevant Transfer Date, it shall not, and shall procure that any relevant Sub-Contractor shall not, issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in **clauses** 23.1 to 23.6 inclusive without the consent in writing of the Authority and the Administering Authority (such consent not to be unreasonably withheld or delayed); and
- (d) it shall not, and shall procure that any relevant Sub-Contractor shall not, take or omit to take any action which would materially affect the benefits under the LGPS or under the Contractor Scheme of any Eligible Employees who are or will be employed, wholly or partially, in connection with the Services without the prior written agreement of the Authority (such agreement not to be unreasonably withheld or delayed) provided that the Contractor and/or such Sub-Contractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees; and
- (e) it shall and shall procure that any relevant Sub-Contractor shall offer any of its Eligible Employees who do not give their prior written consent to cease to be engaged in the provision of the Services and thereby cease to be eligible for membership of the LGPS membership of the Contractor Scheme as soon as reasonably practicable after ceasing to be so engaged. Where any Eligible Employees give their prior written consent to cease to be engaged in the provision of the Services this **sub-clause** 23.8.1(e) shall not apply.

23.9 **Discretionary Benefits**

23.9.1 The provisions of **clauses** 23.9.2 to 23.9.4 inclusive are subject to **clause** 23.15.3.

23.9.2 Where the Contractor or a Sub-Contractor is an Admission Body, the Contractor shall and/or shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the Compensation Regulations and/or the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Authority.

23.9.3 Where the award of benefits in **clause** 23.9.2 is not permitted under the Compensation Regulations and/or the LGPS, or the Contractor and/or a Sub Contractor is not an Admission Body, the Contractor shall and/or shall procure that any Sub-Contractor shall award benefits to the Eligible Employees which are equivalent to the benefits the Eligible Employees would have received under the Compensation Regulations and/or the LGPS in

circumstances where the Eligible Employees would have received such benefits had they still been employed by the Authority.

23.9.4 Under **clauses** 23.9.2 and 23.9.3, where such benefits are of a discretionary nature, they shall be awarded on the basis of the Authority's written policy in relation to such benefits at the time of the Relevant Transfer Date (which the Authority shall provide upon request). Where the payment of such benefits is not, for whatever reason, possible, the Contractor shall and/or shall procure that any relevant Sub-Contractor shall compensate the Eligible Employees in a manner which is broadly comparable or equivalent in cash terms.

23.10 **Claims from Eligible Employees or Trade Unions**

23.10.1 The Contractor hereby indemnifies the Authority and/or any Future Contractor and, in each case, their sub-contractors, from and against all losses suffered or incurred by it or them which arise from claims by Eligible Employees of the Contractor and/or of any Sub-Contractor or by any trade union, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:

- (a) relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract;
- (b) arise out of the failure of the Contractor and/or any relevant Sub-Contractor to comply with the provisions of this **clause** 23 before the date of termination or expiry of this Contract; and
- (c) the Authority and the Contractor, or relevant Sub-Contractor, agree that **clause** 72 of this Contract shall not apply to this **clause** 23.10.

23.11 **Liability for costs**

23.11.1 Each party's costs necessarily and reasonably incurred in connection with the Contractor Admission Agreement and/or of obtaining the necessary certification of comparability in accordance with **clause** 23.7.1 shall be borne by each party in proportion as incurred by the Authority and the Contractor respectively.

23.12 **Transfer to another employer**

23.12.1 Save on expiry or termination of this Contract, if the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE) the Contractor shall, and shall procure that any relevant Sub-Contractor shall:

- (a) consult with and inform those Eligible Employees of the pension provisions relating to that transfer; and
- (b) procure that the employer to which the Eligible Employees are transferred (the "**New Employer**") complies with the provisions of this **clause** 23, provided that references to the "Sub-Contractor" will become references to the New Employer, references to the "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to the "Eligible Employees" will become references to the Eligible Employees so transferred to the New Employer.

23.13 **Pension Issues On Expiry Or Termination**

23.13.1 The Contractor shall (and shall procure that each relevant Sub-Contractor shall):

- (a) maintain such documents and information as will be reasonably required to manage the pension rights of, and aspects of any onward transfer of, any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Services on the expiry or termination of this Contract (including, without limitation, identification of the Eligible Employees);
- (b) promptly provide to the Authority such documents and information mentioned in **sub-clause** 23.13.1(a) which the Authority or the Administering Authority may reasonably request in advance of the expiry or termination of this Contract; and
- (c) fully co-operate (and procure that the trustees of the Contractor Scheme shall fully co-operate) with the reasonable requests of the Authority or the Administering Authority relating to any administrative tasks necessary to deal with the pension rights of, and aspects of any onward transfer of, any person engaged or employed

by the Contractor or any Sub-Contractor in the provision of the Services on the expiry or termination of this Contract.

23.14 Pensions Act 2004 and Pensions Act 2008

- 23.14.1 The Contractor shall, or shall procure that any relevant Sub-Contractor shall, comply with sections 257 and 258 of the Pensions Act 2004 in relation to any relevant employee who is:
- (a) a member of, or is entitled to be a member of, their employer's occupational pension scheme; or
 - (b) would have become eligible to be a member of their employer's occupational pension scheme had he served out the usual waiting period; or
 - (c) on or immediately prior to the Relevant Transfer Date but excluding, for the avoidance of doubt, any Eligible Employees.
- 23.14.2 The Contractor shall, or shall procure that any relevant Sub-Contractor shall, comply with the requirements from time to time under Part 1 of the Pensions Act 2008 to make a minimum level of contributions to a qualifying workplace pension scheme.

23.15 Funding Arrangements

- 23.15.1 At the Relevant Transfer Date, the Fund will be deemed to be fully funded in respect of the Eligible Employees and the Authority shall be responsible for any underfunding prior to the Relevant Transfer Date. Any underfunding will be established by the actuarial valuation of the Fund at the date the Contractor or a relevant Sub-Contractor enters into an Admission Agreement in respect of the Eligible Employees. The arrangements regarding any payment to be made to the Fund for any underfunding up to the Relevant Transfer Date will be agreed between the Authority and the Fund.
- 23.15.2 At the date of the expiry or earlier termination of the Services, the Authority shall obtain, or procure that the Administering Authority obtains, an actuarial valuation of the Fund (or revision thereto). If the Contractor is required to pay any contribution to the LGPS representing any funding deficit (the "**Exit Contribution**"), then subject to such other arrangements as are agreed between the Authority and the Administering Authority for the handling of any Exit Contribution, the Contractor shall pass the account or invoice in relation to the Exit Contribution to the Authority who shall be responsible for payment of the Exit Contribution. As soon as is reasonably practicable following settlement of the Exit Contribution howsoever agreed between the Authority and the Administering Authority, the Contractor shall pay an amount to the Authority that represents the extent to which the Exit Contribution results from any of the matters set out in **clause** 23.15.3.
- 23.15.3 To the extent that the Contractor or relevant Sub-Contractor is not obliged to act in a particular way by the LGPS Regulations, the LGPS Compensation Regulations or by the Authority's own discretionary policies which it discloses to the Contractor or relevant Sub-Contractor, the Contractor or relevant Sub-Contractor accepts responsibility for any Exit Contribution to the extent it results from one or more of the following:
- (a) the grant of early retirement requests in relation to Eligible Employees;
 - (b) granting an augmentation of benefits in relation to an Eligible Employee in relation to the Fund, including, but not limited to, an augmentation under Regulation 31 of the LGPS Regulations, which is in addition to any augmentation that an Eligible Employee is entitled to as a right under the LGPS Regulations;
 - (c) the reduction or waiver of any contributions due from any Eligible Employee;
 - (d) the award of pay increases to Eligible Employees which in aggregate exceed the higher of:
 - (i) the percentage rate allowed for pay increases in the latest valuation of the Fund prior to the award of the pay increase in question; or
 - (ii) any pay increases that the Contractor or relevant Sub-Contractor is required to make by law (including, for these purposes, pursuant to its obligations arising under, or as a consequence of, the TUPE Regulations, any code of

- practice and/or any National Joint Council for Local Government Services arrangements); or
 - (iii) any pay increases that the Contractor or relevant Sub-Contractor is obliged to offer pursuant to the terms and conditions of employment in place with the Eligible Employees as at the Relevant Transfer Date (including under any collective agreement); or
 - (iv) any pay increases above the level awarded in line with the requirements of the Contract;
 - (e) the termination of the employment contract of an Eligible Employee who is aged 55 or over at the time, by reason of redundancy or in the interests of efficiency or otherwise allowing such employee to retire on those grounds but only to the extent that such costs do not arise as a result of a Notice of Change issued by the Authority under **clause 42**;
 - (f) bringing the deferred or active benefit of an Eligible Employee into payment through consent to retiring voluntarily on or after the age of 55;
 - (g) exercising any discretion to extend the statutory time frames under Regulation 22 of the LGPS Regulations; or
 - (h) waiving any reduction to benefits under Regulation 30(6) of the LGPS Regulations.
- 23.15.4 The Contractor or relevant Sub-Contractor shall pursuant to the Admission Agreement pay to the Administering Authority for the credit of the Fund such contributions as are required under Regulation 67 of the LGPS Regulations in respect of the Eligible Employees.
- 23.15.5 If the contributions payable under **clause 23.15.4** exceed the Initial Contribution Rate by more than 2% of Pensionable Pay, the amount which exceeds the Initial Contribution Rate plus 2% shall be reimbursed by the Authority to the Contractor for each month during the period during which the contributions payable in accordance with the Admission Agreement exceed the Initial Contribution Rate plus 2%.
- 23.15.6 If the contributions payable under **clause 23.15.4** decrease below the Initial Contribution Rate less 2% of Pensionable Pay, the reduction below the Initial Contribution Rate less 2% shall be refunded by the Contractor to the Authority for each month during the period during which the contributions payable in accordance with the Admission Agreement are below the Initial Contribution Rate less 2%.
- 23.15.7 For the avoidance of doubt, the provisions of **clauses 23.15.5** and **23.15.6** above shall not apply where any such change in employer contribution rate arises from any matters for which the Contractor is responsible pursuant to **clause 23.15.3** above.

24. SUITABILITY OF EMPLOYEES

24.1 Employee checks

- 24.1.1 This **clause 24** applies to all employees and any other individual engaged to perform the Services at any time during the Contract Period.
- 24.1.2 The Contractor shall ensure that full details of personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities, health and safety and recruitment) are published in written form and that copies (including any revisions of and/or amendments to the same) are issued to the Authority on or before the Service Commencement Date.
- 24.1.3 The Contractor shall ensure that in respect of each individual employee, recruitment practices and procedures are followed in accordance with the Contractor's policies as supplied to the Authority in accordance with **clause 24.1.2**.
- 24.1.4 The Contractor shall (and shall procure that any Sub-Contractors shall) procure that in respect of all potential staff or persons performing any of the Services (each a "**Named Employee**"), before a Named Employee begins to perform any of the Services:
- (a) each Named Employee is required to disclose any Convictions;

- (b) where any Named Employee discloses any Convictions, or is found to have any Convictions, the same shall be immediately notified to the Authority; and
- (c) notwithstanding (a) and (b) (above) where such checks are required (by Legislation, Good Industry Practice or any Authority policy or policies) to carry out valid checks undertaken through the Disclosure and Barring Service in accordance with Part V of the Police Act 1997 and the Rehabilitation of Offenders Act 1974 (as amended) of the level appropriate to the nature of the Services to be performed by the Named Employee and that no Named Employee is engaged in the provision of the Services until such checks have been carried out.

24.1.5 The Contractor shall (and shall procure that any Sub-Contractor shall):

- (a) ensure that all individuals engaged in the provision of the Services in Sensitive Posts or Sensitive Service Areas are:
 - (i) registered with the Independent Safeguarding Authority (“ISA”) in accordance with the Safeguarding Vulnerable Groups Act 2006 (and regulations or orders made thereunder);
 - (ii) are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service, as appropriate; and
 - (iii) the Contractor shall monitor the level and validity of the checks under this **clause 24** for each member of staff;
- (b) warrant that at all times for the purposes of this Contract in relation to any Named Employee engaged in Sensitive Posts or Sensitive Service Areas:
 - (i) it is appropriately registered in relation to all persons who are or will be employed or engaged by the Contractor or any Sub-Contractor in the provision of the Services; and
 - (ii) it has no reason to believe that any such person is barred from the activity or is not registered with the ISA,

in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time;
- (c) immediately notify the Authority in writing upon the Contractor becoming aware of any Named Employee who, subsequent to his/her commencement of employment by the Contractor or any Sub-Contractor, receives a Conviction or whose previous Convictions become known to the Contractor (or any Sub-Contractor);
- (d) if reasonably requested by the Authority, provide copies of the records of any unspent Convictions of any Named Employee; and
- (e) in respect of any Named Employee engaged in Sensitive Posts or Sensitive Service Areas, immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this **clause 24** have been met.

24.1.6 The Contractor shall procure that no person who discloses any Convictions, or who is found to have any Convictions following the results of a Disclosure and Barring Service check, is employed or engaged without the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

24.2 Skills, training and resources

24.2.1 The Contractor shall (and shall procure that any Sub-Contractors shall):

- (a) only such persons who are skilled and experienced in provision of the Services and have such qualifications and training as may be required by law are employed or engaged in the provision of the Services;
- (b) all persons engaged in the provision of the Services are at all times properly and adequately trained, notified and instructed with regard to the duties of their job, any standing instructions or policies and procedures of the Authority, all relevant health and safety rules, fire risks and fire precautions and any other statutory or mandatory requirements; and

- (c) there shall be at all times (including periods of holiday, sickness, other absences and anticipated and actual peaks in demand for each of the Services) be a sufficient number of staff (including all relevant grades of supervisory staff) engaged in the provision of the Services with the requisite level of skill and experience.

24.3 Conduct of employees

24.3.1 The Contractor shall (and shall procure that any Sub-Contractors shall):

- (a) comply with the Authority's policies notified to the Contractor from time to time by the Authority relating to the conduct of staff and security arrangements and shall ensure that employees do likewise;
- (b) comply with such rules, regulations and requirements relating to the conduct of staff (including those in respect of security arrangements and dress code) as may be made and enforced by the Authority from time to time acting reasonably; and
- (c) ensure that its employees, workers, consultants and agents also comply with **sub-clauses** 24.3.1(a) and 24.3.1(b).

24.3.2 The Contractor shall take and/or procure appropriate disciplinary action against any members of the Contractor's Staff who transgress any of the Authority's policies, Legislation, rules, regulations and requirements (which may include the removal from the provision of the Services of any such person where such action is permitted by law).

24.4 Removal of employees

24.4.1 The Contractor shall comply with and/or procure compliance with any notice issued by the Authority from time to time requiring the removal from any of the Services of any person employed who in the opinion of the Authority (which it shall not be required to explain or disclose to the Contractor) is not acceptable on the grounds of risk to themselves or property and that such persons shall not be employed again in connection with the provision of the Services without the written consent of the Authority.

24.5 Contractor's employees

24.5.1 Other than as expressly provided in this Contract, the Contractor shall be entirely responsible for the employment and conditions of service of the Contractor's Staff and shall procure that any Sub-Contractor is likewise responsible for its employees.

25. EQUALITY REQUIREMENTS

25.1 The Contractor shall, throughout the term of this Contract, ensure that the Services are provided in such a manner as to comply with the Equalities Legislation and the Human Rights Act 1998 and shall also ensure that no breach of this **clause** 25 shall occur.

25.2 The Contractor (including its agents and employees) shall not, and shall procure that Contractor Parties shall not:

25.2.1 discriminate directly or indirectly, or by way of victimisation or harassment, against any person on Prohibited Employment Grounds; and/or

25.2.2 discriminate directly or indirectly or by way of victimisation or harassment against any person on Prohibited Grounds; and/or

25.2.3 contravene Part 8 (Prohibited Conduct: Ancillary) of the Equality Act 2010.

25.3 The Contractor (including its agents and employees) shall, and shall procure that Contractor Parties shall in relation to the delivery of the Services and staff engaged in the provision of Services observe as far as possible the provisions of:

25.3.1 the Authority's equal opportunities policy as notified to the Contractor from time to time;

25.3.2 the Equalities and Human Rights Commission's Codes of Practice on Employment and Service Provision; and

25.3.3 any other relevant code of practice introduced by a commission or other body set up by Parliament to promote, monitor and enforce Equalities Legislation,

- including, but not limited to, those provisions recommending the adoption, implementation and monitoring of an equal opportunities policy.
- 25.4 Where in connection with this Contract the Contractor (including its agents and employees) or any Contractor Party are required to carry out work on the Authority's premises or alongside the Authority's employees on any other premises, they shall comply with the Authority's own employment policy and codes of practice relating to racial equal opportunities.
- 25.5 The Contractor shall, and shall procure that Contractor Parties shall, notify the Authority forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Contractor or any Contractor Party under the Equalities Legislation.
- 25.6 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Contractor's performance of its obligations under this Contract being in contravention of the Equalities Legislation, the Contractor shall, and shall procure that the Contractor Parties shall, free of charge:
- 25.6.1 provide any information requested in the timescale allotted;
- 25.6.2 attend any meetings as required and permit any of its staff to attend;
- 25.6.3 promptly allow access to and investigation of any documents or data deemed to be relevant;
- 25.6.4 allow itself and any of its staff to appear as witness in any ensuing proceedings; and
- 25.6.5 cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

PART 6 – PAYMENT

26. SERVICE PAYMENT

- 26.1 In consideration for receiving the Services from the Contractor, the Authority shall pay the Service Payment to the Contractor.
- 26.2 The Service Payment shall be calculated in accordance with section 2 of **Schedule 4**. The Service Payment shall become due and payable on a pro-rata, monthly basis within 20 Working Days of receipt by the Authority of:
- 26.2.1 the valid invoice for the relevant month; and
- 26.2.2 the full and complete Performance Report for the preceding month,
- in each case as prepared under and in accordance with **clause 27**.

27. INVOICES

- 27.1 The Contractor shall submit a single invoice to the Authority on the first day of each Contract Month during the Contract Period in accordance with paragraph 2.2 of **Schedule 4**.
- 27.2 Each invoice shall contain:
- 27.2.1 the Contractor's name and contact address;
- 27.2.2 an invoice reference number;
- 27.2.3 the invoicing period to which the invoice relates; and
- 27.2.4 the Contractor's registration details for VAT purposes.
- 27.3 The Contractor must ensure that the invoice (in each case in respect of the relevant invoicing period) details:
- 27.3.1 the amount due for the Annual Service Payment, any applicable Variable Items Payment and any Performance Deductions; and

- 27.3.2 the amount owed under any Change or Minor Change or Qualifying Change in Law agreed from time to time.
- 27.4 The Service Payment for any month shall only become due and payable when the Authority has received (in addition to the invoice for the relevant month) a Performance Report which is full and complete, in the reasonable opinion of the Authority, for the preceding Contract Month.
- 27.5 Disputed invoices shall be dealt with in accordance with the Dispute Resolution Procedure. The Authority shall be entitled to withhold payment of the disputed part of any invoice. Following resolution of the dispute, any amount agreed to be due shall promptly be paid. For the avoidance of doubt, during the period of any such dispute, the Contractor shall continue to perform all of its obligations under this Contract notwithstanding any such withholding of payment by the Authority.

28. INTEREST ON LATE PAYMENT

- 28.1 If the Authority is late in making any payment due to the Contractor under this Contract, then the Authority shall pay the Contractor interest on the amount of any such late payment, unless the unpaid sum is in dispute between the parties.
- 28.2 The interest payable will be calculated on a daily basis from the day after payment should have been made to the date when payment is actually made.
- 28.3 The applicable interest rate will be the base rate of the Bank of England from time to time plus 2% per annum. The parties acknowledge and agree that this interest rate provides the Contractor with a substantial remedy in respect of any late payment of sums due under this Contract, and any right to receive statutory interest, defined under the Late Payment of Commercial Debts (Interest) Act 1998, shall not apply to any payment under the Contract.

29. AUTHORITY FINANCED VEHICLES

- 29.1 The Contractor has requested that the Authority provide the finance required to purchase the Authority Financed Vehicles ("AFV"). The AFV are for use by the Contractor from the Service Commencement Date. The ownership of the AFV shall remain with the Authority.
- 29.2 The parties shall execute a Master Operating Lease in respect of all AFV in the form contained in **Schedule 16** within 14 Working Days of the Commencement Date.
- 29.3 The Contractor shall purchase the AFV and upon receipt of a VAT invoice from the Contractor, the Authority shall purchase the AFV from the Contractor without delay with payment to be made within 5 Working Days of receipt of an invoice. The Contractor shall provide to the Authority a Vesting Certificate in the form contained in **Schedule 17** in respect of all AFV purchased by the Authority.
- 29.4 The parties shall enter into a Lease Contract (as appended to the Master Operating Lease) in respect of each AFV. The AFV shall then be made available to the Contractor for use solely in the provision of the Services.
- 29.5 The Contractor shall take on all obligations and risks in relation to the AFV. This includes but is not limited to the Contractor being responsible for all costs incurred if the AFV prove to be unfit for purpose or due to failure by the Contractor to maintain or operate the AFV correctly or if the AFV are incorrectly specified by the Contractor. The Contractor shall be responsible for all ongoing maintenance costs.
- 29.6 The Contractor shall be responsible for all costs incurred (including if necessary the cost of replacing the AFV) in the event that any AFV reaches the end of its life prior to the end of the Contract Period or the estimated life of the vehicle. The Contractor shall vest ownership of any replacement vehicle in the Authority.
- 29.7 The Contractor shall be responsible for all costs arising from any damage to or theft of or from an AFV and any legal penalties due to improper or illegal use of the AFV.
- 29.8 The Contractor shall not dispose of, assign or deal with, mortgage or underlet the AFV or create any lien over them.

- 29.9 The Contractor shall at all times be fully responsible for licensing and for the payment of all licensing fees, taxes, fuel and insurance premiums required in connection with or arising out of the possession or use of all AFV.
- 29.10 The Contractor shall at all times permit the representative(s) of the Authority access to the AFV to inspect the same.
- 29.11 At the end of the Contract Period, the Contractor shall leave at the Authority Depots in a secure, serviceable and clean condition having regard to its age and fair wear and tear, all the AFV or reasonably equivalent replacements (unless during the Contract Period the Authority shall have notified the Contractor in writing of its decision to write off any of such AFV). Any dispute as to the condition of a vehicle at return or any other disputes shall be resolved in accordance with the Dispute Resolution Procedure.
- 29.12 The Authority shall use reasonable endeavours to facilitate any reasonable documentary and administrative requests made by the Contractor which arise because the Authority is the legal owner of the AFV.

30. SET OFF

- 30.1 The Contractor shall not be entitled to retain or set off any amount due to the Authority by it.
- 30.2 The Authority may retain or set off any amount owed to it by the Contractor under this Contract which has fallen due and payable against any amount due to the Contractor under this Contract.

31. VAT

- 31.1 VAT, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 31.2 Any invoice or other request for payment of moneys due to the Contractor under the Contract, shall, if it 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 Finance Act 1972.
- 31.3 The Contractor shall, if so requested by the Authority, furnish such information as may reasonably be required by the Authority as to the amount of VAT chargeable on the value of the Services and payable by the Authority to the Contractor in addition to the Service Payment. Any overpayments by the Authority to the Contractor shall be a sum of money recoverable from the Contractor for the purposes of this Contract.

PART 7 – INDEMNITIES, LIABILITY AND INSURANCE

32. CONTRACTOR INDEMNITY

- 32.1 The Contractor indemnifies and keeps indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever arising out of, in respect of or in connection with the provision of the Services or this Contract during the Contract Period to the extent that any such loss or claim is due to the breach of contract, negligence, breach of statutory duty, wilful default or fraud of itself or of its employees or of any of its representatives or sub-contractors other than where the same is caused by or arises from the negligence, breach of this Contract, breach of statutory duty, breach of Legislation or other wrongful act or omission of the Authority. For the avoidance of doubt, the Contractor's liability to indemnify the Authority pursuant to this clause on account of loss or damage to any property of any nature whatsoever, includes a liability to reimburse the Authority all costs and expenses reasonably incurred by the Authority in the reinstatement or replacement of such property, whether or not such reinstatement or replacement results in an improvement of or to the property so lost or damaged.

33. LIMITATION OF LIABILITY

- 33.1 Notwithstanding any other provision of this Contract, neither party limits or excludes its liability for:
- 33.1.1 fraud or fraudulent misrepresentation;
 - 33.1.2 death or personal injury caused by that party's negligence; or
 - 33.1.3 breach of statutory duty.
- 33.2 Except where expressly provided otherwise in this Contract, neither party shall be liable to the other party in connection with the provision of the Services or this Contract for any indirect or consequential loss including any loss of profit, revenue, savings, use, contract, goodwill or business howsoever caused save that where the Contractor holds insurance as required under **clause** 34 of this Contract that covers the Contractor's exposure for any such indirect or consequential losses, the Contractor shall be liable to the Authority and shall account to the Authority for any such indirect or consequential losses to the extent that the Contractor recovers any such sums from its insurers.
- 33.3 Subject to **clauses** 33.1 and 33.2, the Contractor's liability shall be limited in aggregate per year to:
- (a) the value of the cover where a matter is recoverable (irrespective of whether the Contractor actually recovers from insurers) under a policy of insurance required under **clause** 34.1 of this Contract;
 - (b) £ 2.5 million (Indexed) in respect of all other claims, losses or damages arising from matters for which the Contractor is not obliged to hold insurance under **clause** 34.1 of this Contract; and
 - (c) is unlimited in respect of:
 - (i) any breach of **clause** 22; and
 - (ii) the Contractor's wilful default.

34. INSURANCE

34.1 General

- 34.1.1 The Contractor shall take out and maintain in force, or procure the taking out and maintenance in force, throughout the Contract Period:
- (a) public liability insurance in the sum of ten million pounds (£10,000,000) in respect of any one incident;
 - (b) employers liability insurance in the sum of ten million pounds (£10,000,000) in respect of any one incident;
 - (c) property damage insurance in the sum of five million pounds (£5,000,000) in respect of any one incident;
 - (d) environmental impairment insurance in the sum of five million pounds (£5,000,000) in respect of any one incident and in the aggregate during any one period of insurance; and
 - (e) any other insurances as may be required by law,
- together the "**Insurances**".
- 34.1.2 No party to this Contract shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.
- 34.1.3 With the exception of any insurances required by law, the Insurances shall:
- (a) contain an indemnity to principals clause; and

- (b) contain a clause waiving the insurers' subrogation rights against the Authority, its employees and agents.
- 34.1.4 The Contractor shall provide to the Authority on request copies of all insurance certificates relating to any of the Insurances or a broker's verification of insurance to demonstrate that the required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 34.1.5 Renewal certificates in relation to the Insurances shall be obtained as and when necessary and copies (certified in a manner acceptable to the Authority) shall be forwarded to the Authority as soon as possible but in any event on or before the renewal date.
- 34.1.6 If the Contractor is in breach of **clause** 34.1.1, the Authority may pay any premiums required to keep such insurance in force or itself procure such insurance and may in either case recover such amounts from the Contractor on written demand, or deduct such amounts from the Service Payment.
- 34.1.7 The Contractor shall:
 - (a) retain full details of any and all potential, failed and successful claims under or in connection with any of the Insurances throughout the Contract Period and for a further period of at least six months after the end of the Contract Period and shall provide any information in relation to such potential failed and successful claims to the Authority as soon as reasonably practicable upon request from the Authority; and
 - (b) notify the Authority within 10 Working Days after any notification of a claim which it considers (acting reasonably) will result in a claim in excess of twenty-five thousand pounds (£25,000) (Indexed) on any of the insurance policies relating to any of the Insurances accompanied by full details of the incident giving rise to the claim.
- 34.1.8 Neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the Contractor of its liabilities and obligations under this Contract.
- 34.1.9 The insurance premiums in respect of the Insurances shall be the responsibility of the Contractor.
- 34.1.10 The Insurances shall be effected with insurers approved by the Authority, such approval not to be unreasonably withheld or delayed.
- 34.1.11 Any Key-Subcontractor(s) shall be required to take out and maintain in force, or procure the taking out and maintenance in force, throughout the Contract Period (or otherwise as may be provided in the warranty) insurances as set out in the Collateral Warranty.
- 34.2 **Authority Insurances**
- 34.2.1 The Authority shall take out and maintain insurance where appropriate, as detailed in the applicable leases ("**Authority Insurances**").

PART 8 – DISPUTE RESOLUTION AND TERMINATION

35. DISPUTE RESOLUTION

35.1 Escalation

- 35.1.1 If a dispute arises in relation to any aspect of this Contract which cannot be resolved at the Partnership Board, the dispute shall be escalated to the chief executive of the Authority and a senior director of the Contractor.

35.2 Mediation

- 35.2.1 If the dispute is not resolved within 20 Working Days of escalation of the dispute in accordance with **clause** 35.1, either party may refer the dispute to mediation in accordance with the CEDR "Model Mediation Procedure".
- 35.2.2 If the parties cannot agree on a mediator, the parties shall appoint a mediator nominated by CEDR.

35.2.3 The parties shall use their reasonable endeavours to conclude the mediation within 40 Working Days of referral of the dispute to mediation, and each party shall be responsible for its own costs (unless the mediator directs otherwise) in respect of such mediation.

35.3 Arbitration

35.3.1 If the dispute is not resolved in accordance with **clause 35.2** within 40 Working Days of referral of the dispute to mediation, either party (the "**Referring Party**") may (by service of a written notice on the other party (the "**Other Party**") within 30 Working Days of expiry of the period for mediation) refer the dispute to an arbitrator who shall be of not less than 10 years standing or qualification.

35.3.2 If, the Other Party (as referred to in **clause 35.3.1**) does not agree to the arbitrator proposed by the Referring Party (as referred to in **clause 35.3.1**) within 15 Working Days of service of the written notice referred to in **clause 35.3.1**, the parties shall appoint an arbitrator nominated by the President for the time being of the Chartered Institute of Arbitrators.

35.3.3 Any reference to arbitration in accordance with this **clause 35.3** shall be conducted in accordance with the Rules of the London Court of International Arbitration and the arbitration shall be held at a venue agreed by the arbitrator.

35.3.4 The arbitrator's decision shall be final and binding on the parties.

35.3.5 The costs of the arbitration shall be paid as directed by the arbitrator.

36. NOT USED

37. TERMINATION FOR CONTRACTOR DEFAULT

37.1 The Authority shall, in accordance with the terms of this **clause 37** be entitled to terminate this Contract on the occurrence of a Contractor Default ("**Termination for Contractor Default**").

37.2 If the Contractor Default which has occurred is an Insolvency Event of Default, the Authority may, at any time thereafter, in its sole discretion give notice terminating this Contract, whereupon this Contract shall terminate with immediate effect.

37.3 If the Contractor Default which has occurred is one of the events listed in limbs (b) to (j) of the definition of Contractor Default and the Authority wishes to terminate this Contract, the Authority must serve a termination notice on the Contractor specifying:

37.3.1 the type and nature of the Contractor Default that has occurred, giving reasonable details;

37.3.2 the required timescale for remedying the Contractor Default (having regard to the nature of the Contractor Default and its impact on the Services, the Authority and the Service Users); and

37.3.3 that this Contract will terminate on the date specified in the termination notice unless the Contractor remedies the Contractor Default within the timescale notified in accordance with **clause 37.3.2**,

and if the Contractor fails to remedy the Contractor Default, this Contract will terminate on the day one month from the date specified in the termination notice.

37A AUTHORITY DEFAULT

37A.1 The Contractor shall be entitled to terminate this Contract on the occurrence of an Authority Default and if the Authority fails to remedy the Authority Default, this Contract will terminate on the day one month from the date specified in the termination notice.

38. TERMINATION FOR SERVICE BREAKDOWN

38.1 Warning Notice

In the event of the occurrence of a Service Breakdown, the Authority may serve a notice (a "**Warning Notice**") on the Contractor:

- 38.1.1 specifying that it is a Warning Notice;
- 38.1.2 giving reasonable details of the nature of the Service Breakdown; and
- 38.1.3 stating that if the Service Breakdown continues beyond 15 Working Days or recurs 3 or more times within the 4 month period after the date of service of the relevant Warning Notice, this may result in a termination of this Contract.

38.2 Final Warning Notice

If, following service of a Warning Notice under **clause** 38.1 the Service Breakdown has continued beyond 15 Working Days or recurred 3 or more times within the 4 month period after the date of service of the Warning Notice, then the Authority may serve a final warning notice (a "**Final Warning Notice**") on the Contractor:

- 38.2.1 specifying that it is a Final Warning Notice;
- 38.2.2 stating that the Service Breakdown has been the subject of a Warning Notice served within the 4 month period prior to the date of service of the Final Warning Notice; and
- 38.2.3 stating that if such failure continues beyond 10 Working Days after the date of the Final Warning Notice or recurs 2 or more times within the 2 month period after the date of service of the Final Warning Notice, this Contract may be terminated with immediate effect and without further notice.
- 38.2.4 If the failure leading to the service of a Final Warning Notice recurs 2 or more times within the 2 month period after the date of service of the Final Warning Notice or continues beyond 10 Working Days of the service of the Final Warning Notice, the Authority shall be entitled to terminate the Contract with immediate effect and without further notice.

39. CONSEQUENCES OF EXPIRY OR TERMINATION: ACCRUED RIGHTS

- 39.1 The expiry or termination of this Contract howsoever arising is without prejudice to the rights, duties and liabilities of either party accrued prior to termination.
- 39.2 All provisions that are expressed or impliedly intended to survive expiry or termination of this Contract, including but not limited to **clauses** 13, 15.6, 15.7, 19.2, 21, 22, 23, 30, 32, 34, 39, 40, 44, 45, 46, 48 and 55, shall continue in force in accordance with their terms, notwithstanding the expiry or termination of this Contract.

40. TRANSITION TO A NEW CONTRACTOR

- 40.1 During the final nine months prior to the Expiry Date or during the period of any notice of termination due to service of a Final Warning Notice under **clause** 38.2 of this Contract or on the Termination Date where the grounds for termination is without notice, and in any case for a period of six months thereafter, the Contractor shall (at no cost to the Authority unless termination is due to an Authority Default) co-operate fully with the transfer of responsibility for the Services (or any of the Services) to the Authority and/or any New Contractor, including:
 - 40.1.1 liaising with the Authority and/or the New Contractor, and providing reasonable assistance, information and advice concerning the Services and their transfer to the Authority and/or to such New Contractor;
 - 40.1.2 procuring all relevant consents, approvals and/or terms and conditions (including agreements to assign, novate or extend arrangements) under or in any third party contracts or leases that are necessary to ensure the continued provision and/or receipt of the Services;

- 40.1.3 providing to the Authority and/or any New Contractor all and any information concerning the Services which is required for the efficient transfer of responsibility for their performance; and
- 40.1.4 not taking any action at any time during the Contract Period or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult or increase the cost of the transfer of the Services to the Authority and/or any New Contractor.
- 40.1.5 In the event that termination is due to an Authority Default, the Contractor shall be entitled to be paid all its reasonable costs and expenses incurred exclusively in complying with this **clause 40**.
- 40.2 **Initial Exit Plan**
- 40.2.1 Notwithstanding the provisions of **clause 40.1**, the Contractor shall maintain, regularly update and copy to the Authority an Initial Exit Plan which provides for:
- (a) the activities required to enable the Authority to re-tender the provision of the Services;
 - (b) the activities necessary to support any New Contractor in carrying out any necessary due diligence;
 - (c) details of the transition services to be provided by the Contractor prior to the Expiry Date;
 - (d) support for the Authority and/or any New Contractor during its preparation of any relevant plan for the transition of the Services to the Authority and/or any New Contractor including prior to and during the transition period;
 - (e) the maintenance of a "business as usual" environment for the Authority during all such transition activities for such transition period; and
 - (f) all other necessary activities to support the preparation for, and execution of, a smooth and orderly transition and transfer to the Authority and/or any New Contractor.
- 40.2.2 The first Initial Exit Plan shall be produced by the Contractor and supplied to the Authority within 3 months of the Service Commencement Date. The Authority shall provide to the Contractor the Authority's comments on the plan within 20 Working Days of the Authority's receipt of the plan. The Contractor shall incorporate the comments and suggestions of the Authority as appropriate.
- 40.2.3 The parties shall review, and the Contractor shall update, the Initial Exit Plan in the manner described in **clause 40.2.2** every 12 months during the Contract Period so as to ensure that it corresponds to developments and/or changes in the Services, and provide the final version of the Initial Exit Plan no later than 9 months prior to the Expiry Date.
- 40.2.4 The Authority may request a revision of the Initial Exit Plan 6 months after the first publication of the Initial Exit Plan and in all other cases **clause 40.2.3** shall apply.

PART 9 – CHANGES

41. CHANGE IN LAW: QUALIFYING CHANGE IN LAW

- 41.1 If a Qualifying Change in Law occurs or is shortly to occur, then the Contractor may write to the Authority to express an opinion on its likely effects, giving details of its opinion of:
- 41.1.1 any necessary change in the Services;
 - 41.1.2 whether any changes are required to the terms of this Contract to deal with the Qualifying Change in Law;
 - 41.1.3 whether relief from compliance with obligations is required during the implementation of any relevant Qualifying Change in Law;
 - 41.1.4 any loss of or gain in revenue that will result from the relevant Qualifying Change in Law;

- 41.1.5 any Estimated Change in Costs that directly results from the Qualifying Change in Law; and
 - 41.1.6 any Capital Expenditure of the Contractor that is required as a result of a Qualifying Change in Law taking effect during the Contract Period,
- in each case giving full details of the procedure for implementing the change in the Services. Responsibility for the costs of implementation (and any resulting variation to the Service Payment), shall be dealt with in accordance with **clauses** 41.2 and 41.3.
- 41.2 As soon as practicable after receipt by the Authority of any notice from the Contractor under **clause** 41.1, the parties shall discuss the issues referred to in **clause** 41.1 and any ways in which the Contractor can reasonably mitigate the effect of the Qualifying Change in Law, including:
 - 41.2.1 providing evidence that the Contractor has (or its Sub-Contractors have) minimised any increase in costs and maximised (a) any revenues generated through contractual or other arrangements entered into with third parties in accordance with this Contract, or (b) any reduction in costs (including, where practicable, the use of competitive quotes);
 - 41.2.2 demonstrating how any Capital Expenditure to be incurred has been measured in a cost effective manner including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Contractor;
 - 41.2.3 giving evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses to the provision of the Services; and
 - 41.2.4 demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Qualifying Change in Law concerned, has been taken into account in the amount claimed under **clause** 41.1.
 - 41.3 Following the provision of any additional information under **clause** 41.2, the parties shall agree any required change to the Services and/or the terms of the Contract to deal with the Qualifying Change in Law in accordance with **clause** 42 and such change shall take effect as an agreed variation of this Contract from the date the Estimated Change in Costs is confirmed agreed by the Authority or such other date as is agreed between the parties.
 - 41.4 For the avoidance of doubt, any Change in Law which is not a Qualifying Change in Law shall be the responsibility of the Contractor to deal with and implement at no extra cost to the Authority and the Contractor shall not be entitled to relief from compliance with its obligations under this Contract or any increase in the Service Payment as a result of such change.

42. CHANGES

- 42.1 Changes to this Contract shall be agreed and implemented in accordance with the provisions in this **clause** 42.
- 42.2 The Authority may order a change to the Services (including the provision of New Services) by serving a notice of change ("**Notice of Change**") on the Contractor setting out the required change in the Services in sufficient detail to enable the Contractor to provide an estimate in accordance with **clause** 42.4.
- 42.3 The Authority shall not issue a Notice of Change which:
 - 42.3.1 requires the Services to be performed in a way that infringes Legislation; and/or
 - 42.3.2 would cause any Planning Permission or Necessary Consent to be revoked.
- 42.4 Save in respect of a Notice of Change issued under **clause** 42.2, within 15 Working Days of receipt of the Notice of Change, the Contractor shall provide to the Authority an estimate (the "**Change Estimate**") setting out:
 - 42.4.1 an estimate of any changes required to the Annual Service Payment or to any Variable Items Payment rate or of the value of any new Variable Items Payment rate to effect the change to the Services;

- 42.4.2 any amendment required to this Contract as a result of the change in the Services; and
- 42.4.3 any Planning Permissions and/or Necessary Consents required to effect the change in the Services,
- together with all relevant supporting documentation and any additional documentation as may be requested by the Authority.
- 42.5 The Authority may:
- 42.5.1 confirm in writing the Change Estimate;
- 42.5.2 suggest reasonable amendments to the Change Estimate (which the Contractor shall incorporate and agree);
- 42.5.3 withdraw the Notice of Change; or
- 42.5.4 where the Authority considers that the Change Estimate is not reasonable or proportionate to the change in the Services covered by the Notice of Change, refer the Change Estimate to the Dispute Resolution Procedure.
- 42.6 Subject to the Contractor complying with the requirements of **clause 42.3**, if the Authority does not confirm in writing the Change Estimate within 30 Working Days of the provision of the Change Estimate or refer the Change Estimate to the Dispute Resolution Procedure in accordance with **clause 42.5.4**, the Notice of Change shall be deemed to have been withdrawn.
- 42.7 If the Authority confirms in writing the Change Estimate, the change in the Services shall be effected as an agreed variation to, and be incorporated in to, this Contract from the date the Change Estimate is confirmed in writing by the Authority or such other date as is agreed by the parties.
- 42.8 The Contractor may request that the Authority issues a Notice of Change pursuant to this **clause 42** and the Authority shall decide in its absolute discretion whether or not to issue such a Notice of Change.
- 42.9 The parties agree that the proposal or introduction of any change to the Services does not give rise to a change in the Service Payment unless, and to the extent, agreed under this **clause 42**. Without limiting this **clause 42.9**, nothing shall limit the right of the Authority to receive a reduction in the Service Payment as a result of any change to the Services.
- 42.10 **Minor Changes**
- 42.10.1 Where the Authority or the Contractor see a need for a Minor Change to the Services or this Contract, then either party may at any time request a change and propose an amendment to this Contract in accordance with the procedure set out in this **clause 42.10**.
- 42.10.2 Neither party shall unreasonably withhold its agreement to any Minor Change.
- 42.10.3 The obligations of the parties shall not be effected until a Minor Change Control Note prepared in the form set out in **clause 42.10.8** has been signed by the authorised signatory of both parties.
- 42.10.4 The Authority shall not be responsible for the cost of any work undertaken or goods or materials ordered by the Contractor or any of its Sub-Contractors which has not been authorised in advance by a Minor Change Control Note.
- 42.10.5 The parties shall discuss Minor Changes proposed by either party to this Contract and such discussion shall result in:
- (a) a decision not to proceed further;
- (b) a written request for a Minor Change by the Authority; or
- (c) a recommendation for a Minor Change by the Contractor.
- 42.10.6 Where a written request for a Minor Change is received from the Authority, the Contractor shall submit two signed copies of a Minor Change Control Note to the Authority within 5 Working Days of such request.

- 42.10.7 A recommendation to amend this Contract by the Contractor shall be submitted to the Authorised Officer in the form of a copy of a Minor Change Control Note signed by the Contractor.
- 42.10.8 Each Minor Change Control Note shall contain details of the change including, where applicable:
- (a) the title of the Minor Change;
 - (b) the originator and the date of the request or recommendation for the Minor Change;
 - (c) the reason for the Minor Change;
 - (d) full details of the Minor Change;
 - (e) the price, if any, of the Minor Change (such price to be the marginal cost of effecting the Minor Change);
 - (f) a timetable for implementation together with any proposals for acceptance of the Minor Change;
 - (g) a schedule of payments, if applicable;
 - (h) the impact, if any, of the Minor Change on other aspects of the Services;
 - (i) the date of expiry of validity of the Minor Change Control Note; and
 - (j) provision for signature by the Authority if the Minor Change is agreed.
- 42.10.9 For each Minor Change Control Note submitted to the Authority, the Authority shall, within the period of the validity of the Minor Change Control Note, evaluate the Minor Change Control Note and, as appropriate:
- (a) request further information from the Contractor in which case the Contractor shall provide such information as soon as reasonably practicable and in any event within 5 Working Days. The request for information and the information once provided shall be deemed to be part of the Minor Change Control Note, and the Authority may approve or reject the Minor Change Control Note upon receipt of the new information; or
 - (b) notify the Contractor of the rejection of the Minor Change Control Note.
- 42.10.10 A Minor Change Control Note signed by both parties shall constitute a variation to this Contract in accordance with the terms of this **clause 42**.
- 42.10.11 The authorised signatory for the Authority will be the Authorised Officer. The authorised signatory for the Contractor will be the Contractor's Representative.

PART 10 – GENERAL

43. FORCE MAJEURE

- 43.1 No party shall be entitled to bring a claim for a breach of obligations under this Contract by the other party or incur any liability to the other party for any losses or damages incurred by that other party to the extent that a Force Majeure Event occurs and the relevant party is prevented from carrying out obligations by that Force Majeure Event.
- 43.2 On the occurrence of a Force Majeure Event, the affected party shall notify the other party as soon as practicable, including details of the Force Majeure Event, its effect on the obligations of the affected party and action proposed to mitigate its effect.
- 43.3 As soon as practicable following such notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.
- 43.4 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Contract and, following such notification, this Contract shall continue to be

performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

44. INTELLECTUAL PROPERTY

- 44.1 The Contractor shall not in connection with this Contract use, manufacture, supply or deliver any process, article, matter or thing which would be an infringement of Intellectual Property Rights.
- 44.2 All Intellectual Property Rights created during the term of this Contract and for the sole purpose of this Contract shall vest in and be the property of the Authority.
- 44.3 The Authority grants to the Contractor a non-exclusive, non-transferable licence for the Contract Period to use any Intellectual Property Rights which vest in it under **clause 44.2** solely for the purpose of providing the Services or improving the efficiency and economy of the Services.

45. DATA PROTECTION

- 45.1 The Contractor shall (and shall procure that any Sub-Contractors shall) only undertake processing of Personal Data reasonably required in connection with the provision of the Services and as required by this Contract and shall not transfer any Personal Data to any country or territory outside the European Economic Area.
- 45.2 In relation to all Personal Data, the Contractor shall (and shall procure that any Sub-Contractors shall) comply with the provisions of the Data Protection Act 1998 and any code of practice or guidance issued by the Information Commissioner's Office.
- 45.3 The Contractor shall indemnify and keep indemnified the Authority against all losses, claims, damages, liabilities, costs and expenses (including reasonable legal costs) incurred by it in respect of any breach of this **clause 45** by the Contractor and/or any act or omission of any Sub-Contractor.
- 45.4 On or before the Expiry Date or the Termination Date (as relevant), the Contractor shall ensure that all documents or computer records in its possession, custody or control, which contain Personal Data including any documents in the possession, custody or control of a Sub-Contractor are delivered to the Authority in such form as specified by the Authority.

46. CONFIDENTIALITY

46.1 Duty of confidentiality

- 46.1.1 Subject to **clause 46.1.2**, the parties shall, and shall ensure that their employees, agents and Sub-Contractors shall, keep confidential all information and documents received by them and/or accessed or viewed by them (including accidentally) in connection with and all matters relating to the Services and this Contract.
- 46.1.2 **Clause 46.1.1** shall not apply to:
 - (a) any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under this Contract for the performance of their obligations;
 - (b) any matter which a party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this **clause 46**;
 - (c) any disclosure which is required by Legislation or by an order of a court of competent jurisdiction, by any parliamentary obligation or the rules of any stock exchange or governmental or regulatory board having the force of law;
 - (d) any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

- (e) any disclosure by the Authority of information as may be reasonably required for the purpose of conducting a due diligence exercise to any proposed new contractor or its advisers should the Authority decide to re-tender this Contract;
 - (f) any registration or recording of the Planning Permissions or Necessary Consents and any property registration required;
 - (g) any disclosure of information by the Authority to any other department, office or agency of the government or their respective advisers for the purpose of the examination and certification of the Authority's accounts or any examination or investigation; or
 - (h) compliance with the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004.
- 46.1.3 Where disclosure is permitted under **clause** 46.1.2, the party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.
- 46.1.4 The Contractor shall not make use of this Contract or any information issued or provided by or on behalf of the Authority in connection with this Contract otherwise than for the purposes of this Contract, except with the written consent of the Authority.
- 46.2 **Freedom of information**
- 46.2.1 Where the Authority receives a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 in relation to information that the Contractor is holding on its behalf, the Authority shall transfer to the Contractor such request for information that it receives as soon as practicable and the Contractor shall (at no cost to the Authority):
- (a) provide the Authority with confirmation as to whether it holds the information subject to the request within 5 Working Days of the request and if then requested by the Authority provide a copy of all such information in the form that the Authority requires within 20 Working Days of the request (or such other period as the Authority may specify) of the Authority request; and
 - (b) provide all necessary assistance as reasonably requested by the Authority in connection with any such information to enable the Authority to respond to the request for information within the time for compliance set out in the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
- 46.2.2 The Authority shall be responsible for determining at its absolute discretion:
- (a) whether information is exempt from disclosure under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004; and
 - (b) whether the existence of information is to be confirmed or denied, and whether information is to be disclosed in response to a request for information,
- and in no event shall the Contractor respond directly to a request for information unless expressly authorised in writing to do so by the Authority.
- 46.2.3 Without prejudice to the rest of this **clause** 46, the Authority may (at its absolute discretion) consult with the Contractor to ascertain whether the Contractor believes that information provided by or relating to the Contractor is exempt from disclosure under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004. The decision of the Authority as to whether or not an exemption does, in fact, apply, is deemed to be final.

47. STEP-IN BY THE AUTHORITY

- 47.1 Notwithstanding any other term or condition of this Contract, and without prejudice to any other right or remedy of the Authority, if a Step-In Event occurs then the Authority may give notice requiring the Contractor to take such reasonable steps as the Authority considers necessary or expedient in the circumstances to mitigate or preclude the Step-In Event from occurring forthwith or to deal with the consequences of the Step-In Event where it has

- occurred (including the provision of additional or alternative services, and/or any temporary changes to the Services and actions reasonably necessary to secure that the Services can be maintained or provided).
- 47.2 If the Contractor fails to take such reasonable steps pursuant to **clause** 47.1 as the Authority thinks necessary within such reasonable time as the Authority thinks fit, or if the Authority reasonably considers that the Contractor is unable or will not do so, then the Authority may exercise its Step-In Rights.
- 47.3 The Authority shall give prompt notice to the Contractor of its decision to exercise its Step-In Rights and such notice shall specify which of the Services are to be subject to the Step-In Rights.
- 47.4 In the event of a Step-In Event under limb (a) of that definition, the Contractor shall (at the Authority's option):
- 47.4.1 reimburse the Authority for all costs reasonably incurred by the Authority as a result of the Authority exercising its Step-In Rights (including the relevant administrative expenses of the Authority, together with an appropriate sum in respect of general staff costs and overheads); and/or
- 47.4.2 reduce the Service Payment by the amount of such costs as incurred by the Authority.
- 47.5 In the event of a Step-In Event under limb (b) of that definition, the reasonable costs incurred by the Contractor in connection with the exercise by the Authority of the Step-In Rights shall be borne by the Authority and paid in accordance with **clause** 27 (provided that the Contractor has provided adequate supporting documentation to support the amount claimed).
- 47.6 The Contractor shall assist and co-operate with the Authority in circumstances where the Authority exercises its Step-In Rights, including but not limited to:
- 47.6.1 providing such access to, and granting rights for the Authority to use, the Assets and premises used by the Contractor or any Sub-Contractor in connection with the provision of the Services, in each case as may reasonably be required by the Authority to exercise its Step-In Rights;
- 47.6.2 complying with the reasonable instructions of the Authority in respect of the management of the Contractor's Staff and where reasonably required by the Authority allowing for the Contractor's Staff to be directed by the Authority;
- 47.6.3 providing access to the Contractor's computer systems together with any relevant data in such a format as may be requested by the Authority (acting reasonably); and
- 47.6.4 carrying out any steps reasonably requested by the Authority.
- 47.7 On the occurrence of a Step-In Event under limb (a) of that definition, nothing in this **clause** 47 shall affect any entitlement of the Authority to make Deductions in accordance with the provisions of **Schedule 4** which relate to the period prior to the period for which the Authority has exercised its Step-In Rights. For the avoidance of doubt, the Authority may not make Deductions in respect of Services which are affected by the exercise of Step-In Rights by the Authority.
- 47.8 On the occurrence of a Step-In Event under either limb (a) or (b) of that definition, for the avoidance of doubt, the Contractor shall continue to be liable for Deductions in accordance with **Schedule 4** in respect of any of the Services which are unconnected with and are unaffected by the exercise of Step-In Rights by the Authority, and any Deductions accruing prior to any Step-In Period, or any period of poor performance which would but for the Step-In Event in question count towards a Service Breakdown, shall continue to accrue or count (as the case may be) after such Step-In Period and as if such Step-In Period had not occurred.
- 47.9 Upon the Contractor demonstrating to the Authority's reasonable satisfaction that the Contractor can resume performance of its obligations and/or that the Step-In Event no longer applies, the parties shall:
- 47.9.1 agree a plan for the cessation of the Authority's exercise of the Step-In Rights so as to permit resumption of that performance by the Contractor as soon as reasonably practicable; and

- 47.9.2 perform their respective obligations under such plan in a timely manner so as to effect such resumption in the timescales contemplated by such plan.
- 47.10 Any dispute arising under this **clause** 47 may be referred by either party to determination under **clause** 35.

48. PUBLICITY

- 48.1 The Contractor shall not by itself, its employees or agents and shall procure that its Sub-Contractors shall not communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract or the Services without the prior written approval of the Authority except in respect of purely operational matters such as health and safety or employment related issues.

49. ADVERTISEMENTS

- 49.1 The Contractor shall not exhibit or attach to any external part of the Depots or to any of the vehicles operated as part of the Services any advertisement without the prior written permission of the Authority, save where otherwise required to comply with Legislation.
- 49.2 Without prejudice to **clause** 49.1, the parties shall use reasonable endeavours to agree the basis upon which Digital Vehicle Advertising may be included in the Services including without limitation the contractual and financial basis and dates for commencement of the provision of Digital Vehicle Advertising and any trial thereof.

50. ASSIGNMENT, NOVATION AND SUB-CONTRACTING

50.1 Assignment and novation

- 50.1.1 The rights and obligations of the Authority under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to one or more local authorities or other public bodies having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Contract.
- 50.1.2 The Contractor shall not refuse or unreasonably delay consent or otherwise object in the event of the novation or other transfer of this Contract as described in **clause** 50.1.1.
- 50.1.3 The Contractor shall not assign, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this Contract in whole or in part except with the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed).

50.2 Sub-contracting

- 50.2.1 Subject to **clause** 50.2.1 in respect of Key-Subcontractors, nothing in this Contract shall prohibit the Contractor from providing or procuring the provision of the Services from a Sub-Contractor of sound financial standing and good repute and whose identity has been notified to the Authority by the Contractor and approved by the Authority (such approval not to be unreasonably withheld or delayed) prior to the appointment of such Sub-Contractor, provided that the Contractor shall remain primarily and directly liable for all of the Contractor's obligations under this Contract.
- 50.2.2 The Contractor shall only be entitled to replace any of the Key-Subcontractors with the written approval of the Authority (such approval not to be unreasonably withheld or delayed where such arrangements are envisaged in the Contractor's tender documents).
- 50.2.3 For the purposes of **clause** 50.2.1, it shall not be unreasonable for the Authority to withhold its approval of a Sub-Contractor who in the reasonable opinion of the Authority, among other things:
- (a) would or is likely to cause damage to the reputation of the Authority; or
 - (b) is not a fit and proper person to be engaged or employed in or in connection with the provisions or performance of any part of the Services; or

- (c) may present an actual or potential risk to the health, safety or welfare of any Authority Related Party or member of the public; or
 - (d) whose activities could pose a threat to national security.
- 50.2.4 Where the provision of any part of the Services by a Sub-Contractor involves a Relevant Transfer, the Contractor shall provide the Authority with such information as may be requested by the Authority as to how the Contractor and any Sub-Contractor shall comply with TUPE. In granting its approval under **clause** 50.2.1 to any proposed Sub-Contractor, the Authority shall have regard to how any proposed Sub-Contractor shall comply with TUPE and that it can adequately secure pension protection as required under the Best Value Authorities Staff Transfers (Pensions) Direction 2007.
- 50.2.5 For the avoidance of doubt, the Contractor shall procure that any new contracts entered into by the Contractor with any new or replacement Sub-Contractor(s) as may be permitted in accordance with this Contract shall include terms which reflect any obligations applicable to Sub-Contractors generally and, where relevant to Key-Subcontractors in particular, as set out in this Contract.
- 50.2.6 The Contractor shall indemnify and keep the Authority indemnified in full against all Direct Losses, incurred or by the Authority or any New Contractor as a result of or in connection with any failure on the part of the Contractor to comply with this clause.

51. CHANGE OF CONTROL

- 51.1 The Contractor shall not without 28 Working Days' prior written notification to the Authority (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of the whole or a significant part of its business or assets:
- 51.1.1 to any person, company or undertaking not domiciled within the European Union; or
 - 51.1.2 where this would materially affect the ability of the Contractor to perform its obligations under this Contract.
- 51.2 The Contractor shall take account of, and respond to, any representations made by the Authority in response to a notification under **clause** 51.1 before deciding whether to proceed with the proposed transaction.

52. NO AGENCY

- 52.1 Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Authority and the Contractor.
- 52.2 Save as expressly provided otherwise in this Contract, the Contractor shall not be, or be deemed to be, an agent of the Authority and the Contractor shall not hold itself out as having the authority or power to bind the Authority in any way.

53. ENTIRE AGREEMENT

- 53.1 Except where expressly provided in this Contract, this Contract constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract.

54. REPRESENTATIVES AND PARTNERSHIP BOARD

- 54.1 The Contractor and the Authority shall comply with **Schedule 11** which shall include details of how representatives of both parties and the Partnership Board shall operate in connection with the provision of the Services and generally in connection with this Contract.
- 54.2 The Contractor shall not replace its representative(s) without the prior written approval of the Authority, such approval not to be unreasonably withheld or delayed.

- 54.3 The Authority shall be entitled to replace its representative(s) upon reasonable written notice to the Contractor.
- 54.4 Each party's representative(s) shall have full authority to act on behalf of that party for all purposes of this Contract.

55. OPEN BOOK

- 55.1 The Contractor shall prepare, retain, maintain and/or provide to the Authority any and all Information to be prepared, retained, maintained and/or provided by the Contractor in connection with and in accordance with this Contract on an Open Book Basis.

56. NOTICES

- 56.1 All notices under this Contract shall be in writing and all certificates, notices or written instructions to be given under the terms of this Contract shall be served by sending the same by first class post or by hand, or leaving the same at:

Contractor

[Insert name/title]

[Insert address]

Authority

Executive Director Supporting Communities

As above

- 56.2 Any notices given by:
 - 56.2.1 post shall be effective upon the earlier of actual receipt and 5 Working Days after mailing; and
 - 56.2.2 hand shall be effective upon delivery.

57. WORKFORCE STANDARDS

- 57.1 The Contractor shall use its reasonable endeavours to comply with the Workforce Standards in accordance with **Schedule 14**.
- 57.2 The Contractor shall provide to the Authority on request evidence of his compliance with the Workforce Standards.
- 57.3 In the event that the Authority is not satisfied that the Contractor is complying with the Workforce Standards, the parties shall discuss and agree how such compliance may be achieved during the remainder of the Contract.

58. CIVIL CONTINGENCIES ACT 2004

- 58.1 The Contractor acknowledges and accepts that the Authority has obligations under the Civil Contingencies Act 2004 ("CCA") and hereby agrees:
 - 58.1.1 during and after the Contract Period to provide any information, documentation and assistance that the Authority may reasonably require to be able to comply with its obligations under section 2 of the CCA;
 - 58.1.2 to put in place such measures as may be reasonably practicable so that as far as reasonably possible it can continue to undertake its obligations under this Contract in the event of an Emergency (as defined in the CCA) and to notify the Authority of such measures; and
 - 58.1.3 to obey any instruction of the Authority during and in respect of an Emergency, the Authority undertakes to remunerate and indemnify the Contractor against any direct claims, costs or losses directly arising from the Contractor's compliance with such instructions.

59. LONDON LIVING WAGE

- 59.1 Without prejudice to any other provision of this Contract, the Contractor shall:
- 59.1.1 ensure that none of its employees or Key-Subcontractors' employees engaged in the provision of the Services is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage (unless otherwise directed by the Authority);
 - 59.1.2 ensure that any increase in the London Living Wage shall be applied on the anniversary of the Commencement Date;
 - 59.1.3 provide to the Authority such information concerning the payment of the London Living Wage to its employees or to the employees of its Key-Subcontractors engaged in the provision of the Services as the Authority may reasonably require from time to time;
 - 59.1.4 disseminate on behalf of the Authority to its employees engaged in the provision of the Services such perception questionnaires as the Authority may reasonably require from time to time and promptly collate and return to the Authority responses to such questionnaires; and
 - 59.1.5 co-operate and provide all reasonable assistance to the Authority in monitoring the effect of the London Living Wage on the quality of service provided under this Contract.

60. BLACKLISTING

- 60.1 The Authority supports equality within the workplace and is committed to tackling all forms of malpractice including the illegal practice of blacklisting.
- 60.2 The Contractor shall:
- 60.2.1 comply with all applicable laws, statutes, regulations, and codes relating to illegal blacklisting practices, including but not limited to, the relevant provisions under the Employment Relations Act 1999, Blacklisting Regulations 2010 and the Data Protection Act 1998 ("Blacklisting Legislation"), and shall insert the same provision in any sub-contract relating to provision of any works, goods or services under the Contract;
 - 60.2.2 not engage in any activity, practice or conduct which would constitute an offence under Blacklisting Legislation if such activity, practice or conduct is carried out in the UK;
 - 60.2.3 have and maintain throughout the term of this Contract, policies and procedures to ensure compliance with the Blacklisting Legislation, and will enforce them where appropriate; and
 - 60.2.4 take appropriate steps to ensure that neither the Contractor, Sub-Contractors nor any Contractor's Staff engage in any illegal blacklisting practices.
- 60.3 Where the Contractor has previously breached Blacklisting Legislation prior to entering into the Contract, the Contractor shall provide evidence to the Authority that suitable processes have been put in place to ensure that the practice of Blacklisting does not reoccur.
- 60.4 Upon breach of this clause, the Authority shall be immediately entitled to terminate the Contract or any part of it and to recover from the Contractor the amount of any loss resulting from such termination, including but not limited to, the costs of appointing a third party to complete the Contract requirements on the Contractor's behalf.

61. WHISTLEBLOWING

- 61.1 Nothing in this Contract shall prevent any of the Contractor's Staff from making a protected disclosure within the meaning of the Public Interest Disclosure Act 1998. Workers who make a protected disclosure are protected against dismissal and victimisation in respect of the disclosure.
- 61.2 The Contractor shall:
- (a) comply with all applicable laws, statutes, regulations, and codes relating to Whistleblowing, including but not limited to, the relevant provisions under the Public

Interest Disclosure Act 1998 (“Whistleblowing Legislation”) and insert the same provision in any sub-contract relating to provision of any works, goods or services under the Contract;

- (b) have and maintain throughout the term of this Contract, policies and procedures to ensure compliance with the Whistleblowing Legislation, and will enforce them where appropriate; and
 - (c) ensure all of the Contractor’s Staff are given access to the Contractor’s policies on Whistleblowing.
- 61.3 Where the Contractor has previously breached Whistleblowing Legislation prior to entering into the Contract, the Contractor shall provide evidence to the Authority that suitable processes have been put in place to ensure future compliance.
- 61.4 Upon breach of this clause, the Authority shall be entitled to terminate the Contract or any part of it with immediate effect and to recover from the Contractor the amount of any loss resulting from such termination, including but not limited to, the costs of appointing a third party to complete the Contract requirements on the Contractor’s behalf.

62. FAIR PAYMENT CHARTER

- 62.1 The Contractor shall deliver to the Authority a signed copy of the current version of the Model Fair Payment Charter.
- 62.2 It is a condition of the Authority’s approval of any Key-Subcontractor that the Contractor shall deliver to the Authority a signed copy of the current version of the Model Fair Payment Charter within 28 Working Days of the Authority’s approval of the relevant Key-Subcontractor. If this condition is not fulfilled, the Authority’s approval of the relevant Key-Subcontractor is void, and the Contractor shall cease to employ that Key-Subcontractor.

63. COMPLAINTS ABOUT SERVICE PROVISION

- 63.1 The Contractor shall deal with any complaints received from whatever source in a prompt, courteous and efficient manner and in accordance with **Schedule 2**.

64. LOCAL GOVERNMENT OMBUDSMAN

- 64.1 The Contractor shall fully co-operate with any enquiry or investigation made by the Local Government Ombudsman or the Authority which in any way concerns, affects or relates to the performance of this Contract. This includes providing access to:
- 64.1.1 the originals or copies of documents, letters, notes, minutes, records or any other information (whether held or stored electronically, in hard copy format or otherwise) which relate to the investigation;
 - 64.1.2 premises, vehicles, plant, equipment (including IT hardware and software) or other assets used by the Contractor in providing the Services; and
 - 64.1.3 the Contractor’s Staff providing the Services (including management or supervisory staff) or who may be the subject of, or be named in any enquiry or investigation by the Local Government Ombudsman (including providing suitable facilities for interviewing the Contractor’s Staff).
- 64.2 The Contractor shall pay to the Authority the whole or an appropriate part of any compensation paid or the value of any other benefit given by the Authority to any person following a report or investigation by the Local Government Ombudsman which clearly identifies the Contractor or any Sub-Contractor as being wholly or partly responsible for any maladministration or other failure and recommends compensation to be paid.
- 64.3 If the Contractor disputes the amount of any compensation paid or the value of any benefit given by the Authority, following a Local Government Ombudsman report or investigation, the assessment of that amount or value is to be determined under **clause 35**.

65. CORRUPT GIFTS AND PAYMENT OF COMMISSION

- 65.1 The Contractor shall:
- 65.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery, anti-money laundering and anti-corruption, including but not limited to, the Bribery Act 2010 (“Relevant Requirements”);
 - 65.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 65.1.3 comply with the Authority's Ethics, Anti-bribery and Anti-corruption Policies (in each case as the Authority or the relevant industry body may update them from time to time) (“Relevant Policies”); and
 - 65.1.4 have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to, adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies, and will enforce them where appropriate.
- 65.2 The Authority shall be immediately entitled to terminate the Contract or any part of it and to recover from the Contractor the amount of any loss resulting, plus the value of any gift or consideration if in relation to the Contract or any other contract with the Authority the Contractor, or any of the Contractor's Staff or Sub-Contractors (whether with or without that Contractor's knowledge) shall have offered, or given, or agreed to give, to any person, any gift, or consideration, inducement or reward of any kind, for doing or not doing any action (except in accordance with a permitted and lawful subcontract); or the Contractor or any of the Contractor's Staff or Sub-Contractors shall have:
- (a) committed any offence under the Prevention of Corruption Acts 1889 to 1916; or
 - (b) committed any offence under the Bribery Act 2010; or
 - (c) given any fee or reward, the receipt of which is an offence under section 117(2) of the Local Government Act 1972.

66. QUALITY ASSURANCE

- 66.1 The Contractor warrants that he has a documented quality assurance policy which covers the Services.
- 66.2 The Contractor shall operate or demonstrate that he is working towards implementation of a verifiable quality system based on the principles in ISO 9000, EN 29000, European Foundation of Quality Management or other equivalent quality measures.
- 66.3 The Contractor shall allow the Authority to inspect, check and audit his quality system at any time during normal office hours on reasonable prior notification.
- 66.4 The Contractor shall allow the Authority access at any time while the Contractor is providing the Services to premises owned or occupied by the Contractor to examine, test or check any properties, equipment, documentation or anything else used in providing the Services.
- 66.5 The Contractor shall give all reasonable assistance to the Authority in carrying out quality assurance monitoring. The Contractor shall cooperate with the Authority and permit him to test, take measurements, samples and photographs of any premises, equipment or plant and materials used or proposed to be used in providing the Services.

67. OBSERVANCE OF STATUTORY REQUIREMENTS

- 67.1 The parties shall comply with all Legislation and other statutory provisions and codes of practice to be observed and performed in connection with the Services and shall indemnify the other for any losses or claims arising from the breach of this clause.

68. WORK RELATED ROAD RISK (WRRR)

The defined terms within this clause are as follows:

“*CLOCS Manager*” means the best practice, work related road risk safety reporting system that enables fleet operators to capture, investigate and analyse incidents, collisions and near-misses, as detailed at: www.clocs-manager.org.uk.

“*Collision reporting*” means a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities and within 5 Working Days of a collision occurring.

“*Driver*” means any employee of the Contractor (including an agency driver), who operates a Large Vehicle on behalf of the Contractor while delivering the Services.

“*DVLA*” means the Driver and Vehicle Licensing Agency.

“*e-learning*” means an online driver training course offered via FORS, which can be found at:

http://www.fors-online.org.uk/index.php?page=AE_INTRO&return=PTE_INTRO

“*FORS*” means the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and Large Vehicle fleets. It offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws as well as their environmental, social and economic performance.

“*FORS Standard*” means the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: www.fors-online.org.uk.

“*Gold Accreditation*” means the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk.

“*Large Vehicle*” means a vehicle with a MAM exceeding 3,500 kilograms.

“*MAM*” means the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road. This is also known as the gross vehicle weight (GVW).

“*Side guards*” means guards that are fitted between the front and rear axles of a Large Vehicle and that comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986.

“*Vulnerable road users*” means a pedestrian, cyclist, motorcyclist or person of reduced mobility.

68.1 FORS Accreditation

68.1.1 Where the Contractor operates Large Vehicles, it shall within 90 days of the Service Commencement Date (unless already registered) register for FORS or a scheme, which in the reasonable opinion of the Authority, is an acceptable substitute to FORS (the “Alternative Scheme”); and (unless already accredited) have attained the standard of Gold Accreditation or the equivalent within the Alternative Scheme within the first 12 months of the Service Commencement Date.

68.1.2 The Contractor shall maintain the standard of Gold Accreditation (or equivalent standard within the Alternative Scheme) in accordance with the periods set out in the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme.

68.2 Safety Equipment on Vehicles

68.2.1 The Contractor shall ensure that any Large Vehicle, which it uses to provide the Services, shall as a minimum:

- i. have side guards fitted, unless the Contractor can demonstrate to the reasonable satisfaction of the Authority that the vehicle will not perform the function for which it was built if side guards are fitted;
- ii. have front, side and rear blind spots completely eliminated or minimised as far as practical and possible, through the use of fully operational direct and indirect vision aids and driver audible alerts;

- iii. have equipment fitted with an audible means of warning other road users of the vehicle's left turn manoeuvre and reversing movement; and
- iv. bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside and of getting too close to the vehicle.

68.3 Driver Licence Checks

68.3.1 The Contractor shall ensure that each of its drivers has a driving licence check with the DVLA before that driver commences delivery of the Services and that the driving licence check with the DVLA is repeated in accordance with either the following risk scale, or the Contractor's risk scale, provided that the Contractor's risk scale has been approved in writing by the Authority within the last 12 months:

- i. 0 – 3 points on the driving licence – annual checks;
- ii. 4 – 8 points on the driving licence – six monthly checks;
- iii. 9 – 11 points on the driving licence – quarterly checks; or
- iv. 12 or more points on the driving licence – monthly checks.

68.4 Driver Training

68.4.1 The Contractor shall ensure that each of its drivers undergo approved progressive training (to include a mix of theoretical, e-learning, practical and on-the-job training) and continued professional development to include training covering the safety of vulnerable road users and on-cycle hazardous awareness, throughout the term of this Contract.

68.5 Collision Reporting

68.5.1 The Contractor shall ensure that it has a system in place to capture, investigate and analyse road traffic collisions that results in fatalities, injury or damage to vehicles, persons or property and for generating Collision Reports. For example, the CLOCS Manager www.clocs-manager.org.uk.

68.5.2 The Contractor shall notify the Authority of any collisions involving injuries to persons or fatalities within 5 Working Days of an incident occurring, and provide to the Authority an updated Collision Report within 5 Working Days on written request.

68.6 Subcontracts

68.6.1 These terms shall also apply to the Contractor's Key-Subcontractors and the Contractor shall ensure that any subcontracts awarded by them include terms requiring Key-Subcontractors to comply with these obligations. The Contractor shall provide documentary evidence of the inclusion of such terms in their subcontracts if requested to do so by the Authority.

68.7 Failure to Comply with WRRR requirements

68.7.1 If the Contractor fails to comply with this clause:

- (a) the Contractor shall be in material breach of this Contract and subject to the Enforcement Procedure referred to in **clause 68.8** below;
- (b) the Authority may refuse the Contractor, its employees, agents and Large Vehicles entry onto any property that is owned, occupied or managed by the Authority for any purpose (including but not limited to deliveries);
- (c) the Contractor shall self-certify their compliance before the Service Commencement Date and provide annual updates on their compliance, as well as notifying the Authority if their compliance changes at any stage; and
- (d) random physical spot checks will be undertaken of vehicles, primarily at the Authority Depots but also possibly at the Contractor Depot, following completion of a risk assessment.

68.8 A copy of the Enforcement Procedure is attached in **Schedule 15**. The Contractor should note that the Authority has the option to terminate this Contract in the event of non-compliance with this clause.

69. SEVERABILITY

69.1 If any term, condition or provision of this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Contract. Both parties will attempt to substitute the affected provision with a valid or enforceable provision, which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

70. NO WAIVER

70.1 No term or provision of this Contract shall be considered as waived by any party to this Contract unless a waiver is given in writing by that party.

71. RIGHTS AND REMEDIES

71.1 Where this Contract provides specifically for any right of a party on breach of the other party's obligations under this Contract, the entitlement to exercise (and conferring of) that right will be to the exclusion of all other rights (other than available equitable remedies including injunction or their equivalent in any other jurisdiction) of the first mentioned party howsoever arising at common law, under statute or in equity in respect of the circumstances constituting such breach.

72. THIRD PARTY RIGHTS

72.1 No term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Contract, other than **clause 40** which confers benefits on and are enforceable by any New Contractor and **clause 23** which confers benefits on the Employees in respect of the provision of certain pension rights and benefits by the Contractor or a Sub-Contractor.

73. COUNTERPARTS

73.1 This Contract may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

74. GOVERNING LAW AND JURISDICTION

74.1 This Contract shall be governed by and construed in all respects in accordance with the laws of England and Wales, and the Courts of England and Wales shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Contract.

In witness whereof this Contract is executed as a deed and is delivered on the date stated at the beginning of this Contract.

The Common Seal of)
THE MAYOR AND BURGESSES OF)
THE LONDON BOROUGH OF CAMDEN)

was hereunto affixed in the presence of:)

Authorised Signatory

Executed as a deed by)

VEOLIA ES (UK) LIMITED)

acting by two authorised signatories:)

Authorised Signatory

Authorised Signatory

Schedule 1

Definitions

1. DEFINITIONS

In this Contract, unless the context otherwise requires, the following terms shall have the meanings given to them below:

"Administering Authority"

means the London Borough of Camden acting in its capacity as the administering authority of the Fund;

"Administrative Labour Cost"

means such costs based on the middle point of Scale "SO1" (Spinal Column Point 30) under "National Joint Council Conditions for Administrative, Professional, Technical and Clerical Services", current at the time of the relevant Service Failure;

"Admission Body"

is a transferee admission body for the purposes of regulation 3 of the LGPS Regulations;

"Affiliate"

means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and "**holding company**" and "**subsidiary**" shall have the meaning given to them in section 1159 of the Companies Act 2006, save that for the purposes of determining whether one entity is an Affiliate of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;

"Anaerobic Digestion"

means the biological treatment of Waste where the decomposition and stabilisation of Waste is achieved through an anaerobic process;

"Annual Price Review"

means the annual review carried out in accordance with section 11 of **Schedule 4**;

"Annual Service Improvement Fund"

means the account that the parties will administer and manage as part of the Joint Efficiency Review to fund ongoing service improvement initiatives;

"Annual Service Payment"

means the payment described in section 3 of **Schedule 4**;

"Assets"

means collectively the Contractor Assets and the Authority Assets and any other assets required in the provision of the Services;

"Assets and Equipment Register"

means the register of the Assets and other equipment used in the provision of the Services including details of their location and condition set out in **Schedule 7** (and shall include such register as updated and/or amended from time to time in accordance with this Contract);

"Assisted Collections"

means those collections where the Contractor is required to collect the contents of, and return, one or more Container(s) from an agreed collection point instead of the standard collection point due to the Authority considering the respective householder to be physically unable to present one or more Container(s) at the standard collection point;

"Audit Agents"

means

- (a) the Authority's internal and external auditors.
- (b) the Authority's statutory or regulatory auditors.
- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office.
- (d) HM Treasury or the Cabinet Office.
- (e) any party formally appointed by the Authority to carry out audit or similar review functions.
- (f) successors or assigns of any of the above;

"Authorised Officer"

means the named representative of the Authority responsible for managing the Contract;

"Authority"

means the London Borough of Camden;

"Authority Area"

means the area within the administrative boundary of the Authority;

"Authority Assets"

means together the following:

- (a) those assets made available to the Contractor on the Service Commencement Date as listed in Part 1 of **Schedule 7**;
- (b) any assets purchased or provided by the Contractor to replace the assets listed in Part 1 of **Schedule 7** in accordance with **clause 20.2**; and
- (c) any assets subsequently provided by the Authority to the Contractor;

"Authority Default"

means

- (a) Non-payment by the Authority of undisputed sums due to the Contractor exceeding the equivalent of one month's instalment of the Service Payment such amount remaining outstanding 40 Working Days after receipt by the Authority of notice of non-payment; or
- (b) A failure by the Authority to allow the Contractor to provide the Services on an exclusive basis (subject to provisions in the Contract allowing the Services to be changed during the Contract Period) such failure remaining 40 Working Days after receipt by the Authority of a notice from the Contractor requesting exclusivity of provision of the Services; or
- (c) A deliberate hindrance by the Authority of the Contractor preventing provision of the Services which does not cease within 40 Working Days following receipt of notice from the Contractor requesting cessation;

"Authority Depots"

means the depots, the details of which are set out in **Schedule 7** which are to be made available for use by the Contractor for the provision of the Services (as may be varied by agreement of the parties from time to time);

"Authority Depot Lease"

means the lease or leases to be granted by the Authority to the Contractor for the use of the Authority Depots, on the basis of the lease template as set out in **Schedule 8**;

"Authority Depot Licence"

means the licence or licences to be granted by the Authority to the Contractor for the use of the Authority Depots, on the basis of the licence template as set out in **Schedule 8**;

"Authority Financed Vehicles"

means those vehicles listed in the Annex of **Schedule 7**;

"Authority Related Party"

means any of the following:

- (a) an officer, servant, employee or agent of the Authority acting in that capacity;
- (b) any contractor or sub-contractor of the Authority (excluding for the avoidance of doubt the Contractor and any Sub-Contractors of the Contractor) of any tier and their directors, officers, servants, employees or agents acting in that capacity;

"Backfilling Operation"

means an operation where Waste is used for reclamation purposes in excavated areas or for engineering purposes in landscaping;

"Best Value Duty"

means the duty imposed on the Authority by section 3 of the Local Government Act 1999 in relation to, amongst other things, any one or more of the Services;

"Business Recycling and Waste Services"

means that part of the Services described in section 49 of **Schedule 2** and section 26 of Method Statement 5;

"Capital Expenditure"

means any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time;

"CEDR"

means the Centre for Effective Dispute Resolution;

"Cessation Date"

means the date other than the date of expiry or earlier termination of this Contract on which the Contractor or Sub-Contractor ceases to be an Admission Body;

"Change"

means a change under **clause 42**;

"Change Estimate"

means an estimate as described in **clause 42.4**;

"Change in Law"

means the coming into effect after the date of this agreement of:

- (a) Legislation, other than any Legislation which on the date of this agreement has been published:
 - (i) in a draft bill as part of a Government Departmental Consultation Paper;
 - (ii) in a bill;
 - (iii) in a draft statutory instrument; or
 - (iv) as a proposal in the Official Journal of the European Union;
- (b) any official guidance; or
- (c) any applicable judgment of a relevant court of law which changes a binding precedent;

"Chartered Institute of Arbitrators"

means the London based membership body for arbitrators established as a UK registered charity in 1990;

"Chief Land Registrar"

means the head of the Land Registry;

"Client Resources"

means the labour, equipment, materials and consumables associated with contract management on behalf of the Authority;

"Collateral Warranty"

means a collateral warranty in the form set out in **Schedule 6**;

"Collection Container"

means any sack, container, bin, box or other type of container approved by the Authority for holding Waste;

"Collection Day"

means the designated day of the week on which the relevant Services will normally be collected as set out in section 21 of **Schedule 2**;

"Collection Vehicles"

means the vehicles used by the Contractor to fulfil all or any of the Services required under the Contract, whether owned by or leased by the Authority or the Contractor;

"Commencement Date"

means the date of this Contract;

"Companies House"

means the executive agency of the Department for Business, Energy and Industrial Strategy through which limited companies in England, Wales, Northern Ireland and Scotland are registered as required by law;

"Compensation Regulations"

means the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006;

"Composting"

means the biological treatment of Waste where the decomposition and stabilisation of the Waste is achieved through microbial activity from an aerobic process;

"Consumer Price Index"/"CPI"

means the consumer price index as published from time to time by the Office for National Statistics (or any official publication as maybe substituted therefore) or failing such publication or in the event of a fundamental change to the index, such other index as the parties may agree, or such adjustments to the index as the parties may agree (in each case with the intention of putting the parties in no better or worse position than they would have been had the index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with the Dispute Resolution Procedure;

"Contract"

means this contract including its schedules;

"Contract Month"

means each successive calendar month in a Contract Year;

"Contract Partnership Board"

means the board established by the Authority and the Contractor under **Schedule 11**;

"Contract Period"

means the period from and including the Commencement Date to the Expiry Date, or if earlier, the Termination Date;

"Contract Resources"

means the labour, plant, equipment, materials and consumables associated with the provision of the Services by the Contractor;

"Contract Year"

means the period of 12 months commencing 1 April and ending 31 March except that:

- (a) the first Contract Year shall be the period commencing on the Service Commencement Date and ending on the day immediately following 31 March; and
- (b) the final Contract Year shall be the period commencing on 1 April immediately preceding the last day of the Contract Period and ending on that day;

"Contractor"

means Veolia ES (UK) Limited;

"Contractor Admission Agreement"

has the meaning referred to in **clause 23.1.1**;

"Contractor Assets"

means the assets provided by the Contractor under this Contract including (but not limited to) those assets listed in Part 2 of **Schedule 7**;

"Contractor Default"

means any one or more of the following:

- (a) in relation to the Contractor and/or the Parent Company:
 - (i) it is unable to pay or has no reasonable prospect of being able to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (as amended), but disregarding the references therein to proving it to the court's satisfaction;
 - (ii) it or its directors resolve to appoint an administrator of it or to apply to court for an administration order in respect of it or an application for an administration order in respect of it is made or any steps pursuant to Schedule B1 of the Insolvency Act 1986 (as amended) and/or the Insolvency Rules 1986 (as amended) are taken to appoint an administrator to it or it enters administration;
 - (iii) it or its directors request or it suffers the appointment of a Law of Property Act 1925, court appointed or other receiver or receiver manager, or similar officer over or in relation to the whole of its undertaking, property, revenue or assets or any part thereof, or any person holding security over all or any of its undertaking, property, revenue or assets takes possession of them or any part of them;
 - (iv) it or its directors resolve to wind it up whether as a voluntary liquidation or a compulsory liquidation, or they take any steps under the Insolvency Act 1986 (as amended) and/or the Insolvency Rules 1986 (as amended) to wind it up voluntarily or to apply to the court for a winding-up order or a winding-up petition is presented against it or a provisional liquidator is appointed to it or it goes into liquidation within the meaning of that term under section 247 of the Insolvency Act 1986 (as amended);
 - (v) it or its directors resolve to enter into, or it enters into, or it or its directors commence negotiations, or make any requisite application to court in respect of, or if they convene meetings for the approval of, any composition, compromise, moratorium (to include a moratorium statutorily obtained, whether or not as a precursor to a voluntary arrangement under the Insolvency Act 1986 (as amended)), scheme or arrangement with its creditors or any of them, whether or not under the Insolvency Act 1986 (as amended), the Companies Act 2006 (as amended) or otherwise;

- (vi) it is dissolved, or is removed from the Register of Companies, or ceases to exist (whether or not capable of reinstatement or reconstitution) or its directors apply for it to be struck off the Register of Companies;
 - (vii) it is or becomes subject to, takes or has taken against it or in relation to it, or any or all of its undertaking, property, revenue or assets, any equivalent, analogous, corresponding or similar finding, step, process or proceeding to those in this paragraph (a) in any jurisdiction, whether or not any finding, step, process or proceeding has been taken against or in relation to it, or any or all of its undertaking, property, revenue or assets in England and Wales;
 - (b) a breach by the Contractor of any of its obligations under this Contract which materially and adversely affects the performance of the Services (but excluding any breach which is a Service Breakdown);
 - (c) a breach by the Contractor of its obligations under **clause 34**;
 - (d) a breach by the Contractor of its obligations under **clauses 22, 23, 24 and 25**;
 - (e) a breach by the Contractor of its obligations under **clauses 50 and 51** occurs;
 - (f) a breach by the Contractor of any of its obligations in **clause 3** occurs;
 - (g) a breach by the Contractor of **clauses 12 and 13**;
 - (h) a breach by the Contractor of **clauses 18, 19 and 20**;
 - (i) a serious breach by the Contractor of health and safety Legislation; or
 - (j) a breach by the Contractor of any material term of any lease entered into pursuant to this Contract;
- PROVIDED always that in relation to limbs (c) to (j) inclusive above, the breach referred to must be a material breach which materially and adversely impacts on the rights afforded to the Authority under this Contract;

"Contractor Depot"

means any depot (excluding the Authority Depots) that may be used for the provision of the Services as may be agreed in writing (such agreement not to be unreasonably withheld or delayed) by the Authority;

"Contractor Party"

means any of the Contractor's subsidiaries and contractors (including any Sub-Contractor) of any tier and its or their directors, officers, employees and workers in relation to the provision of the Services under this Contract and Contractor parties shall be construed accordingly;

"Contractor Scheme"

means the retirement benefits scheme or schemes established or to be established under **clause 23.7.1**;

"Contractor Warranted Data"

means all data provided by the Contractor to the Authority and their advisers during the procurement process for this Contract;

"Contractor's Group"

means the group of companies of which the Parent Company is parent;

"Contractor's Representative"

means the named representative of the Contractor's business responsible for the management of the Contract and authorised to act for the Contractor in relation to this Contract;

"Contractor's Staff"

means the employees for whom the Contractor has managerial responsibility, including both permanent and temporary employees, any agency staff and where relevant, the permanent and temporary staff of any Sub-Contractors;

"Contrary Items"

means any Waste items that are presented with or mixed within collected Recycling but are not specified as Recyclable Materials within **Schedule 2** or Method Statement 5;

"Convictions"

means other than in relation to any minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding overs (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order);

"COSHH Register"

means any register required to be maintained to comply with the Control of Substances Hazardous to Health Regulations 2002 (as amended);

"Deduction(s)"

means any of the Performance Deductions and/or the Other Deductions;

"Delivery Site"

means a location designated by the Authorised Officer to which Refuse, Recycling, Food Waste and Garden Waste shall be taken by the Contractor for Composting, treatment or disposal to landfill;

"Depot(s)"

means premises from which the Contractor deploys staff and/or vehicles to deliver the Services;

"Digital Vehicle Advertising"

means the use of digital advertising screens on collection vehicles as generally described in section 1.1 of Method Statement 1;

"Direct Losses"

means all damage, losses, indebtedness, claims, actions, cash, expenses (including the cost of legal or professional services, legal costs being an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but for the avoidance of doubt, excluding Indirect Losses;

"Disclosed Data"

means the information disclosed by the Authority to the Contractor and its advisers during the procurement process for this Contract;

"Discriminatory Change in Law"

means a Change in Law, the terms of which apply expressly to:

- (a) the Services to be provided under this Contract (and not to similar services provided under any other contract); and
- (b) the Contractor and not to other persons;

"Dispute Resolution Procedure"

means the procedure for the resolution of disputes set out in **clause 35**;

"Eligible Employees"

means

- (a) the Transferring Authority Employees who are active members of or eligible to join the LGPS on a Relevant Transfer Date;
- (b) the Transferring Original Employees who are active members of or have the right to acquire benefits under either the LGPS under Regulation 3 of the

- LGPS Regulations or a broadly comparable pension scheme provided by their existing employer on a Relevant Transfer Date; and
- (c) any other individuals nominated by the Contractor or relevant Sub-Contractor (as appropriate) with the agreement of the Authority and the Administering Authority, for so long as they are employed in connection with providing the Services or part of the Services;

"Emergency"

means an event causing or, in the reasonable opinion of the Authority, threatening to cause death or serious injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services, or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services (and whether or not an Emergency has arisen shall be determined in the case of any dispute by the Authority acting reasonably);

"Equalities Legislation"

means the Equality Act 2010;

"Equalities and Human Rights Commission Codes of Practice on Employment and Service Provision"

means guidance in the form of codes of practice published by the Equalities and Human Rights Commission pursuant to the Equality Act 2010;

"Equality Requirements"

means the requirements set out in **clause 25**;

"Estimated Change in Costs"

means a detailed estimate of increased operating costs less any estimated reduced operating costs (without double counting) in connection with the Services;

"European Economic Area"

means the European Economic Area as created by the Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area;

"Excess Profit"

means the Net Profit above the agreed Net Profit Margin in any Contract Year;

"Excess Profit Share"

means the mechanism by which Excess Profit generated by this Contract above the agreed threshold is shared between the Contractor, the Authority and the Annual Service Improvement Fund;

"Excess Profit Share Deduction"

means the deduction in relation to any Excess Profit Share as described in paragraph 6.3 of **Schedule 4**;

"Exit Contribution"

has the meaning referred to in **clause 23.15.2**;

"Expiry Date"

means the date which is 8 years from the Service Commencement Date and as such date may be varied (one or more times as the case may be) in accordance with **clause 2.2**;

"First Contractor"

means the organisation with whom the Authority initially contracted for the provision of services which are fundamentally the same type of services as the service;

"Food Waste"

means cooked and uncooked foods as set out in **Schedule 2** that can be processed to produce compost or digested to produce digestate and a biomethane energy source;

"Force Majeure Event"

means the occurrence after the date of this Contract of:

- (a) war, civil war, armed conflict or terrorism; or
- (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of the action of the Contractor; or
- (c) pressure waves caused by devices travelling at supersonic speeds, which directly causes either party to be unable to comply with all or a material part of its obligations under this Contract;

"Foreseeable Change in Law"

means a Change in Law which on the date of this Contract has been published:

- (a) in a draft bill as part of a Government Departmental Consultation Paper;
- (b) in a bill;
- (c) in a draft statutory instrument; or
- (d) as a proposal in the Official Journal of the European Union;

"Fund"

means the London Borough of Camden Pension Fund;

"Future Contractor"

means the organisation appointed by the Authority to provide the Services after the expiry or earlier termination of the Contract;

"Good Industry Practice"

means that 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 Contractor engaged in the same type of undertaking as that of the Contractor under the same or similar circumstances;

"Guaranteed Business Recycling and Waste Revenue"

means the guaranteed annual minimum payment made by the Contractor to the Authority from the provision of Business Recycling and Waste Services;

"Guarantor"

means Veolia Environmental Services (UK) Plc;

"Household"

means a domestic property including any that are newly built and any other properties that are adapted or converted for domestic use during the Contract Period or which are designated as such by the Authorised Officer (acting reasonably);

"Indexed"

means the adjustment of a value to reflect changes in a basket of indices. Where any value is stated to be "Indexed", then in the Contract Year starting on the Service Commencement Date and each subsequent Contract Year, the said value shall be amended in accordance with the following formula:

$$\frac{A}{B}$$

where:

A = the value of the basket of indices published on the last day or the day closest to the last day of the previous Contract Year; and

B = the value of the basket of indices published on the last day or the day closest to the last day of the Contract Year prior to the previous Contract Year, where indexation is being calculated for the second Contract Year, 'B' shall be the value of the basket of indices published on the Service Commencement Date or the day closest to the Service Commencement Date;

"Indirect Losses"

means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature;

"Industry Experts"

means advisors appointed by or providing assistance to the Authority for the purpose of reviewing the efficiency or effectiveness of the Services;

"Information"

means without limitation any information, policies, data (in whatever format), records, certificates, documents, accounts, or audits (as may be prepared or provided in connection with and/or pursuant to this Contract) and including the Relevant Information and Key-Subcontractor Relevant Information;

"Information Commissioner's Office"

means the independent authority responsible for enforcing the Data Protection Act 1998;

"Initial Contribution Rate"

shall mean 27.3% of Pensionable Pay;

"Initial Exit Plan"

means the initial exit plan developed, updated and maintained by the Contractor in accordance with **clause 40.2**;

"Insolvency Event of Default"

means any of the events listed at paragraph (a) of the definition of Contractor Default;

"Insolvency Option"

means the Authority's option to purchase the Contractor Assets pursuant to **clause 20**;

"Insolvency Option Period"

means, in relation to an Insolvency Event of Default for the purposes of **clause 20**, the period commencing on the date of that Insolvency Event of Default and expiring six months thereafter;

"Intellectual Property Rights"

means any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;

"Intervening Contract"

means a contract with the Authority for the provision of services which are fundamentally the same type of services, at times after they were provided under a contract with the First Contractor and before they are to be provided by the Contractor;

"Joint Efficiency Review"

means the annual review arranged by the Contract Partnership Board to review all aspects of efficiency and productivity of the provision of the Services by the Contractor and the management of the Contract by the Authority;

"Key-Subcontractor Relevant Information"

means all information, documents, records and the like including monthly management accounts as provided in **clause** 13.1.2 in the possession of, or available to, any Key-Subcontractor relating to its business;

"Key-Subcontractors"

means those sub-contractors listed in **Schedule 9**;

"Land Charges Registry"

means the formal register of land charges, pending actions, writs and orders affecting land and other encumbrances registered against the named owners of property not registered under the Land Registration Act 2002;

"Land Registry"

means the non-ministerial government department charged with, among other things, the keeping of a register of title to freehold and leasehold land throughout England and Wales and guaranteeing, on behalf of the crown, title of the crown to registered estates and interests in land;

"Legislation"

means in relation to the United Kingdom:

- (a) any Act of Parliament;
- (b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978 including any statutory guidance;
- (c) any exercise of the Royal Prerogative; and
- (d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972;

"LGPS"

means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 7 and 12 of the Superannuation Act 1972 as amended from time to time;

"LGPS Regulations"

means the Local Government Pension Scheme Regulations 2013 (SI 2013/2356);

"London Living Wage"

means the basic hourly wage as defined on the Greater London site (before tax, other deductions and any increase for overtime) as may be updated from time to time and notified to the Contractor by the Authority;

"Method Statement(s)"

means the method statement(s) contained in **Schedule 3**;

"Minor Change"

means a minor change to the Services requested by either party in accordance with **clause** 42.10 which does not require any material change to the Contract or materially and adversely affect the Contractor's ability to perform the Services or its obligations under this Contract;

"Minor Change Control Note"

means a note requesting a Minor Change prepared in the form set out in **clause** 42.10.8;

"Missed Collection"

means any scheduled collection not made by the Contractor when the relevant Collection Vehicle passes the relevant Household and/or other premises and where the Service User had appropriately presented the correct Collection Container;

"Missed Collection Not Rectified"

means a Missed Collection not rectified in accordance with **Schedule 2** either:

- (a) by the end of the Working Day, where the Contractor was notified of the Missed Collection before 12 p.m. on the scheduled Collection Day; or
- (b) by 12 p.m. on the following Working Day, where the Contractor was notified of the Missed Collection after 12 p.m. on the scheduled Collection Day;

"Necessary Consents"

means all rights, agreements, approvals, consents, permits, licences, facilities, permissions and certificates, (excluding for the avoidance of doubt the Planning Permission) lawfully and necessarily required from any competent regulatory or licensing authority or any other persons whatsoever in connection with the provision of the Services and in accordance with this Contract;

"Net Profit"

means the Total Contract Revenue less the Net Service Cost in any Contract Year;

"Net Profit Margin"

means the Net Profit as a percentage of the Total Contract Revenue in any Contract Year;

"Net Service Cost"

means the directly incurred Contractor costs less all Contract Revenues in any Contract Year;

"New Contractor"

means any person or persons who takes over provision of all or part of the Services from the Contractor;

"New Employer"

has the meaning referred to in **clause 23.12.1**;

"New Services"

means such services which the Authority requests by way of a Notice of Change in accordance with **clause 42**;

"Non Service Provision Deductions"

means the deductions calculated in accordance with section 6.4 of **Schedule 4**;

"Notice of Change"

means a notice served by the Authority in accordance with **clause 42.2**;

"Open Book Basis"

means, in respect of any and all Information, that such Information shall be prepared, retained and maintained in utmost good faith in an open and transparent, complete, accurate, current and readily accessible manner and in accordance with Good Industry Practice and any applicable Legislation, and where such Information is requested in accordance with this Contract by or on behalf of the Authority (or any agent of the same), such Information is not to be unreasonably withheld or delayed and is provided promptly;

"Original Employee"

means those employees of the Authority, who as a result of the application of TUPE, in relation to what was done for the purposes of carrying out the contract

between the Authority and the First Contractor, became employees of someone other than the Authority;

"Other Deductions"

means any of the listed Other Deductions from section 6 of **Schedule 4**;

"Other Service Default Deduction"

means a deduction described and defined as such in paragraph 5.6 of **Schedule 4**;

"Output Based Specification"

means the Output Based Specification contained in **Schedule 2**;

"Parent Company"

means Veolia Environmental Services (UK) Plc;

"Parent Company Guarantee"

means a parent company guarantee in favour of the Authority in the form set out in Part 1 of **Schedule 5**;

"Pensionable Pay"

has the meaning ascribed to it in the LGPS Regulations;

"Performance Deductions"

means any of the Specific Service Default Deductions, the Other Service Default Deductions, and any deductions levied against the Contractor in accordance with **clause 47.4.2** of the Contract;

"Performance Management System"

means the performance management system and approach as set out in section 6 of **Schedule 2** and as may be agreed and reviewed by the parties from time to time to continuously improve the performance of the Services;

"Performance Report"

means the monthly report described in section 3 of **Schedule 11**;

"Personal Data"

means personal data as defined in the Data Protection Act 1998 which is supplied to the Contractor by the Authority or obtained by the Contractor in the course of performing the Services;

"Planning Act"

means the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004;

"Planning Authority"

means the relevant planning authority for the purposes of the Planning Act;

"Planning Permission"

means any planning permission submitted or to be submitted by or on behalf of the Contractor to the appropriate Planning Authority in respect of the Services (including any amendment to the application) pursuant to the Planning Act being in every case either:

- (a) detailed planning permission; or
- (b) outline planning permission together with such approvals of reserved matters as are required to enable the Contractor to commence the Services in every case granted by the Planning Authority, the Secretary of State for the Department for Communities and Local Government or an inspector appointed by him for that purpose;

"Price"

means the amount charged by the Contractor in consideration of any of the Services supplied under this Contract and calculated in accordance with **Schedule 4**;

"Pricing Schedule(s)"

means the schedules included in the Annex of **Schedule 4**;

"Prohibited Act"

means

- (a) offering, giving or agreeing to give to any servant of the Authority any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Authority; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Authority; or
- (b) entering into this Contract or any other contract with the Authority in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority; or
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under the Prevention of Corruption Acts 1889-1916;
 - (iii) under Legislation creating offences in respect of fraudulent acts; or
 - (iv) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Authority; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Authority;

"Prohibited Employment Grounds"

means the grounds of any protected characteristic contrary to Part 5 (Employment) of the Equality Act 2010;

"Prohibited Grounds"

means the grounds of any protected characteristic contrary to Part 3 (Services and Public Functions) or Part 6 (Education) of the Equality Act 2010;

"Quantity Applied"

means the amount of any item determined by the Authority that will be used in the Pricing Schedule to determine the Service Payment. Both parties acknowledge that aspects of the payment mechanism may result in the Quantity Applied in any given Contract Year not equalling the Quantity Count for that same year;

"Quantity Count"

means the Authority's estimated quantities of items that reasonably reflect the scale of the Services. In entering the Contract, both parties acknowledge that there is likely to be inaccuracies surrounding the Quantity Count and the Authority's determination of the numbers, acting reasonably provides for an adequate payment calculation;

"Qualifying Change in Law"

means

- (a) a Discriminatory Change in Law; and/or
 - (b) a Specific Change in Law,
- which was not foreseeable at the date of this Contract;

"Rate Items"

means items in the Pricing Schedule included in the column marked 'RATE ITEMS – Unit Rate';

"Recovery Operation"

means any operation involving the reprocessing, checking, cleaning, repairing, Composting or Anaerobic Digestion of Waste the principal result of which is capable of serving a purpose;

"Recyclable Materials"

means the Waste collected by the Contractor in accordance with section 37 of **Schedule 2** for Recycling but excludes Contrary Items;

"Recycled"

means Waste which:

- (a) has undergone a reprocessing Recovery Operation; and
- (b) is reprocessed into a product, material or substance, whether for its original or other purpose,

but local authority municipal waste is not Recycled if it is used for fuel or for Backfilling Operations (and **"Recycling"** and **"Recycle"** shall be construed accordingly);

"Refuse"

means Waste that does not have further use and is destined for disposal or treatment rather than for Recycling, reuse or Composting;

"Register of Companies"

means the list of companies held by Companies House;

"Relevant Employees"

means the employees who are the subject of a Relevant Transfer;

"Relevant Information"

means all information, documents, records and the like specifically relating to the Contract or publically available including monthly management accounts as provided in **clause** 13.1.2 in the possession of, or available to, the Contractor relating to the Contractor's business;

"Relevant Transfer"

means a relevant transfer for the purposes of TUPE;

"Relevant Transfer Date"

means the date on which Relevant Employees transfer to the Contractor and/or one or more Sub-Contractor by virtue of a Relevant Transfer;

"Repeat Missed Collection"

means any Missed Collection that relates to a Household or other relevant premises (as the case may be) to which a Missed Collection also occurred on the previous scheduled Collection Day;

"Repeat Missed Collection Not Rectified"

means any Repeat Missed Collection not rectified either:

- (a) by the end of the Working Day, where the Contractor was notified of the Missed Collection before 12:00 p.m. on the scheduled Collection Day; or
- (b) by 12:00 p.m. on the following Working Day, where the Contractor was notified of the Missed Collection after 12:00 p.m. on the scheduled Collection Day;

"Rules of the London Court of International Arbitration"

means the rules set by the London Court of International Arbitration effective since 1 January 1998;

"SDLT"

means stamp duty land tax;

"Sensitive Posts"

means all individuals who have direct access to members of the public in the provision of the Services;

"Sensitive Service Areas"

means any area where members of the public may be invited to or have permitted access to;

"Service Breakdown"

means the following occur within a period of 12 consecutive weeks:

- (a) 7% of Missed Collections; or
 - (b) 7% of Missed Collections not Rectified; or
 - (c) 7% of Repeat Missed Collections; or
 - (d) 7% of Repeat Missed Collections Not Rectified; or
 - (e) 15% of Missed Assisted Collections; or
 - (f) 7% of Repeat Missed Assisted Collections; or
 - (g) 15% of failure to restore the relevant land use type to the required standard within the rectification period; or
- any other material failures in the delivery of the Services under this Contract;

"Service Commencement Date"

means the date on which the Services commence under this Contract;

"Service Continuity Plan"

means the plan produced by the Contractor to deal with business continuity and disaster recovery, and addressing or including all of the matters specified in **clause 9.6.1**;

"Service Cost"

means the net direct operating cost to the Contractor of delivering the Services including all revenues from sources including (but not limited to) Recyclable Material sales but excluding any contribution to central or regional overheads or profit during any Contract Year;

"Service Failure"

means a failure in respect of which a Specific Service Default Deduction or an Other Service Default Deduction may be levied by the Authority in accordance with this Contract;

"Service Payment"

means the annual payment for the Services payable by the Authority to the Contractor in accordance with section 2 of **Schedule 4**;

"Service User"

means Householder or other legitimate user of the Services;

"Services"

means the whole or any part of the services to be provided by the Contractor under and in accordance with this Contract which are necessary for the Contractor to undertake in order to comply with these Conditions of Contract and the Schedules;

"Single Data List"

means the "Single Data List for Central Government Departments" published by the Department for Communities and Local Government containing a comprehensive list of all data required of local government by central government and any subsequent lists of central government's data requirements from local government as may be issued by the Department for Communities and Local Government or any other competent authority from time to time;

"Specific Change in Law"

means any Change in Law which specifically refers to the provision of services the same as or similar to the Services;

"Specific Service Default Deduction"

means a deduction made in accordance with section 5 of **Schedule 4** in respect of any default arising from the Key Outcome Target failures set out in Table 1 of **Schedule 4**;

"Step-In Event"

means

- (a) a Contractor Default, a Service Breakdown or any other act or omission of the Contractor or a Sub-Contractor which the Authority considers may create:
 - (i) a material interruption or delay in the provision of the Services or which the Authority reasonably believes may result in all or any material part of the Services not being provided by the Contractor;
 - (ii) a circumstance which entitles the Authority to terminate all or part of the Contract;
 - (iii) an Emergency; or
- (b) any other circumstance (not caused by an act or omission of the Contractor or a Sub-Contractor) which the Authority reasonably considers may create or is an Emergency;

"Step-In Period"

means any period during which the Authority exercises its Step-In Rights under and in accordance with this Contract;

"Step-In Rights"

means the rights of the Authority to take such steps itself or engage others to take such steps in accordance with **clause 47** following a Step-In Event;

"Stop Notice"

means a notice issued by the Authority in accordance with **clause 9**;

"Sub-Contractor"

means any sub-contractor engaged by the Contractor in connection with the provision of the Services and approved by the Authority in accordance with **clause 50.2** and shall include any Key-Subcontractor (appointed as at the date of this Contract or otherwise), and the term "sub-contractor" shall include any Sub-Contractor and any Key-Subcontractor (except where this Contract expressly provides that a "sub-contractor" is a sub-contractor of the Authority);

"Successor Body"

means any successor body of the Audit Agents;

"Termination Date"

means the date of early termination of this Contract in accordance with **clause 37**, **clause 38** or **clause 65.2**;

"Termination Option"

means the Authority's option to purchase the Contractor Assets pursuant to **clause 21**;

"Termination Option Period"

means, for the purposes of **clause 21**, the period of three months commencing on the Expiry or Termination Date;

"Tipping Location Change Deduction"

means the deduction described and defined as such in paragraph 6.2.1 of **Schedule 4**;

"Tipping Location Change Payment"

means the payment described and defined as such in paragraph 6.2.1 of **Schedule 4**;

"Transfer Date"

the transfer on a date agreed by the parties to the Contractor of responsibility for provision of (or procuring the provision by Sub-Contractors of) the Services in accordance with the Contract;

"Total Contract Revenue"

means the total amount paid by the Authority to the Contractor under this Contract in any Contract Year, net of any deduction made in respect of Performance Deductions or Other Deductions;

"Total Deductions"

means the total of the annual Performance Deductions and the annual Other Deductions;

"Transferring Authority Employee"

means an employee of the Authority whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out the Contract between the Authority and the Contractor, a contract of employment with someone other than the Authority;

"Transferring Original Employee"

means an Original Employee:

- (a) whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out the Contract between the Authority and the Contractor, a contract of employment with someone other than its existing employer; and
- (b) whose contract of employment on each occasion when an Intervening Contract was carried out becomes, by virtue of the application of TUPE in relation to what was done for the purposes of carrying out the Intervening Contract, a contract of employment with someone other than his or her existing employer;

"TUPE"

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (246/2006) and/or any other regulations enacted for the purpose of implementing the Directive into English law;

"Unit Rate"

means any rate set out in any Pricing Schedule;

"Variable Items Payment"

means the amount due to the Contractor from the Authority in respect of Rate Items and calculated in accordance with section 4 of **Schedule 4**;

"VAT"

means value added tax;

"Waste"

means Waste (including Recyclable Materials) as defined in section 75 of the Environmental Protection Act 1990;

"Whistleblowing"

means the exposure of unlawfulness, malpractice, negligence, abuses or dangers, such as professional misconduct or incompetence, which exists in the organisation in which the whistle-blower works; and

"Working Day"

means the hours from 7 a.m. to 5 p.m. (inclusive) from Monday to Friday inclusive.