

- (1) NORTH EAST LINCOLNSHIRE BOROUGH COUNCIL

- (2) BALFOUR BEATTY WORKPLACE LIMITED

SERVICES AGREEMENT

Eversheds LLP
1 Royal Standard Place
Nottingham
NG1 6FZ

Tel 0845 497 9797
Fax 0845 497 7477
Int +44 20 7497 9797
DX 10031 Nottingham
www.eversheds.com

CONTENTS

1	DEFINITIONS	8
2	INTERPRETATION	46
3	COMMENCEMENT AND DURATION.....	48
4	OPTION TO EXTEND	48
5	THE PARTNERSHIP FRAMEWORK	52
6	THE SERVICES	54
7	COMMITMENTS AND GUARANTEES	63
8	COUNCIL DEPENDENCIES	64
9	RENAISSANCE SERVICE	70
10	HIGHWAYS, TRANSPORTATION AND PLANNING SERVICE	81
11	ASSET MANAGEMENT SERVICE	92
12	ARCHITECTURAL SERVICE	99
13A	THE PROGRAMME AND PERFORMANCE DELIVERY SUPPORT UNIT	
13	MANAGED CONTRACTS	105
14	ICT	109
15	CALL OFF SERVICES FOR STRATEGIC PROJECTS AND OTHER ACTIVITIES.....	115
16	JOINT AND SHARED WORKING.....	116
17	PROFIT SHARING ARRANGEMENTS	116
18	PEOPLE, RESOURCE AND BUSINESS CAPACITY	117
19	PROJECTS.....	118
20	SOLE RESPONSIBILITY	134
21	DUE DILIGENCE, TRANSITION AND IMPLEMENTATION	135
22	TUPE AND STAFFING.....	143
23	PENSIONS	156
24	PARTNER'S PLANS AND PERFORMANCE REVIEWS	168
25	EXTERNAL ASSESSMENT	181
26	CONTRACT MANAGEMENT.....	187
27	ACCOMMODATION ARRANGEMENTS.....	189
28	VARIATION AND CHANGE CONTROL	189
29	PERSONNEL	196
30	ACTING ON BEHALF OF THE COUNCIL.....	203
31	COUNCIL MEETINGS AND ASSISTANCE IN OTHER PROCEEDINGS	206
32	AGREEMENTS.....	208
33	ASSETS	209
	34A COUNCIL SUPPLIED SERVICES	218
34	CONTRACT PRICE AND PAYMENT TERMS	219
35	PRICE PERFORMANCE MECHANISM	223
36	INTEREST ON LATE PAYMENT.....	225
37	VALUE ADDED TAX	226

38	INDEXATION	226
39	SET-OFF	226
40	ASSET DEPRECIATION	226
41	FINANCIAL MODEL.....	227
42	QUALITY ASSURANCE	228
43	COMPLAINTS, COMMENTS AND OTHER FEEDBACK.....	228
44	PROVISION OF ACCOUNTS/RECORDS	229
45	AUDIT RIGHTS	230
46	DISPUTE RESOLUTION PROCEDURE (DRP).....	232
47	WARRANTIES	236
48	INDEMNITIES AND LIMITATION OF LIABILITY	237
49	PARENT COMPANY GUARANTEE/BOND	246
50	COMPLIANCE WITH TIMESCALES	246
51	STEP-IN	246
52	LIQUIDATED DAMAGES	252
53	TERMINATION FOR BREACH.....	252
54	INSOLVENCY ETC	258
55	TERMINATION AT WILL	260
56	TERMINATION AND EXPIRY CONSEQUENCES	261
57	RECORDS AND DATA	276
58	INTELLECTUAL PROPERTY RIGHTS.....	280
59	CONFIDENTIALITY	285
60	NOVATION OF AGREEMENTS.....	289
61	ADVERTISING/PUBLICITY	297
62	ASSIGNMENT, SUB-CONTRACTING	299
63	COSTS AND EXPENSES.....	301
64	DOCUMENT PRIORITY	302
65	BUSINESS CONTINUITY.....	302
66	CIVIL EMERGENCY.....	303
67	INSURANCE	304
68	FORCE MAJEURE.....	307
69	CORRUPT GIFTS	308
70	ENVIRONMENTAL ISSUES	310
71	HEALTH AND SAFETY	311
72	NOT USED	311
73	NOTICES	311
74	RELATIONSHIP OF THE PARTIES.....	313
75	WAIVER.....	313
76	LAWS, POLICIES AND RELATED MATTERS.....	313
77	CONFLICTS OF INTEREST	315
78	GOVERNING LAW	316
79	INVALIDITY/SEVERABILITY	317
80	ENTIRE AGREEMENT	317
81	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999.....	317
82	FURTHER ASSURANCE.....	318
83	CONTINUANCE IN FORCE	318

- SCHEDULE 1 ACCOMMODATION
- SCHEDULE 2 ASSET REGISTER
- SCHEDULE 3 DELEGATION PROTOCOL
- SCHEDULE 4 BUSINESS CONTINUITY
- SCHEDULE 5 CHANGE CONTROL
- SCHEDULE 6 EXIT
- SCHEDULE 7 PCG
- SCHEDULE 8 ICT
- SCHEDULE 9 LOGO
- SCHEDULE 10 PENSIONS
- SCHEDULE 11 NOT USED
- SCHEDULE 12 POLICIES PLANS AND STRATEGIES
- SCHEDULE 13 PPM
- SCHEDULE 14 PRICING
- SCHEDULE 15 PARTNERSHIP FRAMEWORK
- SCHEDULE 16 PROJECTS
- SCHEDULE 17 REPORTING AND REVIEW
- SCHEDULE 18 STAFFING
- SCHEDULE 19 TRANSFERRING AGREEMENTS
- SCHEDULE 20 WIP / IN FLIGHT PROJECTS
- SCHEDULE 21 TRANSITION / 90 DAY PLAN
- SCHEDULE 22 COMMERCIALY SENSITIVE INFORMATION
- SCHEDULE 23 COMPENSATION ON TERMINATION
- SCHEDULE 24 PROFIT SHARE
- SCHEDULE 25 COUNCIL SUPPLIED SERVICES
- SCHEDULE 26 INTERFACE SERVICES
- SCHEDULE 27 RENAISSANCE SERVICES
- SCHEDULE 28 HIGHWAYS TRANSPORT AND PLANNING
- SCHEDULE 29 ASSET MANAGEMENT
- SCHEDULE 30 ARCHITECTURAL SERVICES

THIS DEED OF AGREEMENT is made the day of 2010

BETWEEN

- (1) **NORTH EAST LINCOLNSHIRE BOROUGH COUNCIL** of Municipal Offices, Town Hall Square, Grimsby, DN31 1HU ("the Council"); and
- (2) **BALFOUR BEATTY WORKPLACE LIMITED** whose registered number is 00598379 and whose registered office is at 10th Floor Marlowe House, 109 Station Road, Sidcup, Kent DA15 7BH ("the Partner").

BACKGROUND

- (A) The Council wishes to enter into a long term partnership arrangement with the Partner for (subject to **clause 4** (Option to Extend) an initial period of ten (10) years.
- (B) The Council's aim is to make a genuine difference in the Borough of North East Lincolnshire by physically regenerating the environment, creating job opportunities, developing skills and transforming the delivery of services to the communities it serves.
- (C) The Council is looking for a partner who can:
 - (i) contribute to strategic leadership and vision through the delivery of its strategies for regeneration and strategic housing and the development of the Regeneration Framework for the Borough;
 - (ii) transform service performance through new innovative and best practice ways of working and increasing the pace of change to deliver continuous improvement;
 - (iii) bring a range of skills and experience through a multi-disciplinary approach to the services and deliver its ambitions set out in its strategies;
 - (iv) build capability and capacity in the Council by providing additional resources and a transfer of knowledge and skills;
 - (v) focus on management, people and performance management not just process re-engineering and technology, to create a strong customer and performance focused culture;
 - (vi) address strategic challenges and barriers to the Council to enable it to achieve the ambitions set out in its strategies;

- (vii) utilise knowledge of the market place to engage other public and private sector partners where added value can be achieved;
 - (viii) identify and secure significant private sector funding to enable the delivery of its ambitions and maximise public investments; and
 - (ix) actively engage with the wider community and Council priorities and the Council's corporate agenda through effective partnership working.
- (D) The Partner has agreed that it will as part of the Partnership provide to the Council:
- (i) the Core Services;
 - (ii) upon agreement in accordance with the Projects methodology contained in **clause 19** (Projects), Projects; and
 - (iii) any other services that may be agreed from time to time in accordance with the Projects methodology or the Change Control Procedure pursuant to **clause 28** (Variation and Change Control).
- (E) In consideration of the Partner providing to the Council the Core Services and any other services specified in this Agreement, the Council will pay to the Partner the Contract Price and other payments set out in this Agreement.
- (F) The Council selected the Partner through a competitive dialogue procurement process pursuant to the Public Contracts Regulations 2006. This commenced with the Council issuing a contract notice in the Official Journal of the European Union on 15 February 2008.
- (G) The Council and the Partner will work together and subject to performance of their respective obligations the Partnership will develop and will operate in accordance with the governance arrangements set out in this Agreement and in pursuance of the objectives outlined above (see Recital B). This Agreement captures:-
- (i) the framework and the manner in which the Partner and the Council will work together; and
 - (ii) the legal, financial and performance obligations of the parties.

The Agreement is structured as follows:

Part A: Definitions and Interpretation

Part B: Partnership Framework and Duration

- Part C:** Key Provisions
- Part D:** Services
- Part E:** Service Transition
- Part F:** Performance Review and Continuous Improvement
- Part G:** Future Projects - Transfer Provisions
- Part H:** Price and Payment
- Part I:** Performance, Review and Remedies
- Part J:** Termination and Expiry
- Part K:** IPR, Confidentiality and Data Protection
- Part L:** Miscellaneous Provisions

Schedules

OPERATIVE PROVISIONS

PART A: DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

1.1 In this Agreement the following expressions shall have the following meanings unless inconsistent with the context:-

Expression	Meaning
"90 Day Plan"	the initial implementation plan to be executed by the Partner within three (3) months of the Service Commencement Date which is reflective of the Council Objectives and demonstrates the tangible, measurable benefits the Partner will deliver to the Council, as more particularly set out in Schedule 21 (Transition Plan/90 Day Plan);
"Actual Volume"	actual volume of demand in respect of a Service Component over the period of the Agreed Volume;
"Additional Payment"	any payment identified in the Statement of Account that is not a Milestone Payment, Periodic Payment, Service Credit or sum falling within clauses 34.3.3.5 or 34.3.3.7 (Payment Terms/Procedure) which is due from the Council to the Partner in respect of the Services;
"Administering Authority"	means East Riding of Yorkshire Council (as the Administering Authority of the East Riding Pension Fund within the LGPS) whose main offices are at County Hall, Beverley, East Yorkshire, HU17 9BA;
"Administration Regulations"	means the Local Government Pension Scheme (Administration) Regulations 2008;
"Admission Agreement"	an admission agreement between the Administering Authority, the Council and the Partner entered into in accordance with the Administration Regulations;
"Admission Body"	a transferee admission body for the purposes of regulation 6 of the Administration Regulations;
"Affected Party"	shall have the meaning given to it in clause 68.2.1 (Force Majeure);
"Agreed Volume"	agreed volume of demand in respect of each

	Service Component, expressed on an annual basis, as set out in the Schedule 14 (Pricing);
"Agreement Asset Register"	the register of assets to be compiled pursuant to clause 33 (Assets) of this Agreement as updated from time to time the initial version of which is attached at Schedule 2 (Asset Register);
"Agreement"	the Contract and its Schedules (as the same may be amended or varied from time to time by agreement between the Council and the Partner in writing);
"Agreement Assets"	Transferring Assets, Controlled Assets, Use Assets, Leased Assets and Partner Assets;
"Annual Budget Setting"	the process set out in clause 24.3 (Annual Budget Setting);
"Annual Performance Review"	shall have the meaning given in clause 24.1.2 (Annual Performance Review);
"Annual Performance Review Report"	the report produced in accordance with clause 24.1.2 (Annual Performance Review);
"Architectural Services"	means the Services more particularly described in clause 12 (Architectural Service) and Schedule 30 (Architectural Services);
"Area"	the administrative area of North East Lincolnshire Borough Council;
"Asset Information"	shall have the meaning given to it in clause 56.6.2 (Assets);
"Asset Management Service"	means the service more particularly described in clause 11 (Asset Management Services) and Schedule 29 (Asset Management Services);
"Assigned Employees"	shall have the meaning given to it in clause 56.8.1 (TUPE and Staffing on Retendering, Transfer Change and Termination of Agreement);
"Associated Company"	any company which is, in relation to another company, its parent undertaking or its subsidiary undertaking or a subsidiary undertaking of its parent undertaking or any other person controlled by or under the same control directly or indirectly. "parent undertaking" and "subsidiary undertaking" shall have the meanings attributed to them in

sections 1161 and 1162 of the Companies Act 2006;

“Background Information”

all materials, documents, contracts, drawings, plans, Data or other information relating in any way to:-

- (i) this Agreement made available by the Council or its agents in connection with the negotiation, preparation and procurement process in relation to this Agreement or in the case of the further services being transferred pursuant to a Project or Change in connection with the preparation and negotiation of the proposal in relation to those services or that Project (in each case, including the due diligence phase of that process); and
- (ii) all and any real property and all other physical equipment and other assets relating to the Services including the Use Assets, the Controlled Assets, the Leased Assets, the Transferring Assets and the Council ICT;

“Balfour Beatty Group”

means Balfour Beatty Plc and any company which is from time to time a subsidiary (within the meaning of the Companies Act 2006) of Balfour Beatty Plc;

“Benchmarked Services”

shall have the meaning given to it in **clause 25.3.1.1** (Benchmarking Proposal);

“Benchmarking Criteria”

shall have the meaning given to it in **clause 25.3.1.2** (Benchmarking Proposal);

“Benchmarking Pool”

shall have the meaning given to it in **clause 25.3.1.3** (Benchmarking Proposal);

“Benchmarking Process”

shall have the meaning given to it in **clause 25.3.1** (Benchmarking Proposal);

“Benefits Regulations”

means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007;

“Best Industry Practice”

such practice in the public sector in the United

	<p>Kingdom as would reasonably be considered to be best practice in relation to services (including such services provided by the private sector to public sector bodies) which are comparable to the Services together with (as appropriate) best practice operating in the private sector;</p>
<p>“Best Value”</p>	<p>the duty of best value imposed on local authorities by the Local Government Act 1999 and the Local Government and Public Involvement in Health Act 2007 and the principles which underpin or otherwise relate to that duty (as amplified or supplemented by regulations and guidance issued by the Secretary of State or a governmental or other competent authority from time to time) and any replacement duty or obligation imposed on local authorities from time to time;</p>
<p>“Best Value Change in Law”</p>	<p>means a change made following the Commencement Date to the External Assessment obligations to which the Council is subject which would involve an increase in the obligations of the Partner under this Agreement and involve it incurring more than immaterial costs in continuing to comply with its obligations under this Agreement;</p>
<p>“Branding Arrangements”</p>	<p>shall have the meaning given to it in clause 30.4.2 (Council and Partnership Names and Logos);</p>
<p>“Branding Proposals”</p>	<p>shall have the meaning given to it in clause 30.4.1 (Council and Partnership Names and Logos);</p>
<p>“Business Case(s)”</p>	<p>collectively the SBC, OBC and FBC, or any of them as the context permits;</p>
<p>“Business Continuity Services”</p>	<p>shall have the meaning given to it in clause 65.1 (Business Continuity);</p>
<p>“Business Day”</p>	<p>any day other than a Saturday or Sunday or public or bank holiday in England;</p>
<p>“Cables” and/or “Cabling”</p>	<p>cables, pipes, ducts, wires, fibres or other conducting media;</p>

“Cessation Date”	means any date on which the Partner ceases to be an Admission Body other than as a result of the termination or expiry of this Agreement or because it ceases to employ any Eligible Employees;
“Change Control Procedure”	means the procedure for Change Control, as set out in clause 28 (Variation and Change Control) and Schedule 5 (Change Control);
“Change in Law”	the coming into effect after the Commencement Date of: <ul style="list-style-type: none"> (a) a Law; (b) any binding precedent of any competent Court; (c) any local by-law; and (d) Guidance;
“Change of Control”	means a change in Control of the Partner which results in the Partner not being within the Balfour Beatty Group;
“Change Request”	a written request for a Change which shall be substantially in the form of Appendix 1 to Schedule 5 (Change Control);
“Change”	any Unscoped Change, Scoped Change or Reprioritisation;
“Cleaning Contract”	the managed cleaning contract between the Council and the Cleaning Contractors;
“Cleaning Contractors”	for building cleaning and window cleaning - Future Cleaning Services Ltd; for feminine & clinical hygiene - Cannon Cleaning Service Ltd; for pest control - Ecolab Ltd; and for periodic cleans - the contractor who the Council appoints pursuant to an OJEU 2009/S122-178213 as listed in Part 2, tab 2 of Schedule 19 (Transferring Agreements);
“Code Dispute Resolution Procedure”	the dispute resolution procedure referred to in the Code;
“Code”	the Code of Practice on Workforce Matters in Local Authority Service Contracts as currently contained

"Code Obligations"	in ODPM Circular 3/03 Annex D; the express obligations of the Partner in clause 22.14 (Compliance with Code Obligations) (other than in clause 22.14.1);
"Commencement Date"	the date of this Agreement;
"Commissioning"	any Core Project or Strategic Project where the Partner acts on behalf of the Council in commissioning a Third Party to undertake the Project or the production of some or all of the Business Cases in relation to a Project and conducts the procurement or other competitive process on behalf of the Council;
"Compensation Regulations"	the Local Government (Discretionary Payments) Regulations 1996 and the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006;
"Comprehensive Area Assessment" or "CAA"	a framework of performance assessment of local public services pursuant to s47a of the Audit Commission Act 1998 and s99 of the Local Government Act 2003 as amended or replaced from time to time;
"Comprehensive Spending Review"	the governmental process carried out by the Treasury to set firm and fixed three (3) year departmental expenditure limits and, through public service agreements, to define the key improvements that the public can expect from these resources, as amended or replaced from time to time;
"Confidential Information"	shall have the meaning given in clause 59.4 (Confidentiality);
"Contract"	the terms and conditions set out in Parts A to L inclusive of this Agreement;
"Contract Price"	the price payable in respect of the Services calculated in accordance with clause 34.1 (Contract Price) and the Financial Model, as varied from time to time;
"Contract Transfer Date"	shall have the meaning given to it in clause

"Control"	56.7.5 (Agreements); shall have the meaning prescribed in Section 416 of the Taxes Act 1988;
"Controlled Assets"	such assets in relation to which the Council retains ownership but in respect of which responsibility and exclusive control (including use and maintenance) is transferred to the Partner pursuant to clause 33.6 (Controlled Assets) as identified in the Agreement Asset Register;
"Convention Rights"	shall have the meaning given to it at clause 76.8 (Laws, Policies and Related Matters);
"Core Hours"	the hours for provision of service by the Partner relating to the relevant Service (or part thereof), as set out in the Service Schedules as may be varied from time to time;
"Core Projects"	projects, new work, tasks or significant changes to services which are undertaken as a project, which are related to or ancillary to the Core Services and are in alignment with the diagram contained in Part 1 of Schedule 16 (Projects) and which are identified from time to time by the Council, Partner or the Partnership Board pursuant to clause 19 (Projects);
"Core Services"	the following services: Renaissance Service, Highways, Transportation and Planning Service, Asset Management Service and Architectural Services as more particularly set out in the Service Schedules;
"Corporate Asset Management Plan" and/or "CAMP"	the Council's Corporate Asset Management Plan, produced by the Partner for the Council;
"Council Default"	means one of the following events: <ul style="list-style-type: none"> (a) a failure by the Council to make payment(s) of any amount of money exceeding (in aggregate) £4,500,000 that is due and payable and not disputed by the Council under this Agreement within twenty (20) Business Days of service of a

formal written demand by the Partner where the amount fell due and payable fifteen Business Days prior to the date of service of the written demand; or

- (b) a breach by the Authority of **clause 62.1** (Assignment Council);

“Council Existing Employee”

in relation to any service equivalent to any of the Services, all those persons employed by the Council under a contract of employment (excluding to avoid doubt (without limitation) any person engaged by the Council as an independent contractor or persons employed by any sub-contractor engaged by the Council) who are wholly or substantially engaged in the provision of that service as at the Relevant Service Transfer Date;

“Council ICT Environment”

the Council ICT and all processes and services which relate to the Council ICT which are within the control of the Council;

“Council ICT”

ICT that is used within the Council from time to time during the Term including that which is included in the Agreement Asset Register as a Use Asset;

“Council Materials”

materials, including but without limitation libraries of plans, catalogues, policies, New Horizon Strategy documentation and documented work in progress, supplied by or on behalf or at the request of the Council to the Partner for use by the Partner in the performance of the Services;

“Council Parties”

Building Control partnership, Building Schools for the Future partners, Architectural Services partners, Shoreline Housing partnership, Care Trust plus, schools in the Area, the police force in the Area and all other emergency services, partners to the local strategic partnership, Yorkshire Forward bid fund, Further Education Colleges, key businesses in the Area, Grimsby institute and any prospective University, sectoral associations for

food, developers and land owners, regional and sub-regional partnerships and other local authorities;

“Council Plan”

the plan or plans developed by the Council containing its strategic values and aims, a current version of which is contained in **Schedule 12** (Policies, Plans and Strategies) and any other plans developed by or on behalf of the Council from time to time and notified in accordance with **clause 76** (Laws, Policies and Related Matters);

“Council Premises”

premises owned, leased or occupied by the Council from time to time;

“Council Rights”

any Intellectual Property Rights, literary works or other works including but without limitation Council Materials, materials and deliverables created by or licensed to the Council or any subcontractor or agent of the Council (i) prior to the Commencement Date or (ii) otherwise than directly in connection with the Services (which for the avoidance of doubt includes the Council’s own software, the Council’s Know-How and the Council ICT);

“Council Service Level Agreement”

means the service level agreement for the supply of the Council Supplied Services as contained in **Schedule 25** (Council Supplied Services Agreement);

“Council Staff”

persons involved in the operation of the Council including employees, members, consultants and others providing services on a regular basis and Trade Union representatives;

“Council Supplied Services”

payroll and ICT services in connection with the Partnership;

“Council’s Data Protection Officer”

means the Council officer designated to deal with data protection issues referred to in **clause 57.1.5.7** (Service Information);

“Council’s Logo”	the Council’s logo, a copy of which is contained in the document entitled “NELC Corporate Style Guide ‘09” set out at Schedule 9 (Logos) as replaced, amended or varied from time to time by the Council;
“Council’s Name”	North East Lincolnshire Borough Council;
“Council’s Objectives”	has the meaning set out in clause 6.1.1 (Services - Objectives and Outcomes);
“Council’s Partnership Director”	the person designated as Partnership Director by the Council in accordance with clause 26.2 (Council’s Partnership Director);
“Data”	all data in an electronic, electromagnetic, digital or other non-paper media;
“Decision Date”	the date on which an Equal Pay Ruling is made;
“Dedicated Partner Assets”	those assets acquired by the Partner during the Term exclusively in connection with the provision of the Services (other than any Transferring Assets and any refreshment thereof or Temporary Partner Assets) the cost of which has been borne by the Partner (including in terms of ownership, maintenance and refreshment) and is written down in the Financial Model in accordance with the Write Down Policy and as specified in the Partner Assets section of the Agreement Asset Register;
“Delegation Protocol”	the Delegation Protocol defined in clause 6.9 (Procurement Support);
“Dependency”	shall have the meaning given in clause 8.1 (Council Dependencies);
“Direct Losses”	subject to clause 48 (Indemnities and Limitation of Liability) all and any losses, costs, claims, actions, demands, proceedings, damages, injury, loss of actual or anticipated saving where such saving is guaranteed or agreed by the parties (including incorporated into the Contract Price as specified in clause 7.1.3 (Commitments and Guarantees)), expenses (including the cost of legal and other professional services (legal costs being

on a client paying basis)), loss of profit as set out in Schedule 24 (Compensation on Termination) and any other loss of profit which is agreed by the Council as part of a Business Case or Project as being recoverable by the Partner, charges, penalties, injury, disbursements and other liabilities whether arising under statute, contract or common law and which are not Indirect Losses;

“Discriminatory Change in Law”

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

- (i) the contractual arrangement between the Council and the Partner as encapsulated by this Agreement and not to similar arrangements between local authorities and other persons;
- (ii) the Partner and not to other persons; and/or
- (iii) contractors whose primary business activity is the provision of services the same as or similar to the Services but not to other persons;

“Dispute Resolution Procedure” or “DRP”
“DPA”

the dispute resolution procedure set out in **clause 46** (Dispute Resolution Procedure (DRP));

the Data Protection Act 1998 and any subordinate legislation having effect in England;

“Due Diligence Environment”

means in relation to the Services:

- (i) all assets, systems, processes, procedures, protocols, management arrangements and functions, which immediately prior to the Commencement Date are owned, used or controlled by or on behalf of the Council; and
- (ii) all assets, systems, processes, procedures, protocols, management arrangements and functions, which immediately prior to a Transfer Date are owned, used or controlled

by or on behalf of the Council;

“Eco Team”

a programme to recruit and train local people to undertake basic energy efficiency surveys in social and privately rented housing, support the householders to undertake simple energy efficiency improvements and seek funding for home improvement works;

“Eligible Employees”

means the Transferring Employees who are active members of or have the right to acquire benefits under the LGPS on a Relevant Service Transfer Date and the Transferring Original Employees who are active members of or have the right to acquire benefits under the LGPS or a Broadly Comparable occupational pension scheme provided by their existing employer on a Relevant Service Transfer Date; For so long as they are employed in connection with the provision of the Services or part of such Services;

“Encumbrance”

means any lien, charge, option, right, mortgage or any other form of security, interest, right, option or encumbrance whatsoever;

“Emergency”

shall have the meaning ascribed to it in section 1 of the Civil Contingencies Act 2004;

“Equal Pay Legislation”

which means all and any anti-discrimination and equal pay opportunities laws, including but not limited to the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Equal Pay Directive (Council Directive 75/117/EEC), the Equal Treatment Directive (Council Directive 76/207/EEC), Article 117 of the Treaty of Rome, the Disability Discrimination Act 1995, the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2002, the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief)

Regulations 2003, the Employment Equality (Age) Regulations 2006 and the Equality Act 2006; which means:

“Equal Pay Ruling”

- (a) a determination by an employment tribunal or court of competent jurisdiction or the settlement or compromise to which the Council shall have consented in either case relating to any claim brought by any Relevant Employee on before or after the Relevant Service Transfer Date under Equal Pay Legislation that the terms and conditions of employment of the Relevant Employee relating to Pay contravene the Equal Pay Legislation; and/or
- (b) in relation to any Relevant Employee (in relation to their period of employment until the Relevant Service Transfer Date) any alteration to the salaries and payscales prescribed by the NJC terms and conditions in order to settle, address or compromise any threatened or extant claim under the Equal Pay Legislation against local authority employers and/or employers engaged as at the date of this Agreement or substantially engaged in the provision of services to local authority employers;

“Excess Partnership Net Profit” any Partnership Net Profit in excess of seven percent 7%;

“Excusing Cause” a failure by the Council to meet the Dependencies set out in **clause 8.1** (Council Dependencies) due to circumstances operating beyond the normal tolerance of a local government environment;

“Exit Period” shall have the meaning given to it in **Schedule 6** (Exit);

“Exit Plan” the exit plan to be provided by the Partner, details of the required content of which are set out in **Schedule 6** (Exit) containing the provisions for the

	parties smooth exit from this Agreement following expiry or termination (however arising);
"Extension"	an extension of the Initial Period or any subsequent extension of the duration of this Agreement (as the case may be) pursuant to clause 4.1 (Extension);
"Extension Criteria"	the extension criteria set out in the Price Performance Mechanism (Schedule 13) (Price Performance Mechanism);
"Extension Implication Notice"	a notice served by the Partner pursuant to clause 4.2 (Implications of Extension);
"Extension Proposal"	a notice served by the Partner pursuant to clause 4.8 (Extension request by the Partner);
"External Assessment"	statutory and other duties imposed upon local authorities from time to time in connection with improving or assessing performance of local authority services, including duties in relation to Best Value and CAA, other inspections and external audit;
"Final Employee List"	shall have the meaning given to it in clause 22.4.2 (Employment Costs);
"Financial Model"	the Partner's financial model set out in Schedule 14 (Pricing);
"Financial Year"	the period reflecting the financial year of the Council from time to time which currently generally starts on 1 April;
"First Employee List"	shall have the meaning given to it in clause 22.4.1 (Employment Costs);
"FM Service Desk"	means the single point of contact for the day to day provision of planned, reactive and enquiry based support for facilities and asset management activity;
"FOIA Code"	the Department of Constitutional Affairs' Code of Practice on the discharge of function of public authorities under part 1 of the Freedom of Information Act 2000;
"Force Majeure"	means for the purposes of clause 68 (Force Majeure) in relation to any party, circumstances beyond the reasonable control of that party which

that party could not reasonably have prevented with the application of diligence, care and foresight, including:-

- (i) acts of God, acts of any UK Governmental or supra-national authority (other than the Council), war or national emergency, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs (except for lock-outs by that party) or strikes and other industrial disputes (save for strikes or other industrial disputes relating to that party's workforce alone and other than those which affect employees in the relevant sector generally); but
- (ii) excluding any default or delays of suppliers or sub-contractors of that party (save where such suppliers or sub-contractors are affected by an event of force majeure (as defined in (i) above) and the Partner is unable to reasonably source the goods or services (which shall be of the same or similar quality) from alternative suppliers or sub-contractors in the market);

"Foreseeable"

a Law that is published:

- (i) in a draft Bill or as part of a UK Governmental 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,

in each case as at the date of this Agreement;

"Freedom of Information Legislation"

means the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004;

"Full Business Case" or "FBC"

a detailed full business case proposal in relation to

	a Project as described in the Schedule 16 (Projects);
"Future Service Provider"	each and every service provider who shall provide any service equivalent to any of the Services immediately after expiry or earlier termination of this Agreement, which for the avoidance of doubt, shall include the Council to the extent that the Council provides such services itself;
"Guarantor"	Balfour Beatty Group Limited;
"Guidance"	any practice directions, codes of practice, policy documents or mandatory protocols published to accompany any UK statute or Statutory Instrument or issued by central government or professional or regulatory bodies relevant to the Services and which it is Best Industry Practice to follow;
"Hardware"	hardware, networks, cabling, telecommunications equipment, servers and peripherals;
"Highways, Transportation and Planning Services"	means the services more particularly described in clause 10 (Highways, Transportation and Planning Service) and Schedule 28 (Highways, Transport and Planning Services) and references to "HTP" shall be construed accordingly;
"Hub"	shall have the meaning given in clause 9.9.1 (Innovation & Learning Hub);
"ICT"	information and communications technology including Hardware, middleware, systems, operating and applications software, networks, telecommunications equipment and peripherals;
"Impact Assessment"	an assessment of a Change Request or the assessment produced following a termination in part (as described in clause 55.2 (Termination at Will) or step back as described in clause 53.7.4 (Step Back)) substantially in the form of Appendix 2 of Schedule 5 (Change Control Procedure);
"Implementation"	implementation work to be carried out by the Partner from time to time in respect of the Partnership ICT including any such implementation work to be carried out following each acceptance

	by the Council of a proposal in relation to a Project or Change;
“Indexation Date”	shall have the meaning given to it in clause 38 (Indexation);
“Indexed”	as increased or varied by a percentage equal to the percentage change specified in clause 38 (Indexation) and Indexation shall be construed accordingly;
“Indirect Losses”	means any loss of profit (save where such profit is recoverable pursuant to Schedule 23 (Compensation on Termination) or, in relation to Business Cases or Projects such other loss of profit as is agreed by the Council to be recoverable by the Partner), loss of business or business opportunity, loss of actual or anticipated saving where such saving has not been guaranteed or agreed by the parties (including incorporated into the Contract Price as specified in clause 7.1.3 (Commitments and Guarantees)), loss of goodwill and any special, indirect or consequential loss of any nature;
“Inherited Contractors”	means those contractors inherited by the Partner from the Council pursuant to this Agreement (including in accordance with clause 32 (Agreements) at any time during the Term);
“Initial Period”	the initial term of this Agreement as contained in clause 3 (Commencement and Duration);
“Insurance Costs”	shall have the meaning given to it in clause 67.6 (Default);
“Intellectual Property Rights”	any and all patents, trade marks, service marks, rights in designs, get-up, trade, business or domain names, goodwill associated with the foregoing, copyright including but without limitation rights in computer software and databases, topography rights (in each case whether registered or not and any applications to register or rights to apply for registration of any of the foregoing), rights in

inventions, Know-How, trade secrets and other confidential information, rights in databases, Confidential Information and other intellectual property rights which may now or in the future subsist in any part of the world;

“Interface Relationship”

a relationship between the Retained Function and the Partner (which is not regulated by a service level agreement) through which the Partner procures a service from the Council. Such services shall include the Interface Services;

“Interface Services”

legal services; democratic services; printing services; postal services; financial services; community services (miscellaneous); cleaning services; community services (gully cleansing); communications & marketing; procurement services; customer services; web services; policy and partnerships services; performance improvement and scrutiny; freedom of information, data protection and environmental information request service; Lincolnshire building consultancy service and human resources services in each case as detailed in **Schedule 26** (Interfaces);

“Inward Investment Strategy”

a document which describes the Partner's approach to attracting inward investment into the Area. It shall include an analysis of economic trends affecting the investment market, identify key industry sectors that will be targeted and the approach to marketing the Area;

“Key Performance Indicators” and/or “KPIs”

the key performance indicators identified in the Price Performance Mechanism for each component of the Services and as modified from time to time in accordance with this Agreement (including pursuant to **clause 24** (Partner's Plans and Performance Reviews));

“Key Personnel”

the persons (who are recruited or appointed on a permanent basis) to posts identified in Part 3 of **Schedule 18** (Staffing Schedule) as Key Personnel;

“Know-How”

all information, methodologies, techniques and other processes and information (including but without limitation that comprised in or derived from formulae, techniques, designs, specifications, drawings, components lists, manuals, codes of practice, instructions and catalogues) and whether or not residing in inventions, discoveries, improvements, designs and/or computer programs and the like;

“Law”

in relation to the United Kingdom:

- (i) any Act of Parliament;
- (ii) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (iii) any exercise of the Royal Prerogative;
- (iv) any enforceable community right within the meaning of section 2 of the European Communities Act 1972;
- (v) any binding precedent of any competent Court;
- (vi) any local by-law; and
- (vii) Guidance.

“LDF”

the Council’s Local Development Framework produced by the Council in the format and timescale prescribed by the Department for Communities and Local Government;

“Lease Agreement”

shall have the meaning given to it in **clause 33.7.1.1** (Leased Assets);

“Leased Assets”

such leased assets as the Council agrees in writing to transfer management, responsibility and control for to the Partner pursuant to this Agreement

	including any that may transfer as agreed as part of the implementation of a Project or as a result of a Change and as identified in the Agreement Asset Register;
"LGPS"	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);
"Licence to Occupy"	the proposed licences between (1) the Council and (2) the Partner pursuant to Part 1 of Schedule 1 (Accommodation), a template of which is contained in Part 2 of Schedule 1 (Accommodation);
"Licensed Premises"	the premises licensed by the Council to the Partner pursuant to the Licence to Occupy and such other parts of the Council Premises as may be agreed in writing between the parties from time to time during the course of this Agreement;
"Longstop Milestone Date"	in respect of any Transition Plan the final long stop dates (if any) set out in that Transition Plan for the achievement of certain milestones (if any) identified in the Transition Plan;
"Losses"	means Direct Losses and Indirect Losses;
"LTP"	the Council's Local Transport Plan, produced by the Council from time to time in the format and timescale prescribed by the Department for Transport;
"Malicious Software"	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"Managed Contracts"	those contracts between the Council and Third Parties which will be managed by the Partner on behalf of the Council which are (i) either existing at

the Commencement Date and/or the Transfer Date and listed in Part 2 tab 2 of **Schedule 19** (Transferring Agreements) and/or (ii) entered into by the Council during the Term in relation to those services which fall outside the scope of the OJEU notice in respect of this Partnership, or services which the Partner does not have the capability or capacity to deliver and in each case which the parties agree should be treated as a Managed Contract;

“Master Plan” means the documents, policies, strategies, plans and studies for the Area (as set out in **clause 9.5.1** (Regeneration Framework)) which together form the holistic approach to regeneration of the Area;

“Material Breach” shall have the meaning given to it in **clause 53.2.1** (Material Breach);

“Mediation Notice” shall have the meaning given to it in **clause 46.4.1** (Dispute Resolution Procedure (DRP));

“Milestone Dates” in respect of any Transition Plan the dates (if any) set out in that Transition Plan for achieving each Milestone (if any) identified in the Transition Plan;

“Milestone Payment” the payment to be made by the Council to the Partner in respect of Projects upon the achievement of each Milestone;

“Milestones” the milestones (if any) identified in the Transition Plans or in respect of Projects;

“National Indicator Set” the National Indicator Set issued by the Department for Communities and Local Government;

“Network” the voice and data communications network of the Council from time to time, including any Cabling, routers and switches;

“New Employee” those employees employed by the Partner and/or any sub-contractor to provide the Services (excluding for the avoidance of doubt any Relevant Employee) who will be working alongside the Transferring Employees;

“New Horizons”

the Council’s regeneration strategy called “New Horizons” a copy of which is contained in **Schedule 12** (Policies, Plans and Strategies);

**“Open Book Accounting” or
“Open Book”**

(a) maintenance of separate records of the following:

(i) full particulars of the costs of performing the Services for these purposes to include Projects (including those related to finance, investment and maintenance of assets);

(ii) a summary of any of the costs referred to above, including details of any funds held by the Partner specifically to cover such costs, in such form and detail as the Council may reasonably require to enable the Council to monitor the performance by the Partner of its obligations under this Agreement;

(iii) such other records as the Council may reasonably require in order to monitor and verify the Partner’s performance and the Contract Price payable under this Agreement;

(b) the keeping of books of account by the Partner in accordance with best accountancy practice with respect to this Agreement showing in detail:

(i) administrative costs;

(ii) payments made to sub-contractors;

(iii) capital and revenue expenditure;

(iv) profit;

- (v) corporate overhead allocation;
 - (vi) cost of materials;
 - (vii) third party income where that is the subject of gainshare; and
 - (viii) such other items as the Council may reasonably require in order to conduct cost audits for verification of cost expenditure or estimate expenditure, for the purposes of this Partnership; and
- (c) the making available of books of account in relation to points (a) and (b) above for inspection by the Council and if required a report on such books of account, which shall only be requested by the Council acting in good faith;

“Outcome Criteria”

the application of the following criteria:

- (i) an assessment of whether the Partner has made satisfactory progress against the following Outcomes:
 - (a) three thousand five hundred (3,500) net new homes completed;
 - (b) four thousand two hundred (4,200) jobs created; and
 - (c) five hundred and seventy million pounds (£570,000,000) of public /private investment;
- (ii) an assessment of whether the Partner has achieved the PIs necessary to achieve such Outcomes as follows:
 - (a) Completed Regeneration

Framework and annual updates;

(b) seven hundred and fifty (750) current or potential businesses directed to appropriate sources of business advice; and

(c) two hundred and fifty (250) training sessions provided to local young people/school children;

“Outcomes”

these outcomes set out in **clauses 6.1** (Services - Objectives and Outcomes), **9.3** (Outcomes/Standards), **10.3** (Outcomes/Standards), **11.3** (Outcomes/Standards) and **12.3** (Outcomes/Standards) and “Outcome” shall be construed accordingly;

“Outgoing Provider”

the provider or providers that have been providing the Council with services the same as or similar to part of the Services immediately prior to the relevant Transfer Date;

“Outline Business Case” or “OBC”

an outline business case proposal in relation to a Project, as described in **Schedule 16** (Projects);

“Partner Assets”

those Temporary Partner Assets and Dedicated Partner Assets;

“Partner ICT Environment”

the Partnership ICT and all processes and services which relate to the Partner’s ICT systems from time to time;

“Partner’s Logo”

the Partner’s logo, a copy of which is contained in the document entitled **“BBW Brand Toolkit Section 7”** set out at **Schedule 9** (Logos) as replaced, amended or varied from time to time by the Partner;

“Partner Modifications”

improvements or additions to Partner Rights made during the Term where the Partner Rights are specifically improved or added to for the sole purposes of the delivery of the Services under this

"Partner's Name"	Agreement;
"Partner's Partnership Director"	Balfour Beatty Workplace Limited; the person designated as Partnership Director for the Partner in accordance with clause 26.1 (Partner's Partnership Director);
"Partner Party"	(a) an employee, consultant or agent of the Partner acting in the course of his or her office or employment in relation to the Partnership; (b) sub-contractors of the Partner including any consultant or agent of the sub-contractor of any tier and their directors, officers and employees acting in the course of their office or employment in relation to the Partnership other than Inherited Contractors who are subcontractors (but solely for so long as the relevant Inherited Contractor is contracted on terms agreed with the Council and not new terms agreed with the Partner); (c) any person at any of the Council Premises at the express or implied invitation of the Partner (other than the Council); and/or (d) any Permitted Sub-contractor,
"Partner Rights"	and "Partner Parties" shall be construed accordingly; any Intellectual Property Rights, literary works or other works including but without limitation materials and deliverables created by or licensed to the Partner or any subcontractor or agent of the Partner (i) prior to the Commencement Date or (ii) otherwise than directly in connection with the performance of the Services or its obligations under this Agreement (which for the avoidance of doubt includes the Partner's own software, the Partner's

“Partner Scheme”	own Know-How and the Partnership ICT); means the occupational pension scheme established by the Partner for the purposes of clause 23 (Pensions);
“Partnership”	the physical regeneration, property, professional and technical services partnership to deliver the objectives as stated in the Background section of this Agreement and clause 6 (The Services);
“Partnership Board”	the Partnership Board consisting of representatives of the Council and the Partner constituted in accordance with clause 5 (The Partnership Framework) and Schedule 15 (Partnership Framework);
“Partnership Directors”	means the Council’s Partnership Director and the Partner’s Partnership Director;
“Partnership Framework”	means the framework detailed in Schedule 15 (Partnership Framework);
“Partnership ICT”	the software to be provided by the Partner as set out in Part 2 of Schedule 8 (ICT) and any other software as may be agreed in writing by the parties from time to time;
“Partnership Information”	<ul style="list-style-type: none"> (i) all Data generated, held, utilised or accessed by or on behalf of the Council at the Commencement Date, between the Commencement Date and the Service Commencement Date, (or as the context permits the relevant Transfer Date) and during the Term; (ii) all Records held by or on behalf of the Council at the Commencement Date, between the Commencement Date and the Service Commencement Date, (or as the context permits the relevant Transfer Date) and during the Term; and (iii) the Service Information;
“Partnership Net Profit”	the profit made by the Partner in carrying out the

Services calculated using the following formula:

$$\text{PNP} = [(A-C)/A] \times 100\%$$

where:

A = total partnership revenue as shown in the revenue line 275 in the Financial Model

C = total partnership costs as shown in the cost lines 277-281 (inclusive) in the Financial Model (including 4% overhead);

“Partnership Objectives”

the objectives of the Partnership as set out in **clause 5** (The Partnership Framework) and **Schedule 15** (Partnership Framework);

“Pay”

the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which a Relevant Employee receives either directly or indirectly in respect of his or her employment with the Council;

“Pension Regulations”

means the Administration Regulations, the Benefits Regulations, the Local Government Pension Scheme (Transitional Provisions) Regulations 2008 and the Local Government Pension Scheme Regulations 1997;

“Performance Indicators” or “PIs”

the performance indicators in respect of each Service as set out in the Services Schedules;

“Performance Failure Points”

shall have the meaning set out in the Price Performance Mechanism;

“Performance Review”

the Performance Review to be conducted by the Partner in accordance with **clause 24** (Partner’s Plans and Performance Reviews);

“Period”

a calendar month during the Term, the first such period commencing on the Service Commencement Date and including any incomplete calendar month at the beginning or end of the Term;

“Periodic Payment”

the amount payable monthly for the Services (excluding Additional Payments and Milestone Payments);

“Permitted Sub-contractor”	a sub-contractor appointed in accordance with the provisions of clause 62.4.1 (Sub-Contracting);
“Persistent Breach”	shall have the meaning given to it in clause 53.4 (Persistent Breach);
“Personal Data”	shall have the same meaning as set out in the DPA;
“Personnel”	all persons engaged by the Partner and any Partner Party from time to time in connection with the provision of the Services, (including the Transferring Employees);
“Policies”	the Council’s constitution, standing orders (in accordance with the financial and contract procedure rules), procedures, strategies and regulations and any plan or policy formally adopted by the Council from time to time which relates to, affects, or impacts on the provision of the Services by the Partner and which are set out in Schedule 12 (Policies, Plans and Strategies) as such policies (and any amendments, additions and substitutions thereto) are communicated to the Partner from time to time in accordance with clause 76 (Laws, Policies and Related Matters);
“Premises”	the Licensed Premises and/or the Underlet Premises (as applicable);
“Price Performance Mechanism”	the mechanism by which (amongst other things) the Contract Price is linked to the standards of performance and availability achieved by the Partner in relation to the Services, as set out in the Schedule 13 (Price Performance Mechanism);
“Process” or “Processing”	shall have the same meaning as set out in the DPA and for the purposes of this Agreement shall include both manual and automatic processing;
“Professional Body”	a group of people in a learned occupation relevant to the Partner and/or the Services who are entrusted with maintaining control or oversight of the legitimate practice of such occupation or government departments and regulatory or statutory bodies who are entitled to regulate,

	investigate or influence any matters dealt with in this Agreement;
“Programme Team”	the persons designated as the transition team in accordance with clause 21.3.2 (Application of Transition and Implementation Provisions);
“Prohibited Act”	an act or omission falling within the circumstances set out in clauses 69.1.1 (Corrupt Gifts) to 69.1.3 (Corrupt Gifts);
“Project Initiation Document” / “PID”	the project initiation document in relation to a Project as described in Schedule 16 (Projects);
“Project Materials”	in respect of any Project, the Strategic Business Case, the Outline Business Case, Full Business Case PID and any ancillary or related documentation, information and Know-How prepared or generated by the Partner in developing the Strategic Business Case, the Outline Business Case or Full Business Case, PID and/or in preparation for implementation by the Partner of the Project;
“Projects”	projects which fall outside of and/or are ancillary to the scope of the Core Services and which are identified from time to time by the Council, the Partner or the Partnership Board pursuant to clause 19 (Projects) together with In Flight Projects that the Partner assumes responsibility for in accordance with Schedule 20 (WIP/In Flight Projects);
“Property Document”	the Licence to Occupy and/or the Underleases as applicable
“Proposed Workforce”	shall have the meaning given to it in clause 22.4.3.1 (Employment Costs);
“Quality Criteria”	a set of standards set by the Council in accordance with clause 19.6.7 (Payment for Business Cases) in respect of each Business Case to test that an FBC, PID or Stage (as the case may be) has been produced in accordance with such standards;
“Quarter”	a period of three consecutive Periods ending on 30 June, 30 September, 31 December or 31 March each Year and Quarterly shall be construed

	accordingly;
"Rate Card"	means the rate card set out in Schedule 14 (Pricing);
"Records"	all records, reports, data (excluding the Data), files, documents, books, accounts, statistics, surveys, blueprints, designs, drawings, specifications, invoices, receipts, claims, demands, photographs, films and sound recordings or any other item in the nature of a record, in each case whether permanent or temporary;
"Regeneration Framework"	a document that identifies a phased programme of regeneration projects (including their delivery and funding arrangements) in the Area over the Term as further set out in clause 9.5 (Regeneration Framework) and Schedule 27 (Renaissance Services);
"Regulatory Body"	those government departments and regulatory, statutory and other entities, committees and bodies which whether under statute, rules, regulations, codes of practice or otherwise are entitled to regulate, investigate or influence any of the matters dealt with in this Agreement or any other affairs of the Council;
"Relevant Employees"	the employees who are the subject of a Relevant Transfer;
"Relevant Service Transfer Date"	the transfer on one or more dates agreed by the parties (each a "Relevant Service Transfer Date") to the Partner of responsibility for provision of (or procuring the provision by sub-contractors of) the Services in accordance with this Agreement;
"Relevant Transfer"	a "relevant transfer" for the purposes of TUPE;
"Remuneration Costs"	shall have the meaning given to it in clause 22.4.3.2 (Employment Costs);
"Renaissance Services"	means the services more particularly described in clause 9 (Renaissance Service) and Schedule 27 (Renaissance Services);
"Reorganisation Costs"	shall have the meaning given to it in clause 22.4.3.3 (Employment Costs);

“Replacement Services”	means any services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following termination or expiry of this Agreement whether those services are provided by the Council internally or by a Third Party;
“Reprioritisation”	a change (other than one in relation to volumes and tolerances where clause 28.5 (Volume Management) applies) in respect of which both the financial and operational impacts are otherwise avoided by the Partner whilst remaining compliant with the terms of this Agreement without any change to the investment or other costs incurred by either party, through specific reprioritisation of resource, outputs, deliverables, KPIs, Service Levels or other similar changes (as approved by the Council and agreed by the Partner);
“Reprioritisation Note”	in relation to a Volume Reprioritisation, the note setting out the details of the Reprioritisation, including details of any adjustments to time, adjustment to volumetrics, duration of the Reprioritisation and Reprioritisation Relief and the matters set out in clause 28.5.4 (Volume Management);
“Reprioritisation Relief”	in relation to a Volume Reprioritisation, specific areas of relief from the Partner’s obligations under the Price Performance Mechanism, the Service Levels and the volumetrics set out in Schedule 14 (Pricing);
“Required Action”	shall have the meaning given to it in clause 51.4.1 (Notice and Assistance);
“Retained Function”	the services, functions and activities carried out by or on behalf of the Council from time to time which are not part of the Services;
“Retendering Information”	shall have the meaning give to it in clause 56.8.1.1 (TUPE and Staffing on Retendering, Transfer Change and Termination of Agreement);
“Return Date”	shall have the meaning given to it in clause

"Returning Employees"	<p>56.9.2 (Termination of Agreement or Transfer Change);</p> <p>shall have the meaning given to it in clause 56.9.2 (Termination of Agreement or Transfer Change);</p>
"Schedules"	<p>the documents, schedules, appendices and attachments appended to the Contract and presented in bound volumes each volume being signed and dated by each of the parties by way of incorporation of such documents, schedules, appendices and attachments into this Agreement;</p>
"Scoped Change"	<p>variations to the Services, and/or any part of this Agreement which fall within one or more of the categories set out in clause 28.1 (Scoped Changes);</p>
"Scoped Change in Law"	<ul style="list-style-type: none"> (i) any Change in Law which is Foreseeable; (ii) any variations to the Services as a result of any Change in Law which relates to or results from partial or complete European Monetary Union and whether or not the United Kingdom shall have joined the European Monetary Union; or (iii) any other Change in Law which does not fall within the definition of an Unscoped Change in Law;
"Service Agreement"	<p>shall have the meaning given to it in clause 21.5 (Use of Agreements);</p>
"Service Area"	<ul style="list-style-type: none"> (i) Renaissance Service; (ii) Highways Transport and Planning Service; (iii) Asset Management Service; and (iv) Architectural Service;
"Service Assets"	<p>any real estate asset whether owned by the Council or not in relation to which Services are provided which are included in Appendix 3 of Schedule 29 (Asset Management) as the same may be amended</p>

from time to time by the parties;

“Service Changes”	shall have the meaning given to it in clause 4.2.2.1(a) (Implications of Extension);
“Service Commencement Date”	the date on which the Partner commences delivery of the Services which shall be 1st July 2010;
“Service Component”	those components of the Asset Management and Highway, Transport and Planning Services in respect of which volumes have been agreed in writing, as set out in Schedule 14 (Pricing);
“Service Credit”	a deduction from the Periodic Payment attributable to failure to achieve the Service Levels calculated in accordance with clause 35 (Price Performance Mechanism);
“Service Development Plan”	the annual service development plan in respect of the Services, as more particularly set out in clause 24.2 (Service Development Plans);
“Service Development Planning Process”	the service development planning process set out at clause 24.2 (Service Development Plans) of this Agreement;
“Service Information”	all Data and Records created or held by or on behalf of the Partner through the provision of the Services or other compliance with its obligations under this Agreement (including pursuant to clause 57.1.1 (Service Information)) and including all such Data and Records as are supplied to or by the Partner from time to time for the purposes of this Agreement;
“Service Levels”	the service levels set out in the Price Performance Mechanism and the Service Schedules, as modified from time to time in accordance with this Agreement;
“Service Process Map(s)”	a map and detailed description of all protocols, processes, systems and ICT used by the Partner in performing the Services from time to time (including any new protocols, processes, systems and ICT) the form and content of which are satisfactory to the Council;

“Service Schedules”	Schedule 27 (Renaissance Services), Schedule 28 (Highways, Transport and Planning Services), Schedule 29 (Asset Management Services) and Schedule 30 (Architectural Services);
“Service Working Day”	the days on which the relevant Service (or part thereof) is to be available, as set out in the relevant parts of the Services Schedules;
“Services”	the services described in clauses 9 (Renaissance Services) to 12 (Architectural Services) of the Contract and the respective Services Schedules and any other services provided by the Partner to the Council in accordance with this Agreement;
“Shared Services”	means where the Council provides or benefits from sharing a service with another public body;
“Site Allocations DPD”	means a component of the development plan document which is a statutory component of the LDF;
“Staff Transfer (Pensions) Direction”	the Best Value Authorities Staff Transfers (Pensions) Direction 2007;
“Statement of Account”	a statement of charges submitted by the Partner to the Council in accordance with clause 34.3.3 (Payment Terms/Procedure);
“Strategic Business Case” or “SBC”	a strategic business case proposal in relation to a Project, as described in Schedule 16 (Projects);
“Strategic Projects”	projects, new work, tasks or significant changes to services which are undertaken as a project and are not Core Projects and which are identified from time to time by the Council, Partner or the Partnership Board pursuant to clause 19 (Projects);
“Sub Regional Housing Strategy”	the housing strategy document adopted maintained and refreshed from time to time by the four local authorities of the Humber sub region;
“Sustainable Communities Strategy”	a strategy document setting out the long term vision for the area prepared by the Council in accordance with its duties under the Local Government Act 2000 for the period 2003 to 2022 a copy of which is contained in Schedule 12

	(Policies, Plans and Strategies);
"TAMP"	the Council's Transport Asset Management Plan as prepared by the Partner and approved by the Council from time to time, which describes the approach to optimising investment in the Area's highway networks;
"Taxes Act"	the Income and Corporation Taxes Act 1988;
"Temporary Partner Asset"	those assets that are provided from time to time by and at the cost of the Partner (including in terms of ownership, maintenance and refreshment/replacement) in the provision of the Services which are shared assets with other Partner clients and/or companies within the Balfour Beatty Group and/or clients of companies within the Balfour Beatty Group;
"Term"	the term of this Agreement as determined in accordance with clauses 3 (Commencement and Duration) and 4 (Option to Extend);
"Termination Assets"	shall have the meaning given to it in clause 56.6.2 (Assets);
"Termination Date"	the date on which this Agreement is terminated or expires;
"Third Party"	a person (as that term is to be interpreted pursuant to clause 2.6 (Interpretation)) not being the Council or the Partner;
"Third Party Services Contracts"	those Transferring Agreements under which the Council provides services to a Third Party;
"Three Year Projection"	has the meaning set out in clause 6.4.1 (Top Quartile);
"Tolerance Parameters"	the specific parameters in relation to each Agreed Volume, as set out in Schedule 14 (Pricing), expressed as percentages;
"Top Quartile"	the top twenty five percent (25%) of English local authorities assessed with reference to the indicator sets issued by the Audit Commission and other indicator sets applied to all English local authorities together with related Guidance;
"Towards Top Performance"	the Council's wider improvement programme set

Programme	out in the Council Plan for 2007/2010 as amended or developed from time to time and notified in accordance with clause 76 (Laws, Policies and Related Matters);
“Traffic Sensitive Roads”	such roads identified by indicators published by the Audit Commission from time to time;
“Transfer Date”	in relation to a transfer of additional services to the Partner as part of a Change or Project, the agreed date for the transfer of such services, as agreed pursuant to the relevant procedures set out in clause 19 (Projects), clause 28 (Variation and Change Control), Schedule 5 (Change Control) and Schedule 16 (Projects);
“Transferring Agreements”	such contracts (for the avoidance of doubt, other than Managed Contracts) as between the Council and Third Parties as the Council agrees in writing to transfer to the Partner or any Partner Party pursuant to this Agreement and which are listed in Part 2, tab 1 of Schedule 19 (Transferring Agreements);
“Transferring Assets”	those assets the ownership of which the Council agrees in writing to transfer to the Partner pursuant to clause 33.5 (Transferring Assets), which as at the Commencement Date, shall comprise those assets set out in Schedule 2 (Asset Register) and which following the Service Commencement Date the Partner uses, maintains and refreshes;
Transfer Change	a cessation of the Services or any part of the Services which results in a Relevant Transfer;
“Transferring Employee”	an employee of the Council (excluding, to avoid doubt (without limitation), any person engaged by the Council as an independent contractor or persons employed by any sub-contractor engaged by the Council) whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out this Agreement between the Council

“Transferring Original Employees”	<p>and the Partner, a contract of employment with someone other than the Council;</p> <p>a former employee of the Council who became, by the application of the Transfer of Undertakings (Protection of Employment) Regulations 1981 or TUPE in relation to what was done for the purposes of carrying out the Cleaning Contract, an employee of such provider of services and whose contract of employment becomes, by virtue of the application of TUPE in relation to what is agreed either regarding any novation of the Cleaning Contract or the provision of services similar to the services provided under the Cleaning Contract, a contract of employment with the Partner or a Permitted Sub-contractor;</p>
“Transition”	<p>shall have the meaning given in clause 21.3.1 (Application of Transition and Implementation Provisions);</p>
“Transition Manager”	<p>the person designated as transition manager in accordance with clause 21.3.2.1 (Application of Transition and Implementation Provisions);</p>
“Transition Plan”	<p>the plan for the transfer to, and the ongoing implementation by the Partner of the Services, a copy of which is set out in Schedule 21 (Transition Plan/90 Day Plan) and any further transition or implementation plan as agreed in accordance with this Agreement, in each case, as modified from time to time in accordance with this Agreement;</p>
“TUPE”	<p>the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI No 246) as amended;</p>
“Unaffected Party”	<p>shall have the meaning given to it in clause 68.2.1 (Force Majeure);</p>
“Underleases”	<p>the proposed underleases between (1) the Council and (2) the Partner pursuant to Part 1 of Schedule 1 (Accommodation), a template of which is contained in Part 3 of Schedule 1</p>

(Accommodation);

“Underlet Premises”

the premises underlet by the Council to the Partner pursuant to the Underleases;

“Unscoped Change in Law”

- (i) a Discriminatory Change in Law;
- (ii) a Change in Law which involves or requires
 - (a) a substantial change to any of the Services or the provision of any of the Services or
 - (b) a substantial change to the means of providing the Services or
 - (c) a significant impact on costs to the Partner;and/or

- (iii) a Best Value Change in Law,

provided that such change is not a Scoped Change under **clause 28.1.1.6** (Scoped Change);

“Unscoped Change”

any variation or addition to the Services and/or any part of this Agreement, other than a Scoped Change or a Reprioritisation Change, and as more particularly described in **clause 28.4** (Unscoped Change Process);

“Use Assets”

those assets which are owned by the Council, the use of which is shared by the Council and the Partner, maintained by the Partner and refreshed by either the Council or the Partner (in accordance with **Schedule 2** (Asset Register)) comprising such assets as:

- (i) the Council agrees in writing to allow the Partner to use pursuant to this Agreement including those set out in **Schedule 2** (Asset Register); and
- (ii) are used in connection with the Council Supplied Services and the Interface Services;

“Value for Money” / “VFM”

the optimum combination of whole-life costs and

	quality (or fitness for purpose) to meet the user's requirements;
"VAT"	value added tax as imposed by the Value Added Tax Act 1994;
"Volume Reprioritisation"	a reprioritisation as a result of an increase in volumetric demand of Service Components, in accordance with clause 28.5 (Volume Management);
"Winter Service Plan"	the annual plan for the maintenance of the highways in the Area during periods of adverse winter weather that implements the Council's statutory duty to facilitate safe movement of people and road traffic as far as reasonably practicable;
"Write Down Policy"	shall have the meaning given to it in clause 40.1 (Asset Depreciation);
"Written Down Value"	the written down value of the Partner Assets following application of the Write Down Policy;
"Year"	the first year being the period from the Commencement Date to 31 March, the second and each successive year (other than the final year of the Initial Period) being each successive period of twelve (12) calendar months from 1 April to 31 March and the final year being the period of 12 or less calendar months from 1 April to the date of expiry or termination. Schedule 14 (Pricing Schedule) sets out the payments made during the Term.

2. Interpretation

- 2.1 Reference to any Laws, Guidance, orders, regulations or other similar instrument shall be construed as a reference to such Laws, Guidance or subordinate legislation, orders, regulations or instrument as amended, supplemented or replaced by any subsequent Law, Guidance, order, regulation or instruments or subordinate legislation or as contained in a subsequent re-enactment thereof without prejudice to **clause 28** (Variation and Change Control).

- 2.2 Reference to any contracting authority (as defined in Regulation 3 of the Public Contracts Regulations 2006) shall include its successor provided that such successor is also a contracting authority.
- 2.3 Reference to any accreditation or award shall include any replacement of such accreditation or award.
- 2.4 Reference to any Laws, orders, regulations or other similar instruments shall be construed to include any published Guidance to such Laws, orders, regulations or other similar instruments.
- 2.5 The masculine shall include the feminine and the neuter and the singular the plural and vice versa as the context shall admit or require.
- 2.6 References to persons will be construed so as to include bodies corporate, partnerships, unincorporated associations, trusts, statutory, local government quasi-public and non-governmental bodies.
- 2.7 References to clauses and Schedules are to clauses of and Schedules to this Agreement.
- 2.8 References to the parties are to the parties to this Agreement.
- 2.9 The Schedules and the appendices to any Schedule form part of this Agreement and will have the same force and effect as if expressly set out in the body of the Contract. The provisions of this Agreement shall be read and interpreted as a whole subject always to the provisions of **clause 64** (Document Priority) as to conflict between the priority of provisions in the Contract and Schedules.
- 2.10 The background information section of this Agreement and the headings to the clauses of and Schedules to this Agreement are for ease of reference only and shall not affect the construction of this Agreement.
- 2.11 Any phrase in this Agreement introduced by the term "include", "includes", "including", "included", "in particular" and "for example" will be construed without limitation unless inconsistent with the context.
- 2.12 This Agreement is drawn up in the English language and may be translated into any language other than English provided however that the English language text shall in any event prevail in interpreting this Agreement.
- 2.13 This Agreement is intended to operate both in relation to the Services and the Projects and the principles of the clauses set out in this Agreement shall apply mutatis mutandis to any Project unless the parties agree otherwise pursuant to **Schedule 16** (Projects).

- 2.14 The words "as amended" or "as varied" shall be construed to be mean in each case as amended or varied pursuant to this Agreement unless the context otherwise permits.
- 2.15 Where there is an obligation on the Partner in this Agreement, that obligation shall extend to an obligation for the Partner to procure any Permitted Subcontractor to perform the relevant obligation, except where the Agreement provides otherwise.

PART B: PARTNERSHIP FRAMEWORK AND DURATION

3. COMMENCEMENT AND DURATION

- 3.1 This Agreement shall take effect on the Commencement Date and shall continue for an initial period of ten (10) years (the "Initial Period") from the Services Commencement Date subject to:-

3.1.1 earlier termination pursuant to **clauses 53** (Termination for Breach), **54** (Insolvency etc), **68** (Force Majeure) and **55** (Termination at Will); and

3.1.2 extension of the Initial Period pursuant to **clause 4** (Option to Extend).

4. OPTION TO EXTEND

4.1 Extension

The Council will be entitled to give not less than fourteen (14) months written notice to the Partner prior to the expiry of the Initial Period (or any subsequent extension thereof) requiring that the Initial Period (or any subsequent extension thereof) be extended by such further period or periods (each such period or periods being no less than twelve (12) months) as the Council shall specify (each an "Extension") provided always that the maximum extension in aggregate will be a period of five (5) years from the expiry of the Initial Period, and the relevant period shall be extended in accordance with the terms of the relevant notice to extend.

4.2 Implications of Extension

4.2.1 The Council may request an Extension in relation to the whole or part of the Services and the Council will serve a Change Request on the Partner to deal with any changes in Services required during the Extension.

4.2.2 If the Council requires an Extension, the Partner shall as soon as practicable and in any event within two (2) months of service by the

Council of a notice of Extension as referred to in **clause 4.1** (Extension):-

4.2.2.1 serve a notice ("**Extension Implication Notice**") on the Council specifying:-

- (a) any business process changes, training and/or consultancy as part of the Services, together with a timescale and Transition Plan for carrying out such work ("**Service Changes**");
- (b) the change management techniques to be employed during the Extension to enable the Council to further review and re-engineer itself as new challenges and demands arise;
- (c) the benefits to be realised from the Extension (including any efficiency savings);
- (d) how the Council can further benefit during the Extension from the further development of its strategies and policies;
- (e) any replacement, upgrade or refreshment or addition to assets or software supplied by the Partner as Partnership ICT;
- (f) any other impacts on, or implications for, the Services and/or this Agreement arising out of the Extension (including those listed in **clause 4.8.2.4**) (Extension request by the Partner).

4.2.2.2 provide to the Council a detailed breakdown and justification (on an Open Book basis in the case of financial matters) in relation to all aspects of the Extension Implication Notice.

4.3 The Partner undertakes that the proposal set out in any Extension Implication Notice will be reasonable in all the circumstances and shall keep to a minimum any adverse practical and operational implications of the Service Changes to the Council. During the implementation by the Partner of any Service Changes and beyond, the Partner will continue to be obliged to perform the Services in accordance with this Agreement and to satisfy its other obligations to the Council under this Agreement and no Extension Implication Notice shall assume or require any deterioration in the Service Levels or Key Performance Indicators or other diminution in service delivery during such implementation or thereafter

except where the Council expressly consents in writing to this pursuant to **clause 4.6** (Implications of Extension).

- 4.4 The financial implications set out in any Extension Implication Notice must be reasonable in all the circumstances and be based on assumptions set out in the Financial Model, and in each case such financial implications shall take into account:-
- 4.4.1 the Contract Price payable during the Initial Period and any previous Extension thereof;
 - 4.4.2 the level of activity and investment that would have to be undertaken by the Partner in order to carry out the Service Changes;
 - 4.4.3 the Write Down Policy; and
 - 4.4.4 the proposed duration of the Extension.
- 4.5 The Council shall respond to the Extension Implication Notice and within three (3) calendar months of receiving such notice shall do one of the following:
- 4.5.1 approve the terms of Extension Implication Notice in which case the parties shall follow the procedure set out in **clause 4.6** (Implications of Extension);
 - 4.5.2 in its absolute discretion reject the terms of the Extension Implication Notice, in which case it shall notify the Partner of the rejection and explain its reasons in writing to the Partner as soon as is reasonably practicable following such rejection;
 - 4.5.3 require the Partner to provide reasonable clarifications regarding the Extension Implication Notice in which event the Partner shall provide such clarifications within five (5) Business Days of such request and make such modifications as are necessary to reflect such clarifications to Extension Implication Notice within the same period;
 - 4.5.4 carry out a benchmarking process to verify the financial information contained in the Extension Implication Notice; or
 - 4.5.5 if the Council is not satisfied (acting reasonably) with the proposals set out in the Extension Implication Notice, the Partner shall negotiate in good faith with the Council to reach an agreed position with the Council and will comply with all reasonable requests of the Council for clarifications regarding the proposals set out in the Extension Implication Notice.

Without prejudice to the foregoing, if the Council requires that the Partner rectifies any failure of the Partner to produce an Extension Implication Notice in accordance with this **clause 4** (Option to Extend) the Partner shall provide such rectification within five (5) Business Days of issue by the Council of a request in writing by the Council for the same.

4.6 The Council shall notify the Partner in writing if it approves the Extension Implication Notice pursuant to **clause 4.5.1** (Implications of Extension). The Partner shall, as soon as reasonably practicable, provide the Council with a copy of the Extension Implication Notice, as amended if applicable pursuant to **clauses 4.5.3** (Implications of Extension) to **4.5.5** (Implications of Extension) and signed by the Partner. The Council shall then sign and return the Extension Implication Notice to the Partner as soon as reasonably practicable and this **clause 4.6** (Implications of Extension) shall apply. The parties shall use reasonable endeavours to ensure the process set out in this **clause 4** (Option to Extend) is completed no later than nine (9) calendar months prior to expiry of the Initial Period, and:

4.6.1 with effect from the date specified in the Extension Implication Notice this Agreement will be deemed to have been modified to the extent necessary to take account of the extended term and Service Changes (if any); and

4.6.2 this Agreement shall continue in full force and effect for the extended term subject always to the maximum period of extension referred to in **clause 4.1** (Extension).

4.7 If the Council does not agree to the proposed Extension this Agreement shall terminate at the end of the Initial Period.

4.8 **Extension request by the Partner**

4.8.1 The Partner shall also be entitled to propose an Extension to the Initial Term of up to five (5) years where it has satisfied the Extension Criteria.

4.8.2 By no later than eighteen (18) months prior to expiry of the Initial Period the Partner shall provide an Extension Proposal to the Council ("**Extension Proposal**") which Extension Proposal shall:

4.8.2.1 confirm that it has satisfied the Extension Criteria;

4.8.2.2 attach a copy of a report detailing the Partner's performance against the Extension Criteria;

4.8.2.3 contain details of the Extension which the Partner proposes;

- 4.8.2.4 contain details of any amendments to this Agreement that would be required;
 - 4.8.2.5 attach a revised financial model;
 - 4.8.2.6 attach details of updated Outcomes in order that the Council can carry out a VFM evaluation of the proposal; and
 - 4.8.2.7 the items listed in **clause 4.2.2.1** (Implications of Extension) (to the extent not covered by this **clause 4.8.2** (Extension request by the Partner))
- 4.8.3 Within twenty (20) Business Days of service of the Extension Proposal the parties shall meet to discuss the contents of the Extension Proposal and in particular the VFM proposals and to consider the details of the Extension.
- 4.8.4 The process set out in **clauses 4.5** (Implications of Extension) to **4.7** (Implications of Extension) shall apply in respect of the Council's consideration of the Extension Proposal.

5. **THE PARTNERSHIP FRAMEWORK**

5.1 **Partnership Governance**

The Partner and the Council shall comply with the Partnership Framework as set out in **Schedule 15** (Partnership Framework) and participate in the governance arrangement, groups and boards for the Partnership as set out in **Schedule 15** (Partnership Framework).

5.2 **Partnership Objectives**

5.2.1 The Partner shall provide the Services within the Partnership Framework with a view to achieving the objectives of the Partnership set out in this **clause 5.2** (Partnership Objectives) and **Schedule 15** (Partnership Framework).

5.2.2 The Council's aim is to make a genuine difference in the Borough of North East Lincolnshire by physically regenerating the environment, creating job opportunities, developing skills and transforming the delivery of services to the communities it serves.

5.2.2.1 The Council has sought a partner who can for the physical regeneration, property, professional and technical services:

- (a) contribute to strategic leadership and vision through the delivery of strategies for regeneration and

strategic housing and the development of the Regeneration Framework for the Borough;

- (b) transform service performance through new innovative and best practice ways of working and increasing the pace of change to deliver continuous improvement;
- (c) bring a range of skills and experience through a multi-disciplinary approach to the services and deliver the Council's ambitions set out in its strategies;
- (d) build capability and capacity in the Council by providing additional resources and a transfer of knowledge and skills;
- (e) focus on management, people and performance management not just process re-engineering and technology, to create a strong customer and performance focused culture;
- (f) address strategic challenges and barriers to the Council to enable it to achieve the ambitions set out in its strategies;
- (g) utilise knowledge of the market place to engage other public and private sector partners where added value can be achieved;
- (h) identify and secure significant private sector funding to enable the delivery of its ambitions and maximise public investments; and
- (i) actively engage with the wider Community and Council priorities and the Council's corporate agenda through effective partnership working.

5.2.2.2 The Partner acknowledges that one of the driving objectives of the Council in respect of the Partnership is for the Partner to secure external funding in order to achieve its commitment to the outcomes as stated in **clause 6** (The Services) of this Agreement. The Partner also acknowledges that the Contract Price, in scope elements of the capital programme and external funding are the sole sources of funding for the Core Services and Projects. The Partner's ability to deliver and develop the Services or deliver

additional Projects is directly related to its ability to secure additional external funding and achieve Value for Money.

5.3 **Partnership Working**

- 5.3.1 The Partner and the Council shall act in good faith and use reasonable endeavours to enable a continuing partnership dialogue throughout the Term.
- 5.3.2 The Partner and the Council shall use reasonable endeavours to establish the processes, relationships and culture which will promote the growth of the Partnership which will enable innovation and structured, programmed and well managed continuous improvement.
- 5.3.3 The Partner shall in consultation with the Council work to raise the profile of the Council at a local, regional and national level. The Partner shall in consultation with the Council work to ensure the Partnership is recognised for excellence in partnering, excellence in performance and excellence in regeneration as evidenced by the Partner delivering presentations at relevant and appropriate conferences and events; the Partnership being nominated for relevant and appropriate awards; and an improvement in the Council's CAA ratings or receiving praise from other similar external audits or reports in respect of the Services.

5.4 **Engagement and Democratic Support**

The Partner will, with the Council, support (and assist the Council in satisfying its obligations under the Council's constitution) and take part in meetings, consultation etc. with the Council and other bodies, which will include full Council, Cabinet, Corporate Management Team, Joint Management Board, Committees, Scrutiny, LSPs, Parish Councils and other such groups.

PART C: KEY PROVISIONS

6. **THE SERVICES**

The Services shall be delivered and aligned within the context of the Council's Towards Top Performance Programme.

6.1 **Services - Objectives and Outcomes**

- 6.1.1 The Services shall be delivered and aligned within the context of the Council Plan and the following Council objectives:
 - 6.1.1.1 improve the quality of the built and natural environment;
 - 6.1.1.2 strengthen the local economy;

- 6.1.1.3 create a safer and more secure Area;
- 6.1.1.4 improve health and wellbeing; and
- 6.1.1.5 being a well managed top performing Council

("the Council's Objectives").

6.1.2 The Partner shall deliver to the Council the Services in accordance with the Services Schedules, the Service Levels and the other provisions of this Agreement.

6.1.3 The parties acknowledge that, through the delivery of the Outcomes set out in this **clause 6.1** (Services - Objectives and Outcomes) and the Outcomes in **clauses 9.3** (Outcomes/Standards), **10.3** (Outcomes/Standards), **11.3** (Outcomes/Standards) and **12.3** (Outcomes/Standards), the Partner shall provide a Renaissance Service, Highways, Transportation and Planning Service, Asset Management Service and Architectural Service which is cohesive and enables the Council to meet the objectives set out in **clause 6.1.1** (Services - Objectives and Outcomes) (which objectives are designed to deliver social, physical, economic and environmental outcomes and benefits from regeneration).

6.1.4 The Partner shall, subject to **clause 8.1** (Council Dependencies), deliver the following Outcomes in the Area during the Term:

6.1.4.1 more and improved quality housing by:

- (a) delivering new homes;
- (b) improving the quality and energy efficiency of the existing housing stock; and
- (c) bringing empty homes back into use;

6.1.4.2 a higher quality built environment by:

- (a) increasing end user satisfaction with building design projects delivered through the Services;
- (b) delivering a programme of public realm, infrastructure, housing, community and regeneration projects including those set out in **Schedule 20** (WIP/In Flight Projects); and
- (c) reducing the carbon footprint of the Services;

- 6.1.4.3 a stronger local economy in the Area by:
 - (a) the creation of new jobs in the Area during the Term primarily through the construction, occupation and operation of regeneration projects, the Hub and directly employing staff; and
 - (b) establishing relationships with developers, businesses and government agencies in order to attract public and private investment into the Area during the Term;
- 6.1.4.4 safer roads and communities in the Area by:
 - (a) reducing the number of people killed or seriously injured on local authority controlled roads in the Area; and
 - (b) reducing the number of children killed or seriously injured on local authority controlled roads in the Area;
- 6.1.4.5 a well managed, top performing Council by:
 - (a) helping the Council achieve a higher Use of Resources rating under the CAA by the end of the Term against the Partner's performance of the Key Lines of Enquiry ("KLOE") within the Partner's direct control and the Partner's performance of the Services which impact on other KLOE's within the Council's control; and
 - (b) improved overall customer satisfaction, assessed through annual satisfaction surveys, with the Services.
- 6.1.5 The Partner's achievement of the Outcomes set out in **clause 6.1.4** (Services - Objectives and Outcomes) shall be reviewed by the Partnership Board as and when required by either party, and at least annually through the production of the Annual Performance Review Report, to ensure the Outcomes are aligned with the Council's Objectives and are achievable through:
 - 6.1.5.1 the activity being undertaken in order to provide the Services;
 - 6.1.5.2 the Financial Model; and
 - 6.1.5.3 the annual budget setting process.
- 6.1.6 Where the Partner or the Council (acting reasonably) considers that an Outcome is no longer in alignment with the delivery of the Services it

shall notify the other party of the potential mis-alignment and the Council and the Partner shall review the matter at the next Partnership Board meeting in order to agree whether an adjustment to service delivery, Service Levels or the Outcome itself is required. The Change Control Procedure shall be used, where appropriate, to record the outcome of the discussions pursuant to this **clause 6.1.6** (Services - Objectives and Outcomes). Where the parties fail to agree whether a Change is required pursuant to this **clause 6.1.6** (Services - Objectives and Outcomes) then either party may refer the matter to the Dispute Resolution Procedure.

6.1.7 Subject to **clause 6.1.8** (Services - Objectives and Outcomes) and **8** (Council Dependencies), in the event that the Partner fails to achieve the Outcomes:

6.1.7.1 the Partner shall be in breach of this Agreement which may constitute a material breach having regard to the nature of the failure to achieve the Outcome; and

6.1.7.2 the ability of the Partner to present a proposal in accordance with **clause 4.8** (Extension request by the Partner) may be removed (as the Extension Criteria may not be capable of being satisfied).

6.1.8 The Council shall not have the right to terminate this Agreement for material breach where:

6.1.8.1 the breach relates solely and directly to the non achievement of the Outcomes; and

6.1.8.2 the Partner has notified the Council in accordance with **clause 6.1.6** (Services - Objectives and Outcomes) that a Change is required and necessary in order for the Outcome(s) to be met and such Change is reasonable and is directly necessary in order to meet the Outcomes and the Council has failed to agree the Change (save where the outcome of any recourse to DRP finds that the Council is right to reject the Change) (provided that the Partner shall not be able to notify the Council that a Change is required and necessary where the failure of the Outcome(s) to be met is attributable to the Partner's poor performance of this Agreement).

6.1.9 The Council has prior to the Commencement Date been engaged in In Flight Projects. The Council and the Partner intend that, subject to and in accordance with **Schedule 20** (WIP/In Flight Projects), the Partner

takes on responsibility for the delivery of such In Flight Projects in accordance with its terms. Where the Partner inherits an In Flight Project from the Council pursuant to **Schedule 20** (WIP/In Flight Projects) it shall not be liable for any work undertaken on such In Flight Project by the Council and the Council shall on demand indemnify and keep indemnified the Partner in relation to any Direct Losses which it may suffer or incur arising out of any act, omission, or breach by the Council in relation to the In Flight Project prior to the date upon which it is inherited by the Partner.

6.2 **Services - General Provisions**

- 6.2.1 The Partner acknowledges awareness of the Council's key external and internal drivers and shall deliver Services which are aligned with and supportive of such drivers and objectives, including the following:
 - 6.2.1.1 the Sustainable Communities Strategy or its replacement from time to time;
 - 6.2.1.2 the Council Plan or its replacement from time to time;
 - 6.2.1.3 the Comprehensive Area Assessment or its replacement from time to time;
 - 6.2.1.4 the Comprehensive Spending Reviews; and
 - 6.2.1.5 the Towards Top Performance Programme.
- 6.2.2 The Partner shall work with the Council in accordance with **Schedule 21** (Transition Plan/90 Day Plan) and take responsibility for the roll-out of Services.
- 6.2.3 The Partner shall initiate, develop and deliver Projects in accordance with the procedure set out in **clause 19** (Projects).
- 6.2.4 The Partner shall, in delivering the Services and Projects, engage directly with the community of the Area (using the Council's forums and methodology for community engagement and consultation) and take into account in its delivery of Services and Projects, the aspirations of the community.
- 6.2.5 The Partner shall provide to the Council the Services:
 - 6.2.5.1 in accordance with all relevant Laws and Best Industry Practice;
 - 6.2.5.2 using all reasonable skill, care and diligence;

- 6.2.5.3 deploying Personnel who are competent, qualified, experienced and properly trained to undertake the work assigned to them;
 - 6.2.5.4 deploying good quality materials and assets which are fit for purpose and utilising appropriate techniques and standards;
 - 6.2.5.5 in a manner which minimises (so far as is reasonably practicable) any disruption and/or inconvenience to the Council, its employees, members of the public or others permitted to use the Council Premises; and
 - 6.2.5.6 in delivering the Services, the Partner shall be responsible for delivering sound project management to deliver Value for Money to the Council and to ensure effective decision making, resource utilisation and productivity levels by the Partner and, in the context of Projects, the Council shall deliver sound project management by, inter alia, following the process set out in **Schedule 16** (Projects).
- 6.2.6 The Partner shall, during the first 90 days of the Term, undertake the activities set out in **clauses 9.4** (90 Day Plan), **10.4** (90 Day Plan), **11.4** (90 Day Plan) and **12.4** (90 Day Plan) and produce a comprehensive 90 Day Plan for the delivery of the Services during the Term.
- 6.2.7 The Partner shall implement and maintain a risk and issues register in respect of the whole Partnership across the Term.
- 6.2.8 The Partner shall attain and maintain the Service Levels and undertake such activity as is necessary or directly ancillary to the Partner's performance of its obligations under this Agreement.

6.3 **Value for Money**

- 6.3.1 In delivering and reviewing the Services the Partner shall achieve Value for Money and demonstrate Value for Money to the Council. The Partner shall demonstrate that it has taken account of the Council Objectives and Outcomes (set out in this **clause 6** (Services) and **clauses 9** (Renaissance Service) to **12** (Architectural Service)) in establishing Value for Money. In securing Value for Money the Partner shall work with the Council to:
- 6.3.1.1 review the budgets allocated to the Services on an annual basis and undertake the business, budget planning and resource allocation process in accordance with **clause 24**

(Partner's Plans And Performance Reviews) and thereafter implement the agreed outcome of such business, budget planning and resource allocation process; and

6.3.1.2 prioritise spending taking account of the Service Development Plan and the Council Objectives.

6.4 **Top Quartile**

6.4.1 Every year, prior to the start of the Service Development Planning Process (set out in **clause 24** (Partner's Plans And Performance Reviews), the Partner shall review the standard which is anticipated to be Top Quartile over the coming three (3) years and produce a proposal in relation to adjustment of Service Levels and standards ("the Three Year Projection") to achieve Top Quartile. The proposed standard shall be established on the basis of a projection of trend drawn from market intelligence of change in service standards over the preceding three (3) years on a rolling basis.

6.4.2 The Partner shall ensure the Three Year Projection reflects:

6.4.2.1 Top Quartile levels of performance (as may best be calculated on the basis set out in **clause 6.3.1** (Value for Money)) from the start of Year 3 of this Agreement; and

6.4.2.2 progress towards the Top Quartile standard in the first two (2) Years of this Agreement.

6.4.3 The Council shall review the Three Year Projection and (acting reasonably) shall:

6.4.3.1 approve the Three Year Projection; or

6.4.3.2 propose modification to the Three Year Projection.

6.4.4 Where the Council proposes modifications to the Three Year Projection the parties shall meet within ten (10) Business Days of the Council's delivery of the proposed modifications to the Partner to agree the modified Three Year Projection, both parties acting in good faith. If the Council and the Partner fail to agree the modified Three Year Projection within five (5) Business Days of such meeting, the dispute in question should be resolved by a Third Party expert in accordance with the procedures set out in **clauses 46.5.1** (Dispute Resolution Procedure (DRP)) to **46.8** (Dispute Resolution Procedure (DRP)) inclusive.

6.4.5 Upon approval of the Three Year Projection and subject to **clause 28** (Variation and Change Control) the Service Levels shall be adjusted

annually to reflect the Three Year Projection unless the parties agree that the level of performance for the relevant three (3) year period shall be less than Top Quartile in which case the agreed step change improvement in standard shall be agreed between the parties and shall apply and be reflected in change to the Service Levels.

6.5 **Continuous Improvement**

6.5.1 Without prejudice to **clause 6.4** (Top Quartile), the Partner shall ensure that (within the resources and budget available pursuant to **clause 24.3** (Annual Budget Setting)) the Services continuously improve with quality and delivery standards being maintained over the Term through:

6.5.1.1 the implementation and delivery of the Services and the implementation of Projects and any Change;

6.5.1.2 the Partner ensuring that the performance of the Services when assessed as a whole shows an improvement in performance which is capable of being measured and when assessing performance periodically over the Term demonstrates a step change in the standard of delivery of the Services when compared to the published standard of delivery of the Services by the Council prior to the Commencement Date; and

6.5.1.3 the provision of additional capacity and expertise by the Partner through short term secondments from the Partner's business and the deployment of coaches and mentors to support Council Staff in the Retained Function that relate to and interface with the Services, the Council Supplied Services, the Interface Services and Personnel,

having regard to Value for Money principles and as set out in the Financial Model and acknowledging that such continuous improvement need not be linear improvement Year on Year.

6.6 **90 Day Plan**

The Partner shall undertake the activities and provide the services identified in the 90 Day Plan within the timescales identified in the 90 Day Plan and achieve the outputs set out in the 90 Day Plan.

6.7 **Advice**

6.7.1 The Partner shall provide to the Council:

- 6.7.1.1 transfer of knowledge regarding the Services to enable the Council to develop an understanding of the systems and processes which support the Services;
 - 6.7.1.2 such advice as is necessary or directly ancillary to the Partner's performance of its obligations under this Agreement and without prejudice to the generality, those advice requirements specifically referred to in this Agreement together with those set out in the Service Schedules and Service Levels; and
 - 6.7.1.3 further advice which shall be agreed by way of a Change or Project.
- 6.7.2 In relation to all advice provided by the Partner the Partner shall:
- 6.7.2.1 ensure that it is in a position to deploy in the provision of the advice to the Council or otherwise, such appropriate Personnel (in terms of the mixture of skills, expertise and level of seniority) as is reasonably necessary in order to meet the reasonable requirements for such advice from time to time specified by the Council;
 - 6.7.2.2 provide the advice in a manner which is objective, consistent and pertinent to the particular circumstances prevailing when it is given and driven by the appropriate professional standards for such advice; and
 - 6.7.2.3 ensure that the advice is readily comprehensible, with any conclusions clearly identified and that the advice is backed up by adequate supporting and technical information.

6.8 **Council's Ability to seek Independent Advice**

- 6.8.1 The Partner acknowledges that at any time during this Agreement the Council shall be entitled to take advice from a Third Party in relation to any matter in connection with this Agreement. Without prejudice to this, prior to the implementation of any Change or Project the Council shall be given an opportunity to take independent advice from a Third Party as to the solution being proposed by the Partner.
- 6.8.2 The Partner shall co-operate with the Council in relation to such advice and shall, upon reasonable prior notice by the Council, provide all necessary information concerning the relevant area to the Council.

- 6.8.3 The Council may provide the advice to the Partner and the Partner shall take due cognisance of the recommendations and implement them where that is necessary, appropriate and timely.
- 6.8.4 Nothing in this **clause 6.8** (Council's Ability to seek Independent Advice) shall require the Council to take any independent advice in relation to proposed changes to the Services. Notwithstanding the provisions of this **clause 6.8** (Council's Ability to seek Independent Advice) but subject to the other provisions of this Agreement, the Partner shall have sole responsibility (as set out in **clause 20** (Sole Responsibility)) for the performance of the Services in accordance with this Agreement and for compliance with its other obligations under this Agreement.
- 6.8.5 For the avoidance of doubt should the Council exercise its rights under this **clause 6.8** (Council's Ability to seek Independent Advice) the Council agrees that it shall not disclose any Confidential Information to any Third Party unless such Third Party accepts written obligations of confidentiality no less onerous than those imposed upon the parties by this Agreement.

6.9 **Procurement Support**

The Partner shall, in procuring contracts between the Council and Third Parties in accordance with this Agreement, work with the Council to adopt best practice procurement activity utilising the Delegation Protocol. The Council's procurement team shall support the Partner in any procurement activity as part of the Interface Services. The Council shall maintain throughout the Term a written delegation protocol (the "Delegation Protocol") which sets out the parameters within which the Partner must operate, and which the Partner must act in accordance with, when procuring, or undertaking procurement activity for the Council. As at the Commencement Date, the Delegation Protocol comprises the documents set out in **Schedule 3** (Delegation Protocol). The Council may update the Delegation Protocol from time to time and shall supply the same to the Partner in accordance with **clause 76** (Laws, Policies and Related Matters). The Council shall be responsible for any procurement activity which falls outside the parameters set out in this Agreement.

7. **COMMITMENTS AND GUARANTEES**

- 7.1 Without prejudice to the obligation of the Partner to provide the Services pursuant to **clause 6** (The Services), the Partner guarantees and commits to the Council that during the Initial Period the Partner shall:
- 7.1.1 comply with the Transition Plans and the Milestones (if any) contained therein;

- 7.1.2 comply with Open Book Accounting in pricing and performing its obligations in accordance with this Agreement and procure that Partner Parties comply with such principle;
 - 7.1.3 over the first three (3) years of the Term (as measured against the Council's budget for 2009/2010), generate the savings set out in the Balfour Beatty Affordability Tab at line 54 of the Financial Model;
 - 7.1.4 commit to achieving further savings, set out in the Financial Model, through continuous improvement measures in accordance with **clause 6.2** (Services - General Provisions);
 - 7.1.5 in addition to the Transferring Employees, provide ten additional senior transformational managers seven (7) of whom shall fill permanent posts and three (3) of whom shall act as mentors and coaches to Personnel in the first Year;
 - 7.1.6 comply with the terms of the 90 Day Plan and complete a draft Regeneration Framework for the Council's consideration within three months from the Service Commencement Date;
 - 7.1.7 use its knowledge, credibility and profile in the development and investment community to broker funding opportunities with both public and private sector organisations for the Council's benefit; and
 - 7.1.8 comply with the profit sharing arrangement set out in **Schedule 24** (Profit Share).
- 7.2 If requested by the Council, the Partner shall provide to the Council, on an Open Book basis, full written details of compliance with its obligations pursuant to **clause 7.1** (Commitments and Guarantees) including details of savings achieved, to enable the Council to assess and verify the Partner's performance against each of the commitments.

8. **COUNCIL DEPENDENCIES**

8.1 **Council Dependencies**

- 8.1.1 The Council acknowledges that the Partnership will require timely, active and positive co-operation between the Partner and the Council to resolve issues not foreseen and to allow the Partner to meet its obligations in this Agreement. The Council shall co-operate in good faith with the Partner and use its reasonable endeavours to resolve such issues using the various provisions set out in this Agreement.
- 8.1.2 The Partner's delivery of Services (including, for the avoidance of doubt, the achievement of the Outcomes or in the case of the

Outcomes listed in **clauses 9.3A** (Outcomes/Standards), **10.3A** (Outcomes/Standards) and **11.3A** (Outcomes/Standards), alignment with) pursuant to this Agreement is dependant upon:

- 8.1.2.1 the Council providing sufficient investment and budget to the Partner in accordance with the terms of this Agreement;
- 8.1.2.2 the Council approving the plans and strategies submitted by the Partner to the Council for approval in accordance with the terms of this Agreement taking into account the Council's constitution and the normal operation tolerance of the decision making process in a local government environment;
- 8.1.2.3 the provision of the Council Supplied Services in accordance with the terms of the Council Service Level Agreement;
- 8.1.2.4 subject to **clauses 8.1.3** (Council Dependencies) and **8.1.4** (Council Dependencies), the Council complying with its obligations under this Agreement;
- 8.1.2.5 the provision of legal services pursuant to **clause 34A** (Council Supplied Services);
- 8.1.2.6 the provision of Interface Services described in **clause 34A** (Council Supplied Services);
- 8.1.2.7 the actions of Third Parties whose actions are not directly controlled or controllable by the Partner; and
- 8.1.2.8 the macro economic environment (provided that the Partner has complied with those obligations in relation to monitoring Outcomes that are contained in **clauses 6.1.5** and **6.1.6** (Services - Objectives and Outcomes));

(together the "Dependencies" and each a "Dependency").

8.1.3 Through the governance process, the Partner's Partnership Director shall inform the Council when they become aware that the Council has failed to comply with its obligations under this Agreement.

8.1.4 Where:

- 8.1.4.1 there is a persistent failure of the Council to comply with a single obligation; or

- 8.1.4.2 the Council's non compliance is material to the Partner's performance of its obligations under this Agreement,
- the provisions of **clause 8.1.2.4** (Council Dependencies) may apply.
- 8.1.5 The right of the Partner to rely upon the Dependencies may only be exercised where it has demonstrated to the Council that it has used its reasonable efforts to:
- 8.1.5.1 explore all relevant options and methods of delivery; and
- 8.1.5.2 deploy reasonable options and reasonable methods of delivery that would be expected of a commercial organisation of the same experience, ability and knowledge as the Partner to mitigate the negative impact of such Dependencies within the available resource and in the context of the performance of the Services.
- 8.1.6 If a Dependency has an effect on the Partner's ability to comply with its obligations under this Agreement:
- 8.1.6.1 any failure by the Partner to perform, and any poor performance of, an affected part of the Services shall not constitute a breach by the Partner of the provisions of this Agreement;
- 8.1.6.2 any such failure shall be deemed not to have occurred so that the Partner shall be entitled to payment under the Agreement as if there had been no such failure of the Services and/or the Partner (as the case may be);
- 8.1.6.3 any necessary changes to any Transition Plan shall be agreed by the parties in writing (such agreement not to be unreasonably withheld or delayed) as an addendum to the Transition Plan; and
- 8.1.6.4 (save as set out in clause 8.2 of the Council Service Level Agreement), the Partner shall not be entitled to be compensated for any Direct Loss it suffers as a result of the impact of the Dependency on the Partner and for the avoidance of doubt, the provisions of **clause 8.2.5** (Excusing Causes) shall not apply to such Dependency.
- 8.1.7 For the avoidance of doubt, in determining whether the Partner has satisfied its monitoring obligations at **clauses 6.1.5** (Services - Objectives and Outcomes) and **6.1.6** (Services - Objectives and

Outcomes) (and referred to in **clause 8.1.2.8** (Council Dependencies)), the successful achievement or otherwise of the Outcome or any adjustments thereto shall be irrelevant.

8.2 **Excusing Causes**

This **clause 8.2** (Excusing Causes) shall not apply where the Partner fails to deliver the Outcomes set out in **clause 6.1** (Services - Objectives and Outcomes).

8.2.1 If an Excusing Cause has a material and adverse effect on the Partner's ability to comply with its obligations under this Agreement, then to the extent that the Partner's failure to comply with its obligations arises as a direct result of such Excusing Cause and but for the Excusing Cause the Partner would have complied with its obligations:-

8.2.1.1 such failure by the Partner to perform, and any poor performance of, an affected part of the Services shall not constitute a breach by the Partner of the provisions of this Agreement;

8.2.1.2 such failure shall be disregarded when measuring the performance of any affected part of the Services in accordance with the Price Performance Mechanism, which shall be operated as though the relevant part of the Services has been performed free of such failure;

8.2.1.3 any such failure shall be deemed not to have occurred so that the Partner shall be entitled to payment under the Agreement as if there had been no such failure of the Services and/or the Partner (as the case may be); and

8.2.1.4 any necessary changes to any Transition Plan required as a direct result of an Excusing Cause shall be agreed by the parties in writing (such agreement not to be unreasonably withheld or delayed) as an addendum to the Transition Plan.

8.2.2 The Partner shall use reasonable endeavours to mitigate the effects of the Excusing Cause.

8.2.3 The benefit of this **clause 8.2** (Excusing Causes), shall apply only if the Partner shall notify the Council in writing within five (5) Business Days of the later of the date of the occurrence of the Excusing Cause and the date the Partner became aware of (or ought reasonably to have become aware of) the occurrence of the Excusing Cause setting out

such details of the Excusing Cause. Failure to do so shall invalidate any claim by the Partner pursuant to this **clause 8.2** (Excusing Causes).

8.2.4 Without prejudice to the provisions of **clause 38** (Indexation) and subject to **clause 8.2.5** (Excusing Causes) below, the Partner shall not be entitled to any payment which would not otherwise have been due under this Agreement but for the provisions referred to in this **clause 8.2** (Excusing Causes) to the extent that the Partner is or should be able to recover under any policy of insurance required to be maintained under the provisions referred to in **clause 67** (Insurance) (whether or not such insurance has in fact been effected or, if effected, has been vitiated as a result of any act or omission of the Partner or any person on the Partner's behalf, including non-disclosure or under insurance) or any other policy of insurance which the Partner has taken out or maintained.

8.2.5 In the event and to the extent that the Partner suffers or incurs any Direct Losses as a direct consequence of the occurrence of the Excusing Cause which are not alleviated or otherwise satisfied by the relief afforded to the Partner in accordance with this **clause 8.2** (Excusing Causes) then without prejudice to the Partner's other rights:

8.2.5.1 the Partner shall calculate its Direct Losses suffered or incurred and include them in the next following monthly report to the Partnership Board together with:

- (a) details of the Excusing Cause that gave rise to them;
- (b) copies of all invoices or other documentary evidence to support its claim;
- (c) how the Excusing Cause resulted in the Partner incurring the Direct Loss; and
- (d) what steps (if any) the Partner has taken to mitigate the Direct Loss that it has suffered;

8.2.5.2 the Partner shall include in the monthly report (prepared pursuant to **clause 8.2.5.1** (Excusing Causes)) any proposal it has either to avoid, overcome, alleviate or work around the Excusing Cause or future similar Excusing Causes;

8.2.5.3 the Council shall consider the monthly report submitted by the Partner pursuant to **clause 8.2.5.1** (Excusing Causes) and either authorise the report, suggest modifications to

the proposal made pursuant to **clause 8.2.5.2** (Excusing Causes) or reject the report;

- 8.2.5.4 where the Council authorises the monthly report pursuant to **clause 8.2.5.3** (Excusing Causes), the Partner shall implement the proposal (if any) referred to in **clause 8.2.5.2** (Excusing Causes) and the Council shall pay the Partner the amount specified in the report for such work undertaken. In addition, where in any month the Partner can demonstrate that as a result of the Excusing Cause it has incurred the Direct Losses identified in **clause 8.2.5.1** (Excusing Causes) and suffered a material and adverse financial impact, the Council shall, unless the Council and the Partner agree otherwise at the Partnership Board, reimburse the Partner in full on an indemnity basis in relation to all such Direct Losses incurred. The Council agrees that it shall take positive action with the support of the Partner to avoid the continuance or re-occurrence (as the case may be) of the Excusing Cause that gave rise to the Direct Loss reported pursuant to this **clause 8.2.5** (Excusing Causes);
- 8.2.5.5 where the Council proposes a modification to the proposal pursuant to **clause 8.2.5.3** (Excusing Causes), the Partner shall consider the modifications and shall (acting reasonably) incorporate the modifications into the proposal and resubmit the same for Council approval which the Council shall consider in accordance with **clause 8.2.5.3** (Excusing Causes); and
- 8.2.5.6 where the Council rejects the report submitted pursuant to **clause 8.2.5.3** (Excusing Causes), the parties shall meet in good faith to discuss the reasons for such rejection with a view to resolving the matter. Failure to agree the report pursuant to this **clause 8.2.5.6** (Excusing Causes) shall entitle either party to refer the matter to the Dispute Resolution Procedure.

For the avoidance of doubt, this **clause 8.2.5** (Excusing Causes) shall not apply to any loss which relates to a Council Supplied Service or an Interface Service. The provisions of the Council Service Level Agreement shall apply with regard to Council Supplied Services and **clause 34A.2** (Council Supplied Services) shall apply with regard to Interface Services.

PART D: SERVICES

The Partner in delivering the Services shall deploy modern delivery methods including re-engineering the delivery structure and deploying principles of modern procurement. Efficient supply chain management and compliance with the obligations of joint working (pursuant to **clause 16** (Joint and Shared Working)), shall deliver additional projects and activities if required by means of the Project methodology (pursuant to **clause 19** (Projects)) and shall realise benefits on behalf of the Council. The Partner shall operate and deliver the Services within the context of the Partnership governance (pursuant to **clause 5** (Partnership Framework)).

9. RENAISSANCE SERVICE

9.1 Definition

9.1.1 The Partner shall provide a Renaissance Service which will be a cohesive service and which is aligned with and will deliver the Council’s contribution to the Council’s economic and regeneration priorities as set out in strategic policy documents including the Sustainable Communities Strategy, Local Area Agreement, Council Plan, New Horizons and LDF, as well as supporting its CAA aspiration. This will be achieved through combining the existing Economic Development, Urban Renaissance, Spatial Futures and elements of the Strategic Housing Council teams into a single integrated service consisting of three teams of Urban Regeneration and Economic Development, Spatial Futures and Strategic Housing and the joint funding team as further described in **clauses 9.6** (Urban Regeneration and Economic Development) to **9.8** (Housing Element of the Renaissance Service) and **Schedule 27** (Renaissance Services).

9.1.2 The Partner, in carrying out the Renaissance Service, will develop an excellent reputation for the Council for:

- 9.1.2.1 place shaping;
- 9.1.2.2 creating high quality environments; and
- 9.1.2.3 creating successful communities,

thereby developing the Area’s reputation as a place of choice, to live, to do business and invest, improving the image and attraction of the Area and promoting the Greater Grimsby Lincolnshire brand.

9.2 Scope and Structure

9.2.1 The Partner will:

- 9.2.1.1 create an Urban Regeneration and Economic Development team with project leaders responsible for the promotion and co-ordination of projects in the areas of Grimsby, South Humber Bank, Immingham and Cleethorpes;
- 9.2.1.2 provide a spatial futures service to assume a critical role in the development and adoption, through the Council, of the core strategy and the Site Allocations DPD during the first three (3) Years of the Partnership;
- 9.2.1.3 provide the strategic housing service elements of the Renaissance Service;
- 9.2.1.4 manage a programme of projects to deliver outcomes in line with the Regeneration Framework;
- 9.2.1.5 manage the Renaissance Service through a Head of Renaissance; and
- 9.2.1.6 provide a Renaissance Service which operates at strategic, management and operational levels,

as described in this **clause 9** (Renaissance Service) and **Schedule 27** (Renaissance Services).

9.2.2 The Partner shall (in line with **clause 24** (Partner's Plans and Performance Reviews)) work with the Council to:

- 9.2.2.1 review the budget allocated to the Renaissance Service on an annual basis;
- 9.2.2.2 prioritise spending taking account of the New Horizons, Sustainable Communities Strategy, Corporate Asset Management Plan, Council Plan, Regeneration Framework, other elements of the Renaissance Service, the Annual Service Development Plan and the Council's wider objectives and other regeneration plans;
- 9.2.2.3 provide the Council with a recommended approach and options for delivering a Renaissance Service which offers Value for Money within the Council's affordability envelope;
- 9.2.2.4 support and advise the Council on the business, budget planning and resource allocation process; and
- 9.2.2.5 implement the agreed outcome of the business, budget planning and resource allocation process.

9.3 **Outcomes / Standards**

In delivering the Renaissance Service, the Partner shall deliver the following Outcomes and performance standards:

Service Quality and Value for Money

- 9.3.1 deliver the Site Allocations DPD one (1) month ahead of the Council's current anticipated programme, with adoption in January 2013 in accordance with the provisions of **Schedule 27** (Renaissance Services);
- 9.3.2 improve the image and perception of Grimsby through the promotion of the Greater Grimsby Lincolnshire brand;
- 9.3.3 ensure the Renaissance Service or Projects arising from the Renaissance Service receives external recognition in the form of at least ten (10) commendations or awards during the Term;

Economic Development

- 9.3.4 identify and pursue opportunities and secure external funding to support the delivery of the Regeneration Framework;
- 9.3.5 support the growth and development of small and medium enterprises in the Area by directing current or potential businesses in the Area to relevant business support agencies;
- 9.3.6 support young people and school children to improve their skills by providing them with training apprenticeships or work placements through the delivery of the Services in the Area (or in close proximity to the Area);

Physical Regeneration

- 9.3.7 through the development and delivery of the Regeneration Framework secure the development of non residential space (including commercial and retail space) in the Area in order to increase footfall within Grimsby Town Centre;

Quality Housing

- 9.3.8 increase end user satisfaction with building design projects delivered through the Renaissance Services;

- 9.3.9 deliver a programme of public realm, infrastructure, housing, community and regeneration projects including those set out in **Schedule 20** (WIP/In Flight Projects);
 - 9.3.10 reducing the carbon footprint of the Services;
 - 9.3.11 return vacant dwellings to occupation;
 - 9.3.12 increase the proportion of vulnerable households in the private sector living in homes that meet the Decent Homes Standard; and
 - 9.3.13 reduce fuel poverty in the Area by reducing the proportion of people (who are receiving income based benefits) that live in homes with a low energy efficiency rating.
- 9.3A In delivering the Renaissance Service, the Partner shall align its delivery of the Renaissance Services with the following Outcomes:
- 9.3.A.1 reduce the difference between the proportion of working age people claiming job seekers allowance in the Area and the regional average;
 - 9.3.A.2 increase the percentage of the working population attaining qualifications at NVQ Level 2, NVQ Level 3 and NVQ Level 4; and
 - 9.3.A.3 maximise the amount of new affordable housing delivered in the area, achieved through planning gain, grant support and cross-subsidy as a minimum to the target /baseline set out in the Council's Planning policy;
- 9.4 **90 Day Plan**
- 9.4.1 The Partner shall prepare a draft Regeneration Framework during the first 90 Days of the Term and submit it to the Council for consideration.
 - 9.4.2 The Council shall co-operate with the Partner in providing information to the Partner in its production of the draft Regeneration Framework within the first 90 Days.
 - 9.4.3 The draft Regeneration Framework shall include the following as described in **Schedule 27** (Renaissance Services):
 - 9.4.3.1 a baseline assessment of current relevant policies and projects and current and future funding and investment programmes;

- 9.4.3.2 a review of the current economic situation and strategy for the Area including associated economic data in order to identify key economic drivers;
- 9.4.3.3 an initial consultation with key stakeholders;
- 9.4.3.4 mapping of key environmental and physical opportunities and constraints;
- 9.4.3.5 initial mapping of planned and potential investments in infrastructure;
- 9.4.3.6 an initial evaluation of viability, deliverability and impact of the possible regeneration projects and programmes; and
- 9.4.3.7 an initial prioritisation and outline regeneration programme over the Term of the Agreement.

9.5 **Regeneration Framework**

- 9.5.1 The Partner shall consult the Council and take into consideration the Council's plans and objectives in preparing the Regeneration Framework (as part of the 90 Day Plan), which shall include, without limitation, having regard to the Council's Sustainable Communities Strategy, Council Plan, New Horizons strategy, Empty Homes Strategy, Fresh Start Renewal Programme, Neighbourhood Renewal Assessment Report, Housing Assistance Policy, Derelict Land and Property Strategy, Affordable Warmth Strategy, South Humber Gateway Programme, Highways and Transport Improvement Plan, Industrial Estates Strategy, Strategy for Economic Being 2009-2010, Road Casualty Reduction Plan, Towards Top Performance Programme, Policies, revenue budget, capital programme and medium term financial strategy, relevant Laws or Government policies and initiatives and the economy (together "the Priorities") as further described in **Schedule 27** (Renaissance Services).
- 9.5.2 The Council shall co-operate with the Partner in providing information to the Partner in its production of the Regeneration Framework.
- 9.5.3 The Council shall be entitled to approve part or the whole of the Regeneration Framework. Such approval by the Council shall not be unreasonably withheld or delayed by the Council. The Partner shall comply with any recommendations or amendments which the Council may have (acting reasonably) in relation to the Regeneration Framework.

- 9.5.4 The Partner shall comply with and implement the approved Regeneration Framework, within the timescales specified in the Regeneration Framework.
- 9.5.5 The Partner shall:
- 9.5.5.1 review the Regeneration Framework on an annual basis in conjunction with the Service Development Plan process and as part of this propose any adjustments to the Regeneration Framework in terms of priority of project delivery, timescales or reallocation of budget which are required to reflect any changes in the Priorities; and
 - 9.5.5.2 undertake appropriate community and stakeholder consultation during the preparation of the full Regeneration Framework as agreed with the Council.
- 9.5.6 The Partner shall ensure the completed Regeneration Framework includes:
- 9.5.6.1 an economic assessment of the Area;
 - 9.5.6.2 a programme for delivering the agreed set of regeneration projects including town centre and resort regeneration, housing renewal projects, community and economic development projects (as further described in the Renaissance Services Schedule (**Schedule 27**) (Renaissance Services));
 - 9.5.6.3 the approach to securing regeneration and economic development funding, including from supplementary business rates, business improvement districts and funding from other government bodies or agencies e.g. HCA/EP, Regional Housing Board, EU and others;
 - 9.5.6.4 incorporate the conclusions from the inward investment strategy on the likely sources of inward investment;
 - 9.5.6.5 a review of the current PPS3 Strategic Housing Land Availability Assessment Plan ("**SHLAA**");
 - 9.5.6.6 current housing needs assessment data, and the current Sub Regional Housing Strategy;
 - 9.5.6.7 a review of the current development proposals in relation to housing either as stand alone or part of mixed developments;

- 9.5.6.8 results from stakeholder consultation and mapping exercises including current relationships, status of proposals and partnership opportunities;
 - 9.5.6.9 a review of other related Council strategies such as Neighbourhood Renewal Plans, Housing transformation areas;
 - 9.5.6.10 reflects LSP and Local Area Agreements targets and priorities;
 - 9.5.6.11 a funder action plan and agreed deliverables; and
 - 9.5.6.12 KPI's for review and agreement focused on delivery of the key Outcomes;
- 9.5.7 The Partner shall work with the Council and key stakeholders (such as the Local Strategic Partnership and Yorkshire Forward) to ensure that the Regeneration Framework provides the basis for a long term investment agreement between public and private sector partners that will enable specific projects to be delivered and the overall vision realised.

9.6 **Urban Regeneration and Economic Development**

The Partner shall be responsible for delivering the following in relation to the Renaissance Service:

- 9.6.1 developing the Regeneration Framework in consultation with the Council;
- 9.6.2 implementing and monitoring the Regeneration Framework during the Term, the delivery of which will promote and raise the profile of North East Lincolnshire and guide its future economic prosperity;
- 9.6.3 updating the Regeneration Framework in consultation with the Council on an annual basis during the Term;
- 9.6.4 develop OBCs and FBCs for Strategic Projects in accordance with **clause 19** (Projects) and the Projects Schedule (**Schedule 16** (Projects)) and secure funding for the further development and delivery of Projects;
- 9.6.5 developing links and working practices with external regeneration agencies including Homes and Communities Agency, Yorkshire Forward, Business Link, E-Factor, Local Strategic Partnership and the Humber Economic Partnership;

- 9.6.6 working with statutory and non statutory bodies such as neighbouring Councils, HCA, Shoreline, Regional Housing Board, Highways Agency, Environment Agency, Sport England and Natural England, GOYH, YF in the promotion of the Area and the development of regeneration projects;
- 9.6.7 developing the Inward Investment Strategy in consultation with the Council;
- 9.6.8 implementing and monitoring the Inward Investment Strategy, such implementation to include the promotion of the Council to businesses and handling enquiries from companies;
- 9.6.9 updating the Inward Investment Strategy in consultation with the Council on an annual basis during the Term;
- 9.6.10 promoting the key economic sectors through undertaking promotional activity;
- 9.6.11 attracting, maximising, securing and delivering external funding opportunities for the Area;
- 9.6.12 utilising the policy and guidance provided by the LDF, promote quality improvements in the urban environment that enable the creation of quality places that attract people and investment;
- 9.6.13 working in conjunction with Schools, Colleges and Universities to improve learning and skills outcomes, consistent with the needs of a vibrant and competitive local economy;
- 9.6.14 enhancing relationships with key regeneration agencies, investors, developers, landowners, businesses, government departments, educationalists and other key stakeholders;
- 9.6.15 representing and promoting the interests of the Area at sub-regional, regional, national and international level; and
- 9.6.16 providing the local economic assessments with partners (as appropriate) in accordance with all relevant Laws,

as further described in **Schedule 27** (Renaissance Services).

9.7 **Spatial Futures**

The Partner shall be responsible for delivering the following in relation to the Renaissance Service:

- 9.7.1 in conjunction with the Council, regional and sub regional policy development representing the interests of the Area including city region development;
- 9.7.2 (in conjunction with the Council), promoting and representing the Area's interest with sub-regional, regional and national organisations in the development of strategic planning, housing and economic policy;
- 9.7.3 delivering the statutory functions of planning policy making including preparation for approval by the Council and adoption of the LDF together with supplementary planning documents (which include issues such as section 106 agreements, affordable housing) and annual monitoring of the LDF through the preparation of an annual report and preparation of the waste and minerals plan;
- 9.7.4 preparation of evidence base to support the LDF;
- 9.7.5 supporting and advising the Council on its response to the Regional Spatial Strategy ("**RSS**") (including carrying out any related census analysis to inform the Regional Spatial Strategy and DPD);
- 9.7.6 co-ordination with other strategic policy development such as LTP and the Shoreline management plan;
- 9.7.7 collection and monitoring of key data for the purposes of delivering the spatial futures services including the LDF annual monitoring report (referred to in **clause 9.7.3** (Spatial Futures)) such data will include demographics, deprivation indices and housing data;
- 9.7.8 provision of the National Land and Property Gazetteer (NLPG);
- 9.7.9 supporting spatial planning advice in relation to external funding and project bids; and
- 9.7.10 working with the development services team to advise on the application of economic, regeneration and housing policies to planning decisions,

as further described in **Schedule 27** (Renaissance Services).

9.8 **Housing Element of the Renaissance Service**

- 9.8.1 The Partner shall be responsible for delivering the following in relation to the Renaissance Service:
 - 9.8.1.1 where requested by the Council, the Partner shall contribute to the production of a Sub Regional Housing Strategy

- including consultation with the Council and sub-regional Partners and other Council services;
- 9.8.1.2 implementing and monitoring the relevant aspects of the Integrated Housing Implementation Plan which supports the Sub Regional Housing Strategy during the Term in conjunction with the Council, sub-regional partners and other Council services;
 - 9.8.1.3 where requested by the Council, the Partner shall contribute to updating the Sub Regional Housing Strategy in consultation with the Council and sub regional Partners and other Council services;
 - 9.8.1.4 appointing a housing mentor to advise and support the service;
 - 9.8.1.5 working with Shoreline to develop innovative Code 4 and Code 6 Housing designs which can be used to apply for HCA grant;
 - 9.8.1.6 consult with Care Trust Plus, Shoreline, the Homes and Communities Agency and other relevant bodies in the delivery of the Renaissance Service;
 - 9.8.1.7 where appropriate, undertaking land assembly exercises to support neighbourhood renewal schemes;
 - 9.8.1.8 working locally with global action plan to develop a Eco Teams programme;
 - 9.8.1.9 proactively tackling the shortage of quality homes in the area through:
 - (a) delivering targeted action against landlords providing unfit housing;
 - (b) maximising the grant funding available and managing the distribution of the same;
 - (c) working with partners such as Shoreline and Care Trust Plus to identify vulnerable people who are eligible for grant funding;
 - (d) working with vulnerable people to educate them on the grants available; and

- (e) administering grants for the vulnerable to improve their homes;
- 9.8.1.10 ensuring the strategic housing needs of the Area are taken into account in all regeneration projects, to ensure that housing positively benefits from the physical, social and economic change necessary to create sustainable communities and new housing developments maximise regeneration impacts;
- 9.8.1.11 building on the capacity and capability of the strategic housing team to ensure the required skills are available to deliver innovative solutions;
- 9.8.1.12 enhancing the public credibility and reputation of the strategic housing team in order to secure funding and be more attractive to the private market investors; and
- 9.8.1.13 review and update housing needs assessments,

as further described in **Schedule 27** (Renaissance Services).

9.9 **Innovation & Learning Hub**

- 9.9.1 The Partner shall prepare a Strategic Business Case relating to the Innovation & Learning Hub ("**Hub**") for consideration by the Council describing the benefits of the proposed Hub, its role within the wider Regeneration Framework, and the potential sources of funding.
- 9.9.2 If the SBC is approved the Partner will progress to an OBC in line with **Schedule 16** (Projects) and prepare any appropriate and necessary funding applications for Third Parties.
- 9.9.3 If these funding applications are successful the Partner shall, through the delivery and operation of the Hub:
 - 9.9.3.1 ensure a minimum of 100 local people receive training through the Hub every year after it opens to the end of the Term in order to contribute to improving skill levels in the Area;
 - 9.9.3.2 create a minimum of 250 net new jobs by the end of the Term in order to contribute reducing unemployment in the Area; and
 - 9.9.3.3 provide managed workspace for 30 small businesses by the end of the Term.

9.10 **Staff**

9.10.1 The Partner shall utilise the project and performance management specialists appointed pursuant to **clause 18** (People, Resource and Business Capacity).

9.10.2 The Partner shall support the Renaissance Service through the provision of additional capacity and resource in the short term through the operation of **clause 28.5** (Volume Management) and shall enhance the capability of the service through the recruitment, training and professional development of Personnel as described in **clauses 13A** (The Programme and Performance Delivery Support Unit) and **18** (People Resource and Business Capacity).

9.11 **Systems**

As part of the Partnership ICT, the Partner shall provide Partnership ICT and related services to support the Renaissance Service in accordance with the provisions of **Schedule 8** (ICT).

10. **HIGHWAYS, TRANSPORTATION AND PLANNING SERVICE**

10.1 **Definition**

10.1.1 The Partner shall provide a Highways, Transportation and Planning Service ("HTP Service") which will be a cohesive service and which is aligned with and will deliver the Council's transport objectives. This will be achieved through combining the existing highways, transport and planning Council teams and transforming these into one integrated service group to meet the Council's Objectives.

Highways and Transportation

10.1.2 The Highways and Transportation Service will include:

10.1.2.1 delivering the Council's transport objectives through the development and implementation of the Council's highways and transport strategies;

10.1.2.2 working in partnership with government agencies, public transport providers, utilities, private logistics and transportation companies and local residents;

10.1.2.3 delivering a safe, integrated, efficient, and sustainable transport system incorporating all modes of travel for people and goods, including walking, cycling, air travel, rail

travel, coach and bus travel and private and commercial vehicles;

- 10.1.2.4 the promotion of safe travel by the delivery of a range of education enforcement and engineering solutions to reduce casualties on the network;
- 10.1.2.5 promoting sustainable travel by encouraging changes to travel patterns and promoting walking and cycling;
- 10.1.2.6 managing the inspection, maintenance and improvement of the Council's highways assets to maximise the value from investment in the network and co-ordinate works on the highway to minimise inconvenience to the travelling public;
- 10.1.2.7 identifying, developing and managing projects that will improve the performance of the network and ensuring that the work carried out as part of the Highways and Transport Service is aligned with the work carried out as part of the Renaissance Service, thus maximising the benefits of strategic projects; and
- 10.1.2.8 creating a safer place, where sensitive design and improved targeting address crime and promote a sense of improved security and public confidence in the Area,

as further described in this **clause 10** (Highways, Transportation and Planning Service) and **Schedule 28** (Highways, Transport and Planning Services).

Planning

10.1.3 The Planning Service will include:

- 10.1.3.1 creating an integrated, efficient and modern Planning Service that is pro-active and works effectively with investors, developers, local communities and stakeholders;
- 10.1.3.2 providing a key interface with the development industry, landowners, stakeholders and the Area's communities and is vital in developing a reputation for a professional and positive approach to business and the future development of the Area;
- 10.1.3.3 securing quality improvements to the built and natural environment and maximise social and economic well being

for the Area's communities to achieve excellent place shaping activities;

10.1.3.4 promoting the Area and the opportunities it offers for regeneration, growth and tourism working with potential investors and developers;

10.1.3.5 contributing to the development of the Local Development Framework (LDF) in shaping proposals for key projects and providing key design and other guidance for future development and change; and

10.1.3.6 implementing strategic projects providing a positive and efficient approach to pre-application discussions, consultation and determination of planning applications,

as further described in this **clause 10** (Highways, Transportation and Planning Service) and **Schedule 28** (Highways, Transport and Planning Services).

10.2 **Scope and Structure**

10.2.1 The Partner shall create the following delivery teams in order to deliver the HTP Service:

10.2.1.1 a network management team;

10.2.1.2 a highways operation team;

10.2.1.3 a development services team; and

10.2.1.4 a transportation strategy team,

who shall undertake the functions described in **Schedule 28** (Highways, Transport and Planning Services) and contain a variety of strategic, management and operational roles.

10.2.2 The HTP Service shall deliver the following statutory planning functions:

10.2.2.1 development control;

10.2.2.2 planning enforcement;

10.2.2.3 planning enquiries;

10.2.2.4 planning searches; and

10.2.2.5 landscape, design and heritage.

10.2.3 The Partner shall manage the HTP Service through a Head of Highways, Transportation and Planning as described in **Schedule 28** (Highways, Transportation and Planning).

10.2.4 The Partner shall (in line with **clause 24** (Partner's Plans and Performance Reviews) work with the Council to:

10.2.4.1 review the budget allocated to the HTP Service on an annual basis;

10.2.4.2 prioritise spending taking account of the LTP, TAMP and other elements of the HTP Service, the Annual Service Development Plan and the Council's wider objectives;

10.2.4.3 provide to the Council a recommended approach and options for delivering a service which offers Value for Money within the Council's affordability envelope;

10.2.4.4 support and advise the Council on the business, budget planning and resource allocation process; and

10.2.4.5 implement the agreed outcome of the business, budget planning and resource allocation process.

10.3 **Outcomes/Standards**

In delivering the HTP Service, the Partner shall deliver the following outcomes and performance standards:

Service Quality and Value for Money

10.3.1 increase the effectiveness of the Council's development services in order to maintain the efficient processing of major planning applications;

10.3.2 improve the quality of the Council's key transport strategy documents (i.e. LTP3 and associated monitoring reports); and

Physical Regeneration

10.3.3 improve the asset management of the Council's road and footway network in order to minimise the proportion of the network in need of structural maintenance to the extent possible from within the Council's available budget.

10.3A In delivering the HTP Services, the Partner shall align its delivery of the HTP Services with the following outcomes:

10.3.A.1 increase bus patronage;

10.3.A.2 reduce disruption to the travelling public by reducing the number of days of temporary traffic controls or road closure on Traffic Sensitive Roads;

10.3.A.3 encourage (through the application of planning conditions) public transport use, walking and cycling; and

10.3.A.4 reduce the level of crime in Grimsby Town Centre by improving the quality of CCTV management.

10.4 **90 Day Plan**

Pursuant to **clause 9.4** (90 day Plan), the Partner shall within ninety (90) days from the Services Commencement Date complete the following actions:

10.4.1 evaluate the Council's success in delivering initiatives identified in the Planning Service Improvement Plan 2008 - 2011;

10.4.2 assess current skill levels and experience within the Transferring Employees, define delegated powers and the need for resource and services in addition to that available from the Transferring Employees;

10.4.3 following the evaluation set out in **clause 10.4.2** (90 Day Plan) develop a training plan for the Transferring Employees, in consultation with the Council;

10.4.4 identify and prioritise planning service delivery initiatives;

10.4.5 develop an implementation plan for delivery of the HTP Service in consultation with the Council;

10.4.6 implement the new Highways, Transport and Planning restructure;

10.4.7 manage transition of service from the Services Commencement Date, ensuring no diminution of service quality (without prejudice to the Service Levels);

10.4.8 review depot accommodation and produce a depot management plan;

10.4.9 undertake review of road safety service and produce an action plan;

10.4.10 review highways inspections regime;

- 10.4.11 agree short, medium and long term Highways and Transport works programmes;
- 10.4.12 produce a resource schedule for the design of Highways and Transport schemes;
- 10.4.13 arrange for additional design resources as necessary;
- 10.4.14 raise NRSWA notices for all appropriate Council works (ensuring compliance with the Traffic Management Act);
- 10.4.15 commence review of workflow process from scheme inception through to delivery, to deliver efficiencies;
- 10.4.16 correctly liveried fleet for Council owned vehicles in place;
- 10.4.17 install GPS units in all Council owned Highways and Transport fleet;
- 10.4.18 review and refine the Council's Winter Service Plan for 2010/2011;
- 10.4.19 review the Council's current TAMP for 2010 and produce a delivery plan in respect of the same;
- 10.4.20 review the highways asset data and undertake a visual inspection of such assets and prioritise the data collection for the highways asset inventory;
- 10.4.21 ensure correct, liveried personal protective equipment is in place for all personnel; and
- 10.4.22 commence the integration between Council Symology systems and the Partner's Contract Control Management system as further set out in **clause 10.8** (System),

as further described in **Schedule 28** (Highways, Transport and Planning Services).

10.5 **Highways and Transportation**

The Partner shall be responsible for delivering the following in relation to the HTP Service:

- 10.5.1 developing (in consultation with the Council) and delivering the Council's key policies, plans and strategies (including LTP and the TAMP) in order to deliver the Outcomes set out in **clause 10.3** (Outcomes/Standards);

- 10.5.2 advising on supply chain management and streamlining procurement in order to streamline the chain of procurement activity for the Highways and Transportation Service. In streamlining the procurement activity the Partner shall endeavour to maximise procurement performance to generate economies, promote Value for Money and secure better resource utilisation. Such advice shall be provided so that any activity undertaken as a result is compliant with Council standing orders, procurement strategy and procurement regulations;
- 10.5.3 in the first Year of this Agreement and acting as the Council's agent, procuring a long term works partner (within an EU Procurement Process) to undertake the highways projects element of the capital works programme and deliver elements of the LTP and the TAMP;
- 10.5.4 the Partner shall incorporate the Council's highways DSO maintenance staff (through TUPE transfer) into the HTP Service in order to deliver routine and reactive works;
- 10.5.5 fulfilling the Council's statutory and non-statutory obligations in relation to Highways and Transport;
- 10.5.6 providing highway management and maintenance services and procuring highway capital improvement works;
- 10.5.7 providing opportunities for the professional and technical development of the staff carrying out the Highways and Transport Service to ensure continued professional development;
- 10.5.8 developing and delivering an integrated, high quality, safe and reliable service (including by working with public and private transport providers);
- 10.5.9 promoting and encouraging car sharing, use of public transport, walking and cycling;
- 10.5.10 improving road safety through education, engineering, school crossing patrols and enforcement, working in partnership with the police and other agencies;
- 10.5.11 the inspection, management and maintenance of the public highway assets (e.g. carriageway, footway, structures, bridges, signs, signals, lighting etc);
- 10.5.12 the identification, design and management of improvement schemes on the highway and, acting as the traffic manager for the Council, with respect to the Traffic Management Act;

- 10.5.13 developing a robust and effective approach to the avoidance and management of insurance and compensation claims and working with the Council's legal team in this regard. The Partner shall support the Council in its defence of such claims;
- 10.5.14 implementing a claims handling system which is efficient and transparent in operation which can:
- i) assist the Council in identifying where an act or omission of the Council, Partner or Third Party contributed to the claim arising; and
 - ii) identifying trends which could indicate fraudulent claims or abuse of the claims system;
- 10.5.15 minimise congestion by:
- 10.5.15.1 co-ordinating and implementing modifications to traffic regulations (seeking consent to such modifications in accordance with **clause 5.1** (Partnership Governance)) on the highway in order to address works and events;
 - 10.5.15.2 managing and delivering reactive works on the network;
 - 10.5.15.3 managing the network of public rights of way;
 - 10.5.15.4 producing the annual Winter Service Plan for the Council each year from 2010;
 - 10.5.15.5 providing effective gritting of highways and footways in line with the Winter Service Plan and Policy;
 - 10.5.15.6 processing and determining highways applications in a timely and efficient manner;
 - 10.5.15.7 holding HTP Management Team forums, where performance against strategic objectives will be discussed and improvement action plans will be agreed upon where necessary;
 - 10.5.15.8 provide training to attract and retain qualified personnel into the Area;
 - 10.5.15.9 delivering quality and timely decisions that promote inward investment, jobs, quality of design, sustainability and alignment with and support of the wider objectives of renaissance;

- 10.5.15.10 operating the Highways and Transport Service in a holistic manner within the wider Services to maximise efficiency and effectiveness;
- 10.5.15.11 ensuring that 100% of major highway works carried out on behalf of the Council are correctly noticed in line with the NRSWA;
- 10.5.16 work with departments within the Council and Third Parties, including:
 - 10.5.16.1 education relating to school developments and school travel plans;
 - 10.5.16.2 community services regarding trees and verges;
 - 10.5.16.3 Care Trust Plus, as a means of promoting independence and supporting vulnerable people;
 - 10.5.16.4 public and private transport providers, for example, bus operators, rail operators, haulers, licensed private hire firms, airport operators;
 - 10.5.16.5 statutory consultees, for example, Environment Agency, English Heritage;
 - 10.5.16.6 business and residents, for example, consultations on planning and highway applications and improvement proposals;
 - 10.5.16.7 police on a range of highway, public safety and wellbeing issues; and
 - 10.5.16.8 utilities agencies,

as further described in **Schedule 28** (Highways, Transport and Planning Services).

10.6 **Planning**

The Partner shall be responsible for delivering the following in relation to the planning aspects of the HTP Service:

- 10.6.1 processing and determining, in accordance with **paragraph 9.1** of **Schedule 15** (Partnership Framework), all types of planning applications (including discharge of planning conditions) in a timely and efficient manner;

- 10.6.2 the implementation of development control policies as defined by the LDF;
- 10.6.3 fulfilling the statutory functions for planning applications, appeals, and enforcement;
- 10.6.4 providing a more efficient and qualitative process resulting in better development;
- 10.6.5 shaping and implementing policy for section 106 and other developer contributions;
- 10.6.6 negotiating section 106 Planning Agreements, and contributing to section 278 and other legal planning and highways agreements;
- 10.6.7 providing professional technical advice in guiding and assessing applications for development and change of use;
- 10.6.8 providing design and environmental advice to assess the impact of development and encouraging good quality design;
- 10.6.9 conserving and developing the natural and built environment including assessment of listed building applications, and applications affecting Tree Preservation Orders and Conservation Areas;
- 10.6.10 developing and implementing community and stakeholder consultation engagement strategies;
- 10.6.11 providing an efficient and professional response to planning enquiries and searches;
- 10.6.12 enhancing public accessibility and communication, for example, increasing the use of electronic service delivery;
- 10.6.13 optimising the existing systems or implementing systems that are efficient in maintaining planning records;
- 10.6.14 ensuring that the planning process contributes towards creating a positive image of the area;
- 10.6.15 informing the Strategic Management Team, Partnership Board, Scrutiny committee and Cabinet as appropriate with key issues and development;
- 10.6.16 operating the Planning Service in a holistic manner within the wider Services to maximise efficiency and effectiveness, including:

- 10.6.16.1 assisting the Economic Development team (part of the Renaissance Service) with the promotion and support of inward investment opportunities, working with public and private sector investors;
 - 10.6.16.2 assisting the Economic Development team (part of the Renaissance Service) with marketing the Area and its strategic opportunities to form a clear brand for the Area;
 - 10.6.16.3 ensuring close working relationships are maintained with other service areas including Renaissance and in particular Spatial Futures; and
 - 10.6.16.4 ensuring a communicative and co-operative approach in operating within an integrated Partnership team (across service boundaries) and with other Council departments for example health, education and leisure;
- 10.6.17 assisting as appropriate with joint working with neighbouring council's on major applications of cross boundary interest;
- 10.6.18 developing close working relationships with statutory and non-statutory bodies including Highways Agency, Environment Agency, Sport England, and Natural England, GOYH, YF, local community groups, civic societies, Wildlife Trust, Chamber of Commerce etc; and
- 10.6.19 improving the quality of urban design by ensuring that 100% of major and/or other appropriate regeneration related planning applications are subject to review by the local or regional design panel,

as further described in **Schedule 28** (Highways, Transport and Planning Services).

- 10.6.20 The Partner shall be liable to the Council for the costs of any planning appeals incurred and any costs awarded by the Council to the appellant in each case to the extent that the Partner has been negligent in :
- 10.6.20.1 the advice it provided to the Council in respect of such planning applications; or
 - 10.6.20.2 the course of providing advice in relation to such planning applications.

10.7 **Staff**

- 10.7.1 The Partner shall utilise the project and performance management specialists appointed pursuant to **clause 18** (The People, Resource and Business Capacity).
- 10.7.2 The Partner shall provide Personnel and Council Staff with relevant, appropriate internal training and development and run change management workshops as described in **clauses 13A** (The Programme and Performance Delivery Support Unit) and **18** (People, Resource and Business Capacity).
- 10.7.3 The Partner shall use reasonable endeavours to accommodate any under utilisation in the HTP Service by offering secondments and consultancy in the Partner's wider business.

10.8 **System**

As part of the Partnership ICT, the Partner shall provide the Partnership ICT and related services to support the HTP Service in accordance with **Schedule 8** (ICT).

11. **ASSET MANAGEMENT SERVICE**

11.1 **Definition**

11.1.1 The Partner shall provide an Asset Management Service which will be a cohesive service which is aligned with and which will deliver the Council's asset management objectives. This will be achieved through combining the existing corporate asset management, facilities management, estates and valuations and building surveying teams and transforming these into one integrated service group to meet the Council's Objectives.

11.2 **Scope and Structure**

11.2.1 The Asset Management Service is the custodian of the Council's property assets. The Asset Management Service plans and delivers services to strategically manage the economic, efficient and effective whole-life utilisation of the Council's property portfolio, which includes commercial and operational property, business centres, markets, individual schools, the Council's capital programme and the assets of Third Parties, such as the Care Trust Plus to support delivery of the Council's corporate and service priorities.

11.2.2 The Partner shall deliver the Asset Management Service through four teams:

11.2.2.1 Facilities Management Team;

11.2.2.2 Corporate Asset Management Team;

11.2.2.3 Estates and Valuations Team; and

11.2.2.4 Building Surveying Team,

who shall undertake the functions described in **Schedule 29** (Asset Management Services).

11.2.3 The Partner shall manage the Asset Management Service through a Head of Asset Management.

11.2.4 The Partner shall (in line with **clause 24** (Partner's Plans and Performance Reviews) work with the Council to:

11.2.4.1 review the budget allocated to the Asset Management Service on an annual basis;

11.2.4.2 prioritise spending taking account of the Corporate Asset Management Plan (CAMP), capital programme plan, development plan, this Agreement, other elements of the Asset Management Service, the Annual Service Development Plan and the Council's wider objectives;

11.2.4.3 provide to the Council a recommended approach and options for delivering a service which offers Value for Money within the Council's affordability envelope;

11.2.4.4 support and advise the Council on the business, budget planning and resource allocation process; and

11.2.4.5 implement the agreed outcome of the business, budget planning and resource allocation process.

11.3 **Outcomes/Standards**

In delivering the Asset Management Service, the Partner shall deliver the following outcomes and performance standards:

Service Quality and Value for Money

11.3.1 improve the Council's management of its property assets in order to improve its rating for Asset Management under the annual Use of Resources judgement;

11.3.2 improve the utilisation, quality and suitability of Council office accommodation by delivering, on behalf of the Council, a programme of rationalisation;

Economic Development

- 11.3.3 maintain the average occupation rates through the effective marketing and letting of units in Council owned Business Centres, industrial units and markets;

Physical Regeneration

- 11.3.4 deliver an improved accommodation stock for the Council; and
- 11.3.5 improve the suitability of Council Buildings for delivering high quality Services.

Safe and Secure Communities

- 11.3A In delivering the Asset Management Service, the Partner shall align its delivery with the following Outcomes:
 - 11.3A.1 provide better public service provision by improved property and co-location services;
 - 11.3A.2 achieve a safe, secure and sustainable working environment for Council staff, residents and service users;
 - 11.3A.3 subject to **clause 21** (Due Diligence, Transition and Implementation), ensure compliance with the Disability Discrimination Act for the remainder of the Term; and
 - 11.3A.4 reduce the number of incidents of vandalism and/or theft recorded on Council owned or managed premises.

11.4 90 Day Plan

Pursuant to **clause 9.4** (90 Day Plan), the Partner shall within ninety (90) days from the Service Commencement Date complete the following actions:

- 11.4.1 review the Council's property database as at the Service Commencement Date;
- 11.4.2 review the current Corporate Asset Management Plan and key deliverables from a whole-life perspective;
- 11.4.3 produce a gap analysis between Corporate Asset Plan and the draft Regeneration Framework;

- 11.4.4 review the capital investment programme; and
- 11.4.5 undertake departmental audit to understand the quality of existing service provision and identify any gaps and issue audit report for discussion with the Council,

as further described in **Schedule 29** (Asset Management Services).

11.5 **Corporate Asset Management**

The Partner shall be responsible for delivering the following in relation to the Asset Management Service:

- 11.5.1 reviewing the medium to long term vision for the property portfolio for statutory compliance, alignment with the Regeneration Framework, and alignment with the Council's Objectives and appropriate and relevant Third Parties objectives and produce a comprehensive and detailed Corporate Asset Management Plan to the Council for consideration;
- 11.5.2 managing the delivery of the Corporate Asset Management Plan in accordance with all agreed timescales and budget constraints;
- 11.5.3 reviewing and updating the Corporate Asset Management Plan;
- 11.5.4 ensuring that Personnel (and where appropriate in the context of the delivery of the Services, Council Staff) receive appropriate training through workshops, training, written guidance from the Partner and its partners;
- 11.5.5 undertaking a 'health check' of current processes against Best Industry Practice and provide a comprehensive and detailed report to the Council on the same;
- 11.5.6 fulfilling the Council's statutory and non-statutory obligations in relation to Corporate Asset Management;
- 11.5.7 the coordination of the CAMP with the Regeneration Framework to align with the Outcomes set out at **clause 11.3** (Outcomes/Standards);
- 11.5.8 improved delivery of community objectives through the more effective use of property;
- 11.5.9 supporting the long-term value of the Council's assets through the delivery of the CAMP, working together with the Council and Third Parties, including:

- 11.5.9.1 tenants;
 - 11.5.9.2 landlords (for *example* Associated British Ports (ABP)); and
 - 11.5.9.3 external stakeholders, for example, Housing Associations, developers, Yorkshire Forward, Care Trust Plus, Shoreline and Local Strategic Partnerships;
 - 11.5.10 providing input to design and construction in relation to Strategic Projects, capital investment and architectural and design services;
 - 11.5.11 advising on sustainability and energy; and
 - 11.5.12 ensuring disposals/purchases are compliant with business case objectives including (where appropriate):
 - 11.5.12.1 maximising the value to the community of property and land disposals and purchases; and
 - 11.5.12.2 releasing capital for reinvestment or debt reduction;
 - 11.5.13 ensure compliance with the security incident management policy (as approved by the Council) by the end of Year 3,
- as further described in **Schedule 29** (Asset Management Services).

11.6 **Facilities Management**

The Partner shall be responsible for delivering the following in relation to the Asset Management Service:

- 11.6.1 providing an integrated facilities management service which delivers the service to the Service Levels set out in **Schedule 29** (Asset Management Services);
- 11.6.2 providing an FM Service Desk which delivers the service to the Service Levels set out in **Schedule 29** (Asset Management Services);
- 11.6.3 applying Best Industry Practice process management tools to deliver process improvement;
- 11.6.4 fulfilling the Council's statutory and non-statutory obligations in relation to facilities management;
- 11.6.5 management of the maintenance and operation of assets comprised in the Council's property database;
- 11.6.6 monitoring and measuring energy use;

- 11.6.7 carry out an awareness campaign to increase the level of understanding of Council staff as to their impact on energy and utility consumption in relation to the Council Premises; and
 - 11.6.8 managing backlog maintenance and prioritising future expenditure resulting in a shift from reactive to planned maintenance,
 - 11.6.9 introducing a Security Control Centre (SCC),
- as further described in **Schedule 29** (Asset Management Services).

11.7 **Estates and Valuation**

The Partner shall be responsible for delivering the following in relation to the Asset Management Service:

- 11.7.1 providing a comprehensive consultancy, valuation, property acquisition and disposal and commercial management service;
- 11.7.2 reviewing the robustness and accuracy of the Terrier information and produce a comprehensive and detailed report for the Council on the same;
- 11.7.3 providing professional property advice in relation to Strategic Projects, and by identifying improved sites and premises for small and medium sized businesses;
- 11.7.4 fulfilling the Council's statutory and non-statutory obligations in relation to estates and valuation service;
- 11.7.5 the effective management of the Council's business centres to promote sustained economic growth, including balancing maximising revenue with increased occupational rate and wider economic regeneration issues;
- 11.7.6 identifying incubator and other specialist units and managing usage in an appropriate manner;
- 11.7.7 the management and implementation of purchase/disposal of property related assets (land/buildings); and
- 11.7.8 in respect of properties not owned by the Council, act on behalf of the Council in relation to rent and lease negotiations,

as further described in **Schedule 29** (Asset Management Services).

11.8 **Building Surveying**

The Partner shall be responsible for delivering the following in relation to the Asset Management Service:

- 11.8.1 providing a customer-focussed, timely and responsive service for planned and reactive maintenance work on Council properties;
- 11.8.2 being the primary point of contact with end users and members of the public;
- 11.8.3 providing customer care training to members of the Building Surveying Team; and
- 11.8.4 fulfilling obligations in relation to building surveying and undertaking condition surveys of approximately twenty (20%) percent of all assets in the Council's property database each Year ensuring all are surveyed once every five (5) Years,

as further described in **Schedule 29** (Asset Management Services).

11.9 **Staff**

- 11.9.1 The Partner shall utilise the project and performance management specialists appointed pursuant to **clause 18** (People, Resource and Business Capacity)
- 11.9.2 The Partner shall support the Asset Management Service through the provision of additional capacity and resource in the short term through the operation of **clause 28.5** (Volume Management) and shall enhance the capability of the service through the recruitment, training and professional development of Personnel and Council Staff as described in **clauses 13A** (The Programme and Performance Delivery Support Unit) and **18** (People, Resource and Business Capacity).

11.10 **System**

- 11.10.1 The Partner shall review, manage and update the Council's asset management database and actively manage the assets in the Council's property database.
- 11.10.2 The Partner shall invest in the development of the Council's systems by undertaking:
 - 11.10.2.1 asset verification and data capture;
 - 11.10.2.2 trend analysis; and
 - 11.10.2.3 integration with other systems,

as appropriate in the context of the delivery of the Asset Management Service.

11.10.3 The Partner shall introduce and implement the following industry leading system during the Term in the event and to the extent that the parties agree in writing (acting reasonably) that the Council's existing works order management system is unsuitable for use in delivery of the Asset Management Service:

11.10.3.1 Maximo - a works order management system for property services.

12. **ARCHITECTURAL SERVICE**

12.1 **Definition**

12.1.1 The Partner shall provide an Architectural Service which will be a cohesive service and which is aligned with and which delivers high quality professional conceptual design and management services for the Area's community including: Architecture, Structural Engineers, Building Services Engineers, Project Management, Clerks of Works and CDM Coordinators.

12.1.2 The Architectural Service will:

12.1.2.1 contribute to the transformation of the Area through creative input, conceptualisation and advisory services in relation to design projects; and

12.1.2.2 create innovative design solutions that will help define a high quality built environment to attract investment and deliver the Council's social and economic outcomes.

12.1.3 The Partner will act as provider, procurer and advisor in relation to the Architectural Service as detailed in **Schedule 30** (Architectural Services).

12.2 **Scope and Structure**

12.2.1 The Partner shall provide a design service from concept design stage, through to full design, to completion of the projects.

12.2.2 The Partner shall manage the Architectural Service through a Head of Architectural Services.

12.2.3 The Architectural Services Team shall provide:

- 12.2.3.1 Architectural design;
 - 12.2.3.2 Mechanical and Electrical;
 - 12.2.3.3 Clerk of Works;
 - 12.2.3.4 Energy Management & Sustainable design;
 - 12.2.3.5 Visioning and concept options; and
 - 12.2.3.6 Community and stakeholder consultation,
- each as more particularly set out in **Schedule 30** (Architectural Services).

12.2.4 The Partner shall provide a strategic, managerial and operational approach to the delivery of the Architectural Service.

12.2.5 The Partner shall (in line with **clause 24** (Partner's Plans and Performance Reviews)) work with the Council to:

- 12.2.5.1 review the budget allocated to the Architectural Service on an annual basis;
- 12.2.5.2 prioritise spending taking account of the CAMP, the capital programme, the Council Plan, other elements of the Architectural Service, the Annual Service Development Plan and the Council's wider objectives;
- 12.2.5.3 provide to the Council a recommended approach and options for delivering a service which offers best Value for Money within the Council's affordability envelope;
- 12.2.5.4 support and advise the Council on the business, budget planning and resource allocation process; and
- 12.2.5.5 implement the agreed outcome of the business, budget planning and resource allocation process.

12.3 **Outcomes / Standards**

In delivering the Architectural Service, the Partner shall deliver the following outcomes and performance standards:

Service Quality and Value for Money

- 12.3.1 improving the programme and project management within the Architectural Service so that a higher proportion of projects are delivered on time and on budget; and

Safe and Secure Communities

- 12.3.2 ensure that eligible major design projects are accredited through the Secure by Design process by the end of Year 3 and this process is maintained for the remainder of the Term.

12.4 **90 day plan**

Pursuant to **clause 9.4** (90 Day Plan), the Partner shall within ninety (90) days from the Service Commencement Date complete the following actions:

- 12.4.1 assess current skills levels and experience within the Transferring Employees, define delegated powers and the need for resource and services in addition to that available from the Transferring Employees;
- 12.4.2 following the evaluation set out in **clause 12.4.1** (90 Day Plan), develop a training plan for the Transferring Employees, in consultation with the Council;
- 12.4.3 develop an implementation plan for delivering the Architectural Services in consultation with the Council;
- 12.4.4 review the capital investment programme for the next twelve (12) months to ensure resources are aligned to the anticipated workload;
- 12.4.5 undertake a departmental audit to understand the quality of existing service provisions and identify any gaps; and
- 12.4.6 submit the report from the audit undertaken pursuant to **clause 12.4.5** (90 Day Plan) to the Council for review and discussion,

as further described in **Schedule 30** (Architectural Services).

12.5 **Architectural Service**

The Partner shall be responsible for delivering the following in relation to the Architectural Service:

- 12.5.1 producing design information, including drawings, sketches, schematics, reports, audits in accordance with Royal Institute of British Architects schedule of services;
- 12.5.2 carrying out multi disciplined design services - encompassing the following expertise:

- 12.5.2.1 Architectural;
- 12.5.2.2 Structural Engineering;
- 12.5.2.3 Building Services Engineering;
- 12.5.2.4 Project Management;
- 12.5.2.5 Clerks of Works; and
- 12.5.2.6 Construction (Design and Management) coordination;
- 12.5.3 attracting high quality staff and enhancing the skill base through targeted training as identified in ongoing training assessments;
- 12.5.4 accessing other professionals through a structured programme, to share best practice and develop skills and competencies, and using these for the benefit of the Council;
- 12.5.5 using design standardisation, design buildability and readily available resources (cost-benchmarking) to enable effective procurement;
- 12.5.6 providing options for design projects that are based on consultation, in order to reflect the needs of users and embrace the vision and values of the Area;
- 12.5.7 providing a broader business base to assist in managing any temporary increases or reductions in workflow by redeploying resources;
- 12.5.8 complying with the standards established by the architects professional and technical bodies which include RIBA, IOB, ICE and IME;
- 12.5.9 fulfilling the Council's statutory and non-statutory obligations in relation to the Architectural Service;
- 12.5.10 providing Construction (Design and Management) and Health and Safety advice;
- 12.5.11 complying with the requirements of the Council's insurance policies;
- 12.5.12 providing professional advice including design (studies, options, concepts), risk profiling, costings, energy studies;
- 12.5.13 designing sustainable buildings that minimise carbon emissions and mitigate against environmental impact;
- 12.5.14 developing the capacity of the design service by enhancing team members' capabilities through structured training programme;

- 12.5.15 carrying out on site compliance/quality inspections;
- 12.5.16 carrying out all construction-related project management;
- 12.5.17 carrying out external consultation (planning and ad-hoc) to enhance knowledge and profile including public consultation, work with professional bodies and attending or contributing to conferences and seminars;
- 12.5.18 managing or delivering design solutions that enhance public spaces through attractive, safe landscaping and recreational space and increasing opportunities for public and community use;
- 12.5.19 delivering design services to the Council and Third Parties reflecting the Partner and its Partner Parties available capacity and the capability of the personnel (provided always that where there is a conflict in demands the Council's demands take priority);
- 12.5.20 promoting inward investment through quality of design, sustainability and alignment with and support of the wider objectives of renaissance; and
- 12.5.21 working with departments within the Council and Third Parties, including:
 - 12.5.21.1 other departments within the Council for example, health, education, leisure, building control and planning;
 - 12.5.21.2 Project Sponsor/end user;
 - 12.5.21.3 landlords, for example, Associated British Ports ("ABP");
 - 12.5.21.4 external stakeholders, including Housing Associations;
 - 12.5.21.5 Third Parties with whom the Council has statutory relationships, for example, the Fire Service, Environment Agency, English Heritage; and
 - 12.5.21.6 external sources of Funding,

as further described in **Schedule 30** (Architectural Services).

12.6 **Staff**

- 12.6.1 The Partner shall utilise the project and performance management specialists appointed pursuant to **clause 18** (People, Resource and Business Capacity).

12.6.2 The Partner shall support the Architectural Service through the provision of additional capacity and resource in the short term through the operation of **clause 28.5** (Volume Management) and shall enhance the capability of the service through the recruitment, training and professional development of Personnel and Council Staff as described in **clauses 13A** (The Programme and Performance Delivery Support Unit) and **18** (People, Resource and Business Capacity).

12.6.3 The Partner shall bring Best Industry Practice to the Area from professional staff within its business with a local authority knowledge and background.

12.7 **System**

12.7.1 As part of the Partnership ICT, the Partner shall introduce and implement an energy modelling tool.

13A. **THE PROGRAMME AND PERFORMANCE DELIVERY SUPPORT UNIT**

13A.1 As part of its satisfaction of its obligations in respect of the Services, the Partner shall establish, develop and maintain over the Term (so far as is necessary and appropriate and subject to review as part of the activities envisaged by **clause 24.2** (Service Development Plans) and **24.3** (Annual Budget Setting)) the delivery unit. The delivery unit shall comprise such experts and operational managers drawn from the Services or introduced in addition to the cohort of staff within the Services as shall be required from time to time to:

- (a) provide support and direction to the Service delivery streams in a consistent and focussed manner, facilitating the prescribed outcomes to be achieved;
- (b) provide support and direction and to act as a catalyst in relation to business change and transformation during Transition and as and when required through the Term;
- (c) provide support to performance management to ensure that required service standards are being met;
- (d) work with service teams, develop, modify / adapt strategies to deliver the prescribed outcomes;
- (e) provide support and direction to the Services or components of the Services as required to address any performance or operational shortfalls in relation to service delivery; and

- (f) provide support and direction to the Services to drive cost reductions and improve Value for Money.

The Partner shall keep the Council informed of the activities and composition of the delivery unit which shall at all times operate without derogation from the obligations of the Partner to provide the Services in accordance with the Service Levels.

13. **MANAGED CONTRACTS**

13.0.1 Within fifteen (15) Business Days from the Commencement Date ("Managed Contracts Supply Deadline"), the Council shall supply full copies of all Managed Contracts referred to in Part 2 tab 2 of Schedule 19 (Transferring Agreements) ("Copy Managed Contracts").

13.0.2 The Partner shall review the Copy Managed Contracts and report to the Council within twenty (20) Business Days following the Managed Contracts Supply Deadline as follows in respect of each such Managed Contract supplied by the Council:-

13.0.2.1 whether the Partner is able to discharge the obligations of the Council as set out in the Copy Managed Contracts or not and where it is not able, the Partner shall provide reasonably detailed reasons as to why it cannot and to the extent it is practicable, provide alternative suggestions that could be accepted by the Council (acting reasonably) so as to enable the Partner to assume responsibility for such Managed Contracts. The Partner shall only be entitled to raise issues in this clause 13.0.2.1 where the Partner would not be able to comply with the terms of the Managed Contracts; and

13.0.2.2 whether the Partner is able to discharge the obligations of the Council in accordance with clause 13.0.2.1 but some of the provisions of clause 13.2 (Managed Contracts) cannot be complied with due to the terms of the Managed Contracts and to the extent that they cannot, the Partner shall supply any relevant alternative suggestions that may be practicable,

("Managed Contracts Report").

13.0.3 The Council shall review the Managed Contracts Report and confirm to the Partner within ten (10) Business Days of receipt of the Managed Contracts Report whether it (acting reasonably) accepts or disputes any of the contents of such report. In the case of a dispute, detailed written reasons and any relevant alternative proposals shall be provided by the Council. If the parties fail to agree within five (5) Business Days on any disputed matters then the matter

shall be subject to the Dispute Resolution Process where it shall be determined on the basis of the evidence provided whether (i) the Partner can manage such Managed Contract(s) on the basis set out in this **clause 13** (Managed Contracts); or (ii) that the Council shall retain such Managed Contract(s) in which case the Partner shall provide advice to the Council in accordance with **clause 6.7** (Advice) to enable the Council to fulfil its obligations in respect of such Managed Contracts. During any DRP, under this clause 13.0.3, the Council shall retain responsibility and the budget for the Managed Contract(s) subject to the DRP and the Partner shall provide advice to the Council in accordance with **clause 6.7** (Advice) to enable the Council to fulfil its obligations in respect of such Managed Contracts.

- 13.0.4 Where in respect of a Managed Contract the Partner has confirmed that it is able to discharge the obligations of the Council in the Managed Contract Report (either with or without amendments pursuant to clause 13.0.2.2 (Managed Contracts)) or where it cannot but it has provided an alternative suggestion which is acceptable to the Council (acting reasonably) in accordance with clause 13.0.2.2 (Managed Contracts), the Partner shall take on responsibility for such Managed Contract in accordance with the remainder of this **clause 13** (Managed Contracts).
- 13.0.5 In the event that the Council fails to provide a copy of the Managed Contract in accordance with the provisions of **clause 13.0.1** or provide details of one that was not included in part 2 of tab 2 of **Schedule 19** (Transferring Agreements) then unless the Partner agrees otherwise it shall not be obliged to assume responsibility for such Managed Contract in accordance with this **clause 13** (Managed Contracts).
- 13.1 As part of the Services the Partner shall manage the Managed Contracts in accordance with this **clause 13** (Managed Contracts) as agent of the Council.
- 13.2 Subject to **clause 13.0** (Managed Contracts) and **clause 13.5** (Managed Contracts), the Partner's obligations and responsibilities to the Council in respect of Managed Contracts shall be to:-
- 13.2.1 obtain any performance management information on the performance by the Third Party to the Managed Contract (a "**Managed Supplier**") in accordance with the terms of the relevant Managed Contract or if there are no such terms (insofar as it is reasonably able), obtain a reasonable amount of performance management information, to a reasonable level of detail, and forward the same to the Council;
- 13.2.2 otherwise report in writing and at monthly intervals to the Council in relation to matters of performance;

- 13.2.3 provide instruction on behalf of the Council to the Managed Supplier in relation to the performance of the relevant Managed Contract;
 - 13.2.4 subject to **clause 13.7** (Managed Contracts), discharge the Council's obligations under the Managed Contract in accordance with the Delegation Protocol;
 - 13.2.5 advise the Council of any defaults and claims arising under the Managed Contract by either the Partner (on behalf of the Council) or the Managed Supplier;
 - 13.2.6 notify the Council of any proposed adjustments to the price payable under the Managed Contract but, for the avoidance of doubt, the Partner shall not have any authority to re-negotiate or agree prices without the Council's prior written consent; and
 - 13.2.7 verify the completeness and accuracy of all details on all invoices relating to Managed Contracts (including that the relevant goods/services have been received, that service levels have been met, deductions made (where applicable), the price is correct, the VAT is correct). If any details are not complete and accurate the Partner shall obtain a revised valid invoice from the relevant Managed Supplier. The Partner shall ensure that all invoices received by it relating to Managed Contracts are passed to the Council as soon as possible and in any event within five (5) Business Days of receipt of a properly submitted invoice. The Council shall be responsible for paying all such invoices directly to the Managed Supplier in accordance with the Managed Contract. The Partner's costs of verifying such invoices are, for the avoidance of doubt, part of the Periodic Payment and the Partner shall not be entitled to any further sums in respect of such verification.
- 13.3 Subject to **clauses 13.0 and 13.5** (Managed Contracts), the Partner's obligations and responsibilities to the Council in respect of: (i) the re-negotiation of any Managed Contract which exists at the Commencement Date and (ii) any proposed contracts that the parties agree will be treated as Managed Contracts, shall be to:
- 13.3.1 procure or renegotiate the contract in accordance with the Council's procurement strategy, the Council's constitution and **clause 6.9** (Procurement Support);
 - 13.3.2 procure or renegotiate the contract (and in renegotiating it is acknowledged that this is in the context of the current Managed Contract (as it has been negotiated by the Council)) in a manner which contributes to the realisation of the Outcomes, outputs and performance improvements set out in this Agreement and to achieve

for the Council in relation to the services which are the subject of the Managed Contract VFM and Best Value;

- 13.3.3 provide the Council with a draft of any proposed or re-negotiated Managed Contract which is commensurate to the scale and nature of the contract to be awarded and includes an effective performance regime, effective governance protocols, effective management of liability and effective termination provisions for approval by the Council and, where the Council requests (acting reasonably) that changes are made to such draft, use reasonable endeavours to agree such a change with the relevant Third Party;
 - 13.3.4 procure or re-negotiate a contract which is based upon the form approved by the Council above or using an accepted industry standard contract such as JCT for construction works; and
 - 13.3.5 verify the completeness and accuracy of all details on all invoices relating to Managed Contracts (including that the relevant goods/services have been received, that service levels have been met, deductions made (where applicable), the price is correct, the VAT is correct etc). If any details are not complete and accurate the Partner shall obtain a revised and valid invoice from the relevant Managed Supplier. The Partner shall ensure that all invoices received by it relating to Managed Contracts are passed to the Council as soon as possible and in any event within five (5) Business Days of receipt of a properly submitted invoice. The Council shall be responsible for discharging all such invoices directly to the Managed Supplier in accordance with the Managed Contract. The Partner's costs of verifying such invoices shall, for the avoidance of doubt, form part of the Periodic Payment and the Partner shall not be entitled to any further sums in respect of such verification.
- 13.4 The Partner shall not terminate or otherwise amend a Managed Contract or enter into any new or replacement Managed Contract without the prior written consent of the Council.
- 13.5 The Partner may suggest, in order for the Council to achieve VFM and Best Value, that the proposed contracts which the parties agree pursuant to **clause 13.3** (Managed Contracts) are to be treated as Managed Contracts and which are within the scope of this Partnership can be novated to the Partner or the Partner may otherwise perform the services which are the subject of the Managed Contract itself. Upon expiry of the Council's Cleaning Contract (referred to in Part 2, tab 2 of **Schedule 19** (Transferring Agreements)), the Partner may choose to self deliver the Cleaning Contract (or services substantially similar thereto) with the Council's prior written consent (such consent not to be

unreasonably withheld). The Partner's proposal in this regard shall be dealt with as an Unscoped Change and the process set out in **clause 28.4** (Unscoped Change Process) and **Schedule 5** (Change Control) shall apply. For the avoidance of doubt, the proposal made by the Partner shall include any costs to be incurred (including transferring pension costs relating to the Transferring Original Employees) and how the proposal achieves VFM and Best Value.

13.6 The Council shall, in advance of the Commencement Date, notify each Managed Supplier of the fact that the Partner will be managing its contract.

13.7 Subject always to **clause 48.5.4** (Liability of the Parties), the Council shall on demand indemnify the Partner for Direct Losses which the Partner suffers or incurs which arise from the Partner's actions as agent of the Council pursuant to this **clause 13** (Managed Contracts) provided that the Council shall not indemnify the Partner for any such losses to the extent that the Partner is in breach of its obligations pursuant to this **clause 13** (Managed Contracts), the Partner has acted outside or in a manner inconsistent with or contrary to its delegated authority under this Agreement or any of the circumstances set out in **clause 48.5.1** (Liability of the Parties) apply.

13.8 Subject always to **clause 48.5.3** (Liability of the Parties), the Partner shall indemnify the Council for Direct Losses which the Council suffers which arise from the Partner's actions pursuant to this **clause 13** (Managed Contracts) which are outside the scope of the authority provided to the Partner by the Council provided that the Partner shall not indemnify the Council for any such losses in any of the circumstances set out in **clause 48.5.1** (Liability of the Parties).

13.9 For the avoidance of doubt the procurement activity referred to in this **clause 13** (Managed Contracts) shall be undertaken within the Contract Price and shall not fall within the procurement activity referred to in **clause 19** (Projects).

14. **ICT**

14.1 The Partner shall:

14.1.1 provide the Partnership ICT and perform its obligations in respect thereof as set out in this **clause 14** (ICT) and in **Schedule 8** (ICT);

14.1.2 provide and use the Partnership ICT (amongst other things) in order to achieve delivery of the Services in accordance with the Partner's obligations under this Agreement;

14.1.3 ensure it provides the Partnership ICT in an organised and efficient manner utilising an ICT manager and service delivery team who will manage the efficient operation of the Partnership ICT and work with

the Council's ICT representatives to ensure all Partnership ICT activities are integrated as far as is necessary with the Council's wider plans and processes;

- 14.1.4 design, procure, provide, install and implement the Partnership ICT as necessary (and any additional Partnership ICT if required as part of a Project or Change in accordance with the further terms agreed in writing between the Council and the Partner);
- 14.1.5 licences the Partnership ICT to the Council on the terms set out herein and shall ensure that such licences are sufficient for the Council to have all necessary rights to access and use the Partnership ICT during the Term and for the period set out in clause **56.14** (Continuation of Services). Such licence shall extend to Council Parties who share the Services with the Council, auditors or Regulatory Bodies who need to access the same for investigations or audits and other Third Parties who provide services to the Council which require that they have direct access to the data stored on or generated by the Partnership ICT provided that in the case of Third Parties, the Council should notify the Partner in advance and they will act reasonably in consenting;
- 14.1.6 manage, maintain, support and upgrade the Partnership ICT to ensure continued delivery of the Services in accordance with this Agreement and as may be agreed in writing by the parties from time to time; and
- 14.1.7 ensure that all Partnership ICT provided by the Partner from time to time shall comply, and shall continue to comply, with all applicable Laws, recognised codes of practice and standards relating thereto.

14.2 **Implementation**

- 14.2.1 The Partner shall consult with the Council as to Implementation where such Implementation may have an impact on the Council.
- 14.2.2 The Partner shall perform such Implementation in accordance with and by the dates specified in the relevant Transition Plan and, without prejudice to the foregoing, will achieve each Milestone by the relevant Milestone Date to the extent that Milestones are specified in Transition Plans from time to time.
- 14.2.3 All Implementation required to be carried out will be managed and undertaken by the Partner in accordance with:-
 - 14.2.3.1 any Laws and any relevant codes of practice or standards relating thereto;

14.2.3.2 any technical standards for equipment and Cabling as specified by the Council acting reasonably from time to time; and

14.2.3.3 any applicable Service Levels and any other relevant provisions of this Agreement.

14.2.4 In carrying out any Implementation from time to time the Partner shall forthwith make good any damage caused to the Council ICT Environment or any Council Premises by such Implementation.

14.3 **Interfaces and Integration**

14.3.1 The Partner shall ensure that the Partnership ICT operates in conjunction with the relevant parts of the Council ICT Environment as necessary to enable delivery of the Services as described in **Schedule 8** (ICT).

14.3.2 The Partner shall maintain and where necessary upgrade any interfaces and integration provided by or on behalf of the Partner pursuant to this **clause 14.3** (Interfaces and Integration). This shall include maintenance and upgrades to interfaces and integration as necessary as a result of any changes to the Council ICT Environment which are notified by the Council to the Partner.

14.4 **Partner Architecture**

The Partner shall create a detailed and comprehensive written and graphical expression of the architecture of the Partnership ICT and shall ensure that it is kept up to date. The Partner shall provide to the Council on request a copy of the then current expression of such architecture.

14.5 **Support and Maintenance**

14.5.1 The Partner shall provide support and maintenance in relation to the Partnership ICT during the Term (and for the period set out in **clause 56.14** (Continuation of Services) as necessary to enable the proper provision of the Services and, without prejudice to the foregoing:-

14.5.1.1 the Partner shall provide access to a help desk facility for users of Partnership ICT (including members of the Council's ICT service desk) for notification of, response to and resolution of Partnership ICT issues and which utilises appropriate technology and automation tools;

14.5.1.2 the help desk facility shall track the status of incidents reported, co-ordinate fixes, escalate incidents where

necessary and resolve all incidents regarding Partnership ICT to the satisfaction of the user;

14.5.1.3 the Partner shall notify the Council of the contact details for the help desk from time to time;

14.5.1.4 the Partner shall ensure that the help desk is manned by appropriately qualified support personnel;

14.5.1.5 the Partner shall ensure that maintenance is undertaken in accordance with paragraph 5 of **Schedule 8** (ICT) and shall ensure that:

(a) that all maintenance (whether ongoing, scheduled maintenance or non-scheduled, emergency maintenance) and support does not interrupt or adversely impact on the performance of the Services; and

(b) in respect of ongoing or scheduled maintenance and support, such maintenance and support does not interrupt or adversely impact on the availability, performance and operation of the Council ICT Environment.

14.5.2 The Council and the Partner shall agree, acting reasonably and in good faith, who shall have responsibility for resolving each incident relating to Partnership ICT which arises, on the following basis:

14.5.2.1 the Partner shall be responsible for resolving each incident reported to its help desk, or of which it otherwise becomes aware, to the extent that the incident is caused by or impacts on the Partnership ICT. The Partner shall keep the Council's service desk updated on the progress and resolution of all such incidents; and

14.5.2.2 the Council shall be responsible for resolving incidents arising out of the Council ICT.

14.6 **Partnership Protocol**

14.6.1 The Partner and the Council shall work co-operatively and openly in notifying each other of changes to each party's ICT environment and to ensure that each party is able to maintain interfaces and/or integration between the Partner ICT Environment and the Council ICT Environment as a result of such changes.

14.6.2 Each party shall control its respective ICT environments.

- 14.6.3 The parties shall notify each other in writing in reasonable time prior to making any change which may affect the other party's ICT environment (Partner ICT Environment or Council ICT Environment as the case may be).
- 14.6.4 The parties shall minimise any interference or impact with the functionality or performance of the other party's ICT environment (Partner ICT Environment or Council/ICT Environment as the case may be).
- 14.6.5 The Partner shall use reasonable endeavours to optimise any ICT solutions provided as part of Changes or Projects so as to minimise the requirement for additional band width capacity of the Network or additional Council server capacity.
- 14.6.6 The Partner and the Council shall act in good faith and co-operate with the other party's reasonable requests for information in connection with the Council ICT Environment or Partner ICT Environment (as the case may be).

14.7 **ICT Advice**

As part of the Services, the Partner shall provide to the Council strategic and technical advice regarding Partnership ICT as reasonably required by the Council.

14.8 **Data Management**

The Partner shall at all times have regard to the provisions of **clause 21.4** (Use of Records and Data).

14.9 **Documentation**

14.9.1 The Partner shall ensure that the Council shall at all times be supplied with relevant manuals (including technical, integration and user manuals) and technical and configuration information in such quantity and format (whether electronically or in paper format) as the Council may reasonably require from time to time in connection with the Partnership ICT.

14.9.2 The Partner shall ensure that the manuals and information provided pursuant to **clause 14.9.1** (Documentation) and the training manuals provided pursuant to **clause 14.10** (Training) (together "the Manuals") shall:-

- 14.9.2.1 contain sufficient information (in an appropriate level of detail) to enable the Council to make full and proper use

and enjoyment of the Partnership ICT during the Term and for the period set out in **clause 56.14** (Continuation of Services);

14.9.2.2 be coherent, comprehensive and self-contained and capable of full and proper use without reference to any further documentation;

14.9.2.3 be and shall remain at all times accurate and up to date in all respects; and

14.9.2.4 be clear and user friendly both in terms of content and format.

14.9.3 The Partner shall grant or procure the grant of licences for the use by the Council of the Manuals, such licences to be sufficient in their terms to permit the full and proper use by the Council of the Manuals in conjunction with the use and operation of the Partnership ICT during the Term and for the period set out in **clause 56.14** (Continuation of Services) and the performance of the Services as anticipated by this Agreement.

14.10 **Training**

The Partner shall provide training to Council Staff on the use of the Partnership ICT as reasonably required by the Council.

14.11 **Malicious Software**

The Partner shall at all times have regard to the provisions of **clause 21.4** (Use of Records and Data).

14.12 **Partner's use of Council ICT**

14.12.1 The Council hereby grants a licence to the Partner during the Term to access and use the Council ICT Environment as necessary to Implement and provide the Partnership ICT and as part of it receiving the Council Supplied Services. The Partner shall be responsible for maintaining the necessary ICT, interfaces and integration to enable the Partner to access and use the Council ICT Environment necessary to implement and provide the Partnership ICT as permitted as part of the Council Supplied Services.

14.12.2 Whenever accessing and using the Council ICT Environment the Partner shall comply and ensure that the Personnel comply with (a) the Council's ICT policies, data security, data processing and data quality policies, IT access and usage requirements and other applicable

policies and procedures each contained in **Schedule 12** (Policies, Plans and Strategies) and all updated and notified to the Partner from time to time pursuant to **clause 76** (Laws, Policies and Related Matters); and (b) any third party terms and conditions or policies which apply to any device, web portal, remote desktop or other ICT that is used to access the Council ICT Environment from time to time copies of which are contained within **Schedule 12** (Policies, Plans and Strategies).

14.12.3 The Council gives no warranty as to the condition, fitness for purpose or state of the Council ICT Environment, including in each case, the nature or manner of the installation or operation of Council ICT, or the suitability or otherwise of their environment.

14.12.4 The Council shall at all times during the Term procure that the Partner shall be entitled to access the Council ICT Environment in accordance with the terms of the service catalogue contained in **Schedule 8** (ICT) and shall ensure that its licences in respect of the Council ICT are sufficient for the Partner to use the Council ICT Environment during the Term.

14.13 **Exit**

On expiry or termination of this Agreement, the Partner shall comply with **clause 56** (Termination and Expiry Consequences), including with respect to the return of all Council Data and other Council materials obtained by the Partner in the course of providing the Services. For the avoidance of doubt, the licences granted pursuant to this **clause 14** (ICT) shall apply during the Term and during any extension thereof in accordance with **clause 56.14** (Continuation of Services).

15. **CALL OFF SERVICES FOR STRATEGIC PROJECTS AND OTHER ACTIVITIES**

15.1 Where the delivery of the service in connection with a Strategic Project or other activity (including Change) not being a component of the Service ordinarily supplied which in the opinion of the Partner requires special additional terms, these terms shall be agreed between the parties as part of the Project or Change proposal. The agreement of these terms shall include agreeing the charges to be made for such additional services and the payment terms, in accordance with the Rate Card and provisions stated in the Financial Model for provision of services that are in addition to those contained within the Contract Price.

15.2 During the Term, the Council may procure from the Partner the services within the scope of the OJEU for this Agreement as set out in Appendix 1 to **Schedule 16** (Projects).

16. **JOINT AND SHARED WORKING**

16.1 Increasingly the Council will need to work jointly with other public bodies and public private partnerships, including local authorities, police authorities, NHS Trusts, LEPs, ALMOs, and with any other public sector, voluntary sector and private sector bodies. In providing the Services to the Council, the Partner shall facilitate such joint working and joint activities by the Council with the other public, private or voluntary sector bodies including by using shared accommodation and (where practicable) open standards technology in accordance with the obligations set out in the Agreement.

16.2 Except where the Council authorises otherwise in writing (in respect of any joint working), the Partner shall ensure that all Council data and information shall be held in files which are separate from the Partner's other customer data and information and that Council data and information is easily retrievable by the Partner on request by the Council and this shall apply to any form of working with other parties, including Shared Services.

17. **PROFIT SHARING ARRANGEMENTS**

17.1 The Partner shall be entitled to retain any Partnership Net Profit of [REDACTED]

17.2 Partnership Net Profit shall be calculated on a cumulative basis throughout the Term and recorded by the Partner and written records of the relevant data will be provided by the Partner to the Council by 30 April in each Year.

17.3 If, at any point throughout the Term, there is Excess Partnership Net Profit, this will be shared by the parties on the following basis:

[REDACTED]

[REDACTED]

17.4 The Council's share of any Excess Partnership Net Profit will at all times through the Term be recorded in a separate line within the Financial Model.

17.5 The Partner shall ensure that it is capable at all times throughout the Term when Excess Partnership Net Profit exists, to pay to the Council the Council's share of any Excess Partnership Net Profit and where payment is requested, the Partner shall reflect amounts in the subsequent Statement of Account and it shall be set off in the following invoice.

17.6 Notwithstanding **clause 17.5** (Profit Sharing Arrangements), the Council may, at any time and its sole discretion, decide that any or all of its share of the Excess Partnership Net Profit should be reinvested into the Partnership, in which case, and within a reasonable period following receipt of the Council's written request

(which request shall detail the Council's requirement in this regard), the Partner shall provide the Council with a written proposal as to how such sums would be invested within the Partnership and any additional benefit that the same would provide to the Partnership.

17.7 For the avoidance of doubt, once Excess Partnership Net Profit exists and is recorded in accordance with **clause 17.4** (Profit Sharing Arrangements), it shall be held on trust by the Partner for the Council and shall on no account be used by the Partner other than at the Council's specific written request in accordance with **clause 17.6** (Profit Sharing Arrangements).

17.8 An example of how this clause will operate is contained in **Schedule 24** (Profit Share).

18. **PEOPLE, RESOURCE AND BUSINESS CAPACITY**

18.1 The Partner shall ensure all Personnel are offered staff briefings, workshops and one to one meetings in order to ensure a smooth transition in the provision by the Partner of the Services.

18.2 The Partner shall develop and implement a communications plan for business as usual operations.

18.3 The Partner shall provide all Transferring Employees with a structured personal development plan within ninety (90) days of the Service Commencement Date.

18.4 The Partner shall finalise a structured training matrix for all Personnel within ninety (90) days of the Service Commencement Date and this training matrix will be subject to annual review.

18.5 The Partner shall, in the first year, provide ten (10) additional senior transformational managers, seven (7) of whom shall fill permanent posts for the Term and the remaining three (3) shall be the additional experienced mentors/coaches with a background in service improvement or project delivery who shall support the service delivery teams in achieving the Outcomes and Partnership objectives.

18.6 The Partner shall regularly assess the skills and ability of the Personnel and arrange training where it deems it to be appropriate.

18.7 The Partner shall provide Personnel with the opportunity to develop skills outside of the Area through secondments and training and access to peers providing similar services outside the Area.

18.8 The Partner shall commit to, as a minimum, the principles of the Council's Workforce Development Strategy, a copy of which is set out in Schedule 12 (Policies, Plans and Strategies).

- 18.9 The Partner shall encourage the sharing of best practice between all Personnel and Council Staff where operationally desirable.
- 18.10 The Partner shall operate a structured appraisal and professional development process.
- 18.11 The Partner shall achieve and maintain Investors in People status.
- 18.12 The Partner shall carry out an annual internal staff survey during the Term and share the results with the Council.

19. **PROJECTS**

19.1 **Governance of Projects**

- 19.1.1 The Partner and the Council acknowledge that the development and implementation of Projects is a key part of the Partnership. The Partner shall bring its vision, skills, experience, knowledge and ideas (from both the public sector and industry) to the Partnership and in accordance with this **clause 19** (Projects) identify project opportunities which help further the objectives of the Partnership and promote continuous improvement within the Council.
- 19.1.2 Projects may arise from any of the Partner, the Council or through proposals by the Partnership Board in accordance with **Schedule 15** (Partnership Framework) or generally from the delivery of the Partnership. Projects may be stand alone or grouped together as part of an overall programme. The Partner and the Council through the governance structures set out in **Schedule 15** (Partnership Framework) and the Council's decision making structures will contribute and participate in identifying and developing ideas for Projects, monitor progress of Projects and approve Projects. It is acknowledged that decisions of the Council in relation to Projects will be subject to statutory call in, service planning and ad-hoc call in.
- 19.1.3 Ideas for Projects shall be proposed and initially discussed at meetings of the Partnership Board. All proposals for Projects will be presented to the Partnership Board for initial review.
- 19.1.4 The parties agree that timely, active and positive co-operation is required of each of them (and that they will act accordingly) in order to develop Projects.
- 19.1.5 The parties shall agree (through the respective Partnership Directors or failing agreement, by the Partnership Board) at the idea or SBC stage as to whether a Project is a Strategic Project or a Core Project and in

each case whether the Partner is Commissioning the Project. **Schedule 16** (Projects) Part A sets out what is to be included in each Business Case in relation to a Core Project. Core Projects shall involve changes to the Core Services or additional work to the Core Services and may involve a variation to this Agreement. **Schedule 16** (Projects) Part B sets out what is to be included in each Business Case in relation to a Strategic Project. Strategic Projects shall include projects involving regeneration and/or development projects and shall not generally involve any Change to this Agreement.

- 19.1.6 The Partner shall be pro-active in proposing ideas for Projects for improvement across the whole Partnership and in relation to the Core Services and shall include a list of such ideas, once approved by the Partnership Board in accordance with **clause 19.1.8** (Governance of Projects), in the draft Service Development Plans produced to the Partnership Board pursuant to **clause 24.2.6** (Process). In addition the Partner or the Council may propose ideas for Projects at any other time during the Term by notifying the Partnership Board in writing of the nature and objectives of the Project. Notwithstanding its obligations to deliver continuous improvement under this Agreement, where the Partner believes it can enhance performance, outputs, Outcomes and or VFM through investment, it shall propose such enhancement as a Project or Change (as the case may be). **Clause 19.1.5** (Governance of Projects) and Part 1 of **Schedule 16** (Projects) contains guidance as to whether items should be treated as a Core Project or a Strategic Project.
- 19.1.7 The Partner shall include in the list produced pursuant to **clause 19.1.6** (Governance of Projects) a range of types of Projects, including (where appropriate) Projects which result in cashable savings to the Council and Projects which have other service improvement benefits.
- 19.1.8 The Partnership Board shall act as a filter for all ideas for Projects and shall:
- 19.1.8.1 decide whether a task, piece of work or activity to be dealt with as a Project or Change; and
 - 19.1.8.2 approve or reject the Partner's suggested list of ideas for Projects to be included in the draft Service Development Plan which shall be produced to the Council in accordance with **clause 24.2.1.2(d)** (Content).
- 19.1.9 Exceptionally, the Council may commission a Project outside of those included in the Service Development Plan by giving reasonable prior

written notice to the Partner of the same. The impact of such Project shall, where possible, be accommodated within and incorporated within the Service Development Plan, failing which, the Partner shall identify the impact of the incorporation of the Project within the Service Development Plan and propose to the Council such adjustment as is necessary and appropriate.

- 19.1.10 The parties acknowledge the importance of developing individual Projects within the Partnership, in order to achieve the objectives of the Partnership. The Partner shall devote sufficient Personnel, skill, Know-How and other resource to generating ideas for Projects and subject to the funding being made available in the Financial Model or the Partner being able to secure funding from external sources, developing Strategic Business Cases, Outline Business Cases, Full Business Cases, PIDs and Commissioning throughout the Term in accordance with this **clause 19** (Projects). The Partner shall develop Business Cases in accordance with Best Industry Practice using the Council's project methodology set out in **Schedule 12** (Policies, Plans and Strategies) (or such other methodology agreed between the parties) and in accordance with the provisions set out in **Schedule 16** (Projects).
- 19.1.11 The Partner shall not develop any Business Cases until the idea for the Project and the timescales for the development of each level of Business Case has been approved by the Council and included in the approved Service Development Plan.
- 19.1.12 In proposing ideas for Projects and in producing an SBC in relation to a Project, the Partner shall consider all relevant factors and where appropriate the following factors:
- 19.1.12.1 the objectives of the Partnership, as stated in the Background section to this Agreement, and in addition in the case of a Strategic Project, the wider Council context within which the proposed Strategic Project will exist;
 - 19.1.12.2 the Council's Objectives from time to time, the Council's financial and strategic plans as revised from Year to Year by the Council and the impact of the Project on the wider community within the Area in each case so far as it is aware;
 - 19.1.12.3 in relation to a Core Project and where applicable, Strategic Projects, the need to address the Council's Comprehensive Area Assessment duties (in so far as the

Partner is aware of the same) and published national government agendas including the Efficiency Programme, Public Service Agreement (PSA) targets, targets for e-government and the Comprehensive Spending Review;

- 19.1.12.4 the opportunities for joint working or shared service with other/or local authorities, health bodies and/or other public and private bodies and the ability of the Partner to share development and implementation works across a number or all of its partnerships;
 - 19.1.12.5 where appropriate, in relation to Core Projects, the previous Service Development Plan produced pursuant to **clause 24.2** (Service Development Plans) and the Performance Reviews produced pursuant to **Schedule 17** (Reporting and Review) which identify areas for improvement within the Services;
 - 19.1.12.6 relevant Laws, regulations, Guidance, standards and best practice from time to time (including policies of the United Kingdom government, the Green Book and any best practice developed in other local authorities, including "pathfinder" or equivalent authorities to the extent it is aware of the same); and
 - 19.1.12.7 the matters set out in **clause 6.1** (Services - Objectives and Outcomes) and **clause 9** (Renaissance Service).
- 19.1.13 The Partnership Board shall consider and discuss all the ideas it generates and receives for Projects in accordance with priorities developed and agreed by the Partnership Board from time to time.
- 19.1.14 Subject to **clause 19.1.9** (Governance of Projects), the Partner shall produce each Business Case within the timescales set out in the approved Service Development Plan.
- 19.1.15 The Council shall provide reasonable access to information and assistance to the Partner where necessary to enable the Partner to develop the Business Cases.
- 19.1.16 The Partner shall ensure that its proposals contained in any Business Cases represent Value for Money and are reasonable, practicable and deliverable proposals for implementation by the Council or as part of a Shared Service arrangement.

- 19.1.17 The Partner and the Council may agree that a particular Project is of a scale or nature which does not justify the use of the approval procedures set out below or does not justify compliance with the whole process set out below and, in any such case, will agree an alternative process, including if appropriate agreeing in writing to bypass any specific stage or combine it with the following stage.
- 19.1.18 Subject to **clause 19.1.9** (Governance of Projects), SBCs, OBCs, FBCs and PIDs will be produced by the Partner in accordance with the Service Development Plans and will be issued through the Partnership Board notwithstanding that approval of all Business Cases, the PIDs and the implementation thereof shall be subject to the approval of the Council in accordance with **clauses 19.2.7** (Strategic Business Case (SBC)), **19.3.5** (Outline Business Case (OBC)), **19.4.10** (Full Business Case (FBC) and PID) and **19.4.16** (Full Business Case (FBC) and PID), which may be withheld in its absolute discretion.
- 19.1.19 The Council reserves the right to propose, develop and/or implement a Project itself or appoint a Third Party to do so. Acting reasonably, the Partner shall where there is relevant capacity within the Personnel resource available for the provision of the Core Services, provide reasonable assistance to the Council in the development and/or implementation of such a Project.
- 19.1.20 Where the Council proposes to exercise its right pursuant to **clause 19.1.19** (Governance of Projects) to appoint a Third Party, the Council shall prior to doing so consult the Partner in relation to the proposed appointment and the Partner shall provide an outline of the potential impact on the Partner's delivery of Services or other Council functions if the Council were to implement the Project through a Third Party.
- 19.1.21 Where the Council uses a competitive procurement process in relation to any Project directly related to the Services, the Partner shall be entitled to tender for such Project provided that it is lawful for it to do so and the provisions of **clause 19.5** (Commissioning) shall apply.
- 19.1.22 In developing and implementing Projects or providing assistance to the Council in the development and implementation of Projects, the Partner shall consult the Council in respect of its obligations under the EU procurement rules and regulations and standing orders and acting upon such advice from the Council shall not propose Projects which, if implemented, would place the Council in a position where it fails to so comply.

19.2 **Strategic Business Case (SBC)**

- 19.2.1 Subject to **clause 19.1.9** (Governance of Projects), the Service Development Plan will set out the timescale within which the Partner shall complete the SBC.
- 19.2.2 The Partner shall ensure that each SBC includes the agreed content, as set out in paragraph 1 in Parts A or B of **Schedule 16** (Projects) as appropriate.
- 19.2.3 The Partner shall submit the SBC for review to the Partnership Board using the lists set out in Part A or Part B (as appropriate) of **Schedule 16** (Projects).
- 19.2.4 The Partner shall initially present the SBC to the Partnership Board.
- 19.2.5 The Partnership Board shall consider and discuss the SBC and may recommend that the Partner amends or clarifies any aspect of the SBC. If the Partnership Board accepts an SBC, it shall make a recommendation to the Council in respect of the SBC for Council consideration.
- 19.2.6 If the Council requires clarification and refinement of (including expansion of options in) any aspect of the SBC, the Partner shall provide such clarification and refinement (including expansion of options) within ten (10) Business Days (or such period as is otherwise agreed) of receipt by the Partner of a request by the Council in writing for the same. The Council may also suggest amendments to the Business Case which the Partner may take account of (acting reasonably).
- 19.2.7 The Council may accept or reject any recommendation of the Partnership Board regarding the SBC at its sole discretion. Within twenty (20) Business Days (or such period as is otherwise agreed) of receipt of the SBC (modified if applicable pursuant to **clause 19.2.6** (Strategic Business Case (SBC)) and complying in all respects with the requirements of Schedule 16 (Projects)) or within such longer period as is dictated by the Council's decision making procedures but prior to the back stop date for approval as agreed between the parties, the Council shall give notice to the Partner as to whether to proceed to prepare (or, at the request of the Council, commission a Third Party to prepare) an Outline Business Case or Full Business Case (as appropriate) and the provisions of **clauses 19.3** (Outline Business Case (OBC)) and **19.4** (Full Business Case (FBC) and PID) shall apply.

19.3 **Outline Business Case (OBC)**

- 19.3.1 The Partner shall ensure that each OBC includes the agreed content, as set out in paragraph 2 in Parts A and B of **Schedule 16** (Projects).
- 19.3.2 The Partner shall initially present the OBC to the Partnership Board.
- 19.3.3 The Partnership Board shall consider and discuss the OBC and may recommend that the Partner amends or clarifies any aspect of the OBC. If the Partnership Board accepts an OBC, it shall make a recommendation to the Council in respect of the OBC for Council consideration and approval or rejection (as the case may be).
- 19.3.4 If the Council requires clarification and refinement of (including expansion of options in) any aspect of the OBC, the Partner shall provide such clarification and refinement (including expansion of options) within ten (10) Business Days (or such period as is otherwise agreed) of receipt by the Partner of a request by the Council in writing for the same. The Council may also suggest amendments to the Business Case which the Partner may take account of (acting reasonably).
- 19.3.5 The Council may accept or reject any recommendation of the Partnership Board regarding the OBC at its sole discretion. Within twenty (20) Business Days (or such period as is otherwise agreed) of receipt of the OBC (modified if applicable pursuant to **clause 19.3.4** (Outline Business Case (OBC))) and complying in all respects with the requirements of **Schedule 16** (Projects)) or within such longer period as is dictated by the Council's decision making procedures but prior to the back stop date for approval as agreed between the parties, the Council shall give notice to the Partner as to whether to proceed to prepare (or, at the request of the Council, commission a Third Party to prepare) a Full Business Case. If the Council is prepared to proceed to a Full Business Case the provisions of **clause 19.5** (Commissioning) may apply.
- 19.3.6 Notwithstanding **clauses 19.3.1** (Outline Business Case (OBC)) to **19.3.5** (Outline Business Case (OBC)), the Council may decide at its sole discretion to produce an Outline or Full Business Case in respect of a Project itself or commission a Third Party to do so. Where this is likely to have an impact on the Partner's delivery of the Services the Council shall consult with the Partner and the Partner shall inform the Council in writing of any impact on the Services and the provisions of **clause 19.5** (Commissioning) shall apply.
- 19.3.7 The Council reserves the right to proceed directly from OBC to implementation (by production of a PID) without the preparation of a

FBC. If the Council decides to proceed on the basis of the OBC, it acknowledges that the Partner may need to undertake further work on its costs and price before a price is agreed for the Project in accordance with the provisions of **clause 19.7** (Project Payment Mechanism). For the avoidance of doubt, the Partner shall not be entitled to any additional payment for such further work (in addition to the agreed charges for production of the OBC) unless agreed by the Council in writing prior to any such further work being carried out.

19.4 **Full Business Case (FBC) and PID**

19.4.1 No OBC shall proceed to an FBC and/or PID without the prior written approval of the Council.

19.4.2 Where the OBC is approved the Partner shall, subject to **clause 19.6** (Payment for Business Cases), in consultation with the Council, prepare a Full Business Case in respect of a Project in accordance with the OBC, within a period as the parties agree in writing when the OBC is approved (both parties acting reasonably having regard to the FBC in question).

19.4.3 If the Council decides, following approval of the OBC, that:

19.4.3.1 it will open the Project to a competitive procurement process after the FBC stage and the Partner does not wish to be considered as part of that process; or

19.4.3.2 it is likely to commission a Third Party to implement the Project after FBC stage; or

19.4.3.3 as the proposed Project has social and community benefits rather than business and financial benefits it requires the Partner to produce a shorter FBC;

then the Council may request the Partner to prepare an FBC containing only the information stated in **paragraphs 3.1 to 3.17** inclusive (or such part of that information as the Council may specify) of **Schedule 16** (Projects). This is without prejudice to the Council's rights after submission of the FBC pursuant to **clause 19.4.18** (Full Business Case (FBC) and PID).

19.4.4 If the Council decides following approval of the OBC that it will open the Project to a competitive procurement process after the FBC stage and the Partner wishes to be considered as part of the competitive procurement process, then the Council may request the Partner to prepare an FBC containing only the information stated in **paragraph**

3.3 of Schedule 16 (Projects), further details of any likely impact on the Partner's delivery of the Services of the Council implementing the Project through a Third Party and such other information contained in **paragraphs 3.1 to 3.17** inclusive of **Schedule 16** (Projects) as the Partner can reasonably deliver without prejudicing the competitive procurement process.

- 19.4.5 The Partner shall ensure that the FBC sets out a more comprehensive and detailed analysis of the matters required for the OBC (as stated in **Schedule 16** (Projects)) and the agreed content, as set out in paragraph 3 in Parts A or B of **Schedule 16** (Projects) (as applicable).
- 19.4.6 The Partner undertakes that the proposals set out in the FBC shall be designed to ensure the successful implementation and operation of the Project, shall be reasonable in all the circumstances and shall be designed to keep to a minimum any adverse practical and operational implications of the Project to the Council. Save as set out in the approved Business Case, during the implementation by the Partner of the Project and beyond, the Partner will continue to be obliged to perform the Services in accordance with this Agreement. No FBC or PID shall assume or require any deterioration in the Service Levels, KPIs, or other diminution in service delivery during such implementation or thereafter unless agreed beforehand with the Council as part of the OBC, FBC or PID.
- 19.4.7 The Partner shall present the FBC to the Partnership Board. The Partnership Board shall consider and discuss the FBC and may recommend that the Partner clarifies any aspect of the FBC. If the Partnership Board accepts a FBC, it shall make a recommendation to the Council in respect of the FBC for Council consideration.
- 19.4.8 If the Council requires clarification and refinement of (including expansion of options in) any aspect of the FBC, the Partner shall provide such clarification and refinement (including expansion of options) within ten (10) Business Days (or such period as is otherwise agreed) of receipt by the Partner of a request by the Council in writing for the same. The Council may also suggest amendments to the Business Case which the Partner may take account of (acting reasonably).
- 19.4.9 If the Council is not satisfied (acting reasonably) with the proposals set out in any FBC, the parties shall negotiate in good faith to reach an accommodation and the Partner will comply promptly with all reasonable requests of the Council for information and acting reasonably, consider all amendments to be made to the FBC.

- 19.4.10 The Council may accept or reject any recommendation of the Partnership Board regarding the FBC at its sole discretion. Within twenty (20) Business Days of receipt of any FBC, (modified, if applicable pursuant to **clauses 19.4.8** (Full Business Case (FBC) and PID) and **19.4.9** (Full Business Case (FBC) and PID) and complying in all respects with the foregoing requirements of this **clause 19.4** (Full Business Case (FBC) and PID)) or within such longer period as is dictated by the Council's decision making procedures but prior to the back stop date for approval as agreed between the parties, the Council shall give written notice to the Partner as to whether the proposals set out in the FBC are accepted.
- 19.4.11 If the Council gives written notice to the Partner that the FBC is approved the Partner shall produce a project initiation document (a "PID") in accordance with **clauses 19.4.12** (Full Business Case (FBC) and PID) and **19.4.13** (Full Business Case (FBC) and PID).
- 19.4.12 Upon approval of the FBC (pursuant to **clause 19.4.10** (Full Business Case (FBC) and PID)) or an OBC (pursuant to **clause 19.3.6** (Outline Business Case (OBC))), the Partner shall prepare and deliver a PID in respect of the Project within such period as the parties agree in writing when the OBC or FBC is approved (as applicable) both parties acting reasonably having regard to the OBC or FBC in question.
- 19.4.13 The PID shall include the deliverables set out in paragraph 4 in Parts A or B of **Schedule 16** (Projects) as appropriate.
- 19.4.14 The Partner shall present the PID to a nominated senior responsible Council officer for approval.
- 19.4.15 If the Council requires clarification and refinement of (including expansion of options in) any aspect of the PID, the Partner shall provide such clarification and refinement (including expansion of options) within a period as is agreed between the parties (both parties acting reasonably). The Council may also suggest amendments to the Business Case which the Partner may take account of (acting reasonably).
- 19.4.16 The Council may accept or reject the PID at its sole discretion. Within twenty (20) Business Days (or such period as is otherwise agreed) of receipt of the PID (modified if applicable pursuant to **clause 19.4.15** (Full Business Case (FBC) and PID)) or within such longer period as is dictated by the Council's decision making procedures, the Council shall give notice to the Partner of its decision to formally approve or reject the PID.

- 19.4.17 If the Council gives written notice to the Partner that the PID is approved the following provisions shall apply:
- 19.4.17.1 the Project shall be implemented and delivered by the Partner and the Council in accordance with the terms of the FBC, unless different terms have been included in the PID and approved in writing by the Council.
 - 19.4.17.2 where the Project involves service transition and/or the transfer of agreements and/or the Council making assets available to the Partner, where relevant the provisions of **clauses 21** (Due Diligence, Transition and Implementation), **32** (Agreements) and **33** (Assets) of the Agreement shall apply (mutatis mutandis);
 - 19.4.17.3 this Agreement and any agreements made pursuant to it shall be deemed to have been modified to the extent made necessary by the proposed implementation of the Project (on the basis accepted by the Council pursuant to **clause 19.4.16** (Full Business Case (FBC) and PID)) so that this Agreement so modified shall apply in full to the implementation of the Project and the performance of the Services (incorporating the Project) thereafter; and
 - 19.4.17.4 all rights, title and interest in the Project Materials shall be dealt with in accordance with the provisions of **clause 58** (Intellectual Property Rights) of this Agreement.
- 19.4.18 If the Council rejects any SBC, OBC, FBC and/or PID (either once completed or if the Council aborts the process part way through (including in accordance with **clauses 19.6.12** (Payment for Business Cases) or **19.6.13** (Payment for Business Cases)), as soon as reasonably possible, but in any event within ten (10) Business Days following any such rejection, the Partner shall provide the Project Materials to the Council or to such Third Party as the Council may nominate and the Partner shall provide such information, documentation and assistance as is reasonable in the circumstances in order to assist the Council or the nominated Third Party to achieve the development and implementation of the Project (or a similar Project) within the Project timescale in question (including such information, documentation and assistance as is reasonably necessary in order to enable the Council to advertise and/or invite tenders for the work involved and/or award a contract for the work to a Third Party).

19.5 **Commissioning**

19.5.1 The Partner acknowledges that the Council may decide in relation to individual Projects to carry out the Project otherwise than through the Partner or go through a competitive tender process in relation to a Project (whether or not it is required to do so by Law). The Council may notify the Partner of its intention to do this following:

19.5.1.1 the development of the annual Service Development Plans or other notification by the Partner to the Council of an idea for a Project; or

19.5.1.2 the provision to the Council of the SBC, OBC or FBC;

If such notice is served the provisions of **clause 19.4.18** (Full Business Case (FBC) and PID) shall apply in relation to all Project Materials in connection with the proposed Project.

19.5.2 In the event that the Council serves a notice in accordance with **clause 19.5.1** (Commissioning), the Partner shall following receipt of such notice notify the Council whether it wishes to participate in the tender process or undertake the Commissioning. The Partner shall not be entitled to any preferential treatment by the Council if it chooses to participate in any tender process operated by or on behalf of the Council in relation to the development and implementation of Projects and the Partner recognises that, in any tendering process operated by the Council, the Partner will have to qualify on its own merits according to the Council's then current tendering procedures and requirements.

19.5.3 If the Council wishes to conduct a competitive procurement process in respect of a Project and the Partner is not to be a bidder in that procurement, the Council may request the Partner conducts the procurement on behalf of the Council (in which case this will be classed as a Commissioning and **clause 19.5.4** (Commissioning) shall apply) or (at the Council's option) provides assistance to the Council in connection with the procurement.

19.5.4 In relation to Commissioning, the Partner shall develop a proposal as to how the procurement or other tendering process in relation to the Project will be conducted, including timescales and involvement for the Partner and the Council. The proposal shall include confirmation as to whether the work to be undertaken by the Partner is within the Contract Price or not. It is intended that where such work is part of the Partner's obligations under the Services Schedules or where the Commissioning is to carry out a Core Project, then the Partner shall conduct the procurement within the Contract Price provided that the activity is within the volume tolerances set out in the Financial Model.

Where the Commissioning relates to a Strategic Project at FBC or PID or where the volume tolerances of the Financial Model are exceeded, the Partner shall provide a pricing and funding proposal in relation to the Partner's costs of the Commissioning Project activity, on an Open Book basis.

- 19.5.5 Where the Council requests assistance pursuant to **clause 19.5.3** (Commissioning) and such assistance is of a general business nature in relation to the procurement such that the Partner can provide the assistance from within existing resource levels within the Core Services, the Partner shall provide such assistance to the Council at no additional cost to the Council.
- 19.5.6 Where the Council requests assistance pursuant to **clause 19.5.3** (Commissioning) and such assistance is beyond that of a general business nature in relation to the procurement, the Partner shall prepare a pricing and funding proposal that describes what charges shall be payable by the Council to the Partner in respect of this greater level of assistance. The Partner shall not be entitled to charge the Council for such assistance where the procurement is being carried out as part of the Partner meeting its obligations in respect of the Core Services provided that the activity is within the volume tolerances set out in the Financial Model.
- 19.5.7 Where the Partner has chosen to bid in respect of a Project which is going out to public tender, the Partner shall repay to the Council an amount equal to the amount that the Partner has received (in cases where the Partner has already been paid) or would receive (in which case the amount shall be deducted from the subsequent Periodic Payment) in anticipation of it either conducting the Commissioning or assisting with the procurement (together with the reasonable costs to the Council of procuring an alternative provider for the business case development process or Commissioning Project process) but for the fact that the Partner had chosen to bid.
- 19.5.8 The Partner's decision to withdraw from any competitive procurement process in which it participated shall be final.

19.6 **Payment For Business Cases**

- 19.6.1 The parties acknowledge that funding for Projects may be sourced by the Partner through any of the following channels:-
 - 19.6.1.1 the Contract Price;
 - 19.6.1.2 the Council's capital programme; and

- 19.6.1.3 external funding procured by the Partner through the funding service provided as a part of the Renaissance Service or through such other means as agreed between the parties in the Service Development Plan or otherwise.
- 19.6.2 In the case of Core Projects, SBCs, OBCs, FBCs and PIDs, and in the case of Strategic Projects, SBCs and OBCs, which are undertaken and developed by the Partner shall be carried out within the Contract Price, at no additional cost (other than disbursements approved by the Council in advance which shall be included in a pricing and funding proposal) taking account of any decisions made pursuant to **clause 24.3** (Annual Budget Setting). For the avoidance of doubt the Council shall not be liable to pay any costs in respect of Business Cases over and above the Contract Price, unless the Council is the beneficiary of the funds as referred to at **clauses 19.6.1.2** (Payment for Business Cases) or **19.6.1.3** (Payment for Business Cases). This shall apply whether or not the Council decides to proceed to the OBC or FBC stage.
- 19.6.3 In the case of Strategic Projects (FBCs and PIDs only) being activities which are outside the Contract Price, the development and production of the relevant Business Cases or PIDs (and, where applicable, discrete parts of them) shall be undertaken by the Partner on either:
- 19.6.3.1 a fixed price basis;
- 19.6.3.2 using the day rates for ad-hoc work specified in the Pricing and Financial Model Schedule;
- 19.6.3.3 costing on a pass through basis without any element of mark up demonstrated on an Open Book basis; or
- 19.6.3.4 as agreed by the parties pursuant to **clauses 19.2** (Strategic Business Case (SBC)) and **19.3** (Outline Business Case (OBC)) on a case by case basis.
- 19.6.4 At approval and acceptance of an SBC or OBC (as applicable) by the Council, the Council and the Partner shall agree the cost and timing for the production of the FBC on the basis set out in **clause 19.6.3** (Strategic Business Case (SBC)).
- 19.6.5 The parties shall be entitled to agree that the FBC may be divided into individual elements ("Stage") and that each Stage may be undertaken on a fixed price basis pursuant to **clause 19.6.3.1** (Strategic Business Case (SBC)). Each Stage must have clearly defined deliverables and outputs associated with it.

- 19.6.6 The Partner shall submit to the Council the list of objectives, outcomes and deliverables to be provided in respect of each FBC or Stage (as applicable) prior to the commencement of any such work and such list shall be subject to approval by the Council.
- 19.6.7 The Council shall provide the Partner with the Quality Criteria to be achieved in respect of each FBC or Stage (as applicable). The Council shall act reasonably in developing the Quality Criteria and provide a draft of the same to the Partner for comment. The Partner shall provide such comments within five (5) Business Days of receipt of the same and the Council shall act reasonably in considering such comments and finalising the Quality Criteria.
- 19.6.8 Within twenty (20) Business Days (or such period as is otherwise agreed) of receipt of the FBC or Stage (as applicable) from the Partner or within such longer period as is dictated by the Council's decision making procedures but prior to the backstop date for approval as agreed between the parties, the Council shall, acting reasonably, review and assess the FBC or Stage (as applicable) against the Quality Criteria and give notice to the Partner formally to approve or reject the FBC or Stage (as applicable).
- 19.6.9 The Partner shall ensure that it completes each FBC or Stage (as applicable) in accordance with the Quality Criteria provided by the Council.
- 19.6.10 The Council shall not be liable to pay for the production of the FBC or Stage (as applicable) including objectives, outcomes and deliverables where the FBC or Stage fails to satisfy the Quality Criteria set pursuant to **clause 19.6.7** (Payment for Business Cases).
- 19.6.11 The Partner shall keep the Council informed, on a periodic basis, of the amount of resource being applied to the development of the FBC or Stage (as applicable) to ensure the Partner is within its budget for the FBC or Stage (as applicable) development.
- 19.6.12 The Council reserves the right to abort the development of an FBC or Stage at any time.
- 19.6.13 In the event that a Project is aborted during the preparation of an FBC or Stage (as applicable), the Partner shall provide to the Council the Project Materials referred to in **clause 19.4.18** (Full Business Case (FBC) and PID) and the Partner shall be entitled to recover a reasonable pro-rata proportion of the FBC or Stage (as applicable) charges incurred by the Partner (calculated in accordance with **clause 19.6.9** (Payment for Business Cases)) on a quantum merit basis,

unless aborted by reason of a failure by the Partner to comply with this **clause 19** or **Schedule 16** (Projects) or failure of the FBC or Stage thereof to reach the Quality Criteria set pursuant to **clause 19.6.7** (Payment for Business Cases).

19.7 **Project Payment Mechanism**

- 19.7.1 The financial implications of the Project, as set out in any SBC, OBC and FBC must be reasonable and proportionate in all the circumstances and represent Value for Money. Where these financial implications involve an increase in the Contract Price, without prejudice to the foregoing provisions of this **clause 19.7** (Project Payment Mechanism), such increase must be based on Open Book pricing and any pricing assumptions set out in the Pricing Schedule. The parties acknowledge that in relation to Strategic Projects payment is likely to be separate to the pricing mechanisms in this Agreement and the Strategic Project will not generally alter existing fees payable under this Agreement.
- 19.7.2 The Partner shall develop a Project payment mechanism for each Project in accordance with such of the following principles as may be relevant:
- 19.7.2.1 where appropriate, having regard to the nature of the Project, the application of the Price Performance Mechanism and any additional amendments required in order to run the Project;
 - 19.7.2.2 payment on a risk/reward basis;
 - 19.7.2.3 payment on a shared risk basis;
 - 19.7.2.4 payment on a fixed price basis; and
 - 19.7.2.5 where none of the above **clauses 19.7.2.1** (Project Payment Mechanism) to **19.7.2.4** (Project Payment Mechanism) can reasonably apply, payment on a time and materials basis.
- 19.7.3 Where appropriate, any Milestones in the Project will have a Milestone Payment and Quality Criteria attached;
- 19.7.4 The Partner shall take account of all matters set out in **clause 19.7.2** (Project Payment Mechanism) in preparing the financial basis for Projects save where the Partner can justify to the Council's satisfaction (acting reasonably) that a variant should be adopted.

19.8 **Implementation**

- 19.8.1 The Partner shall implement the Project or procure a Third Party to implement the Project, and the Council shall assist the Partner in implementation of the Project in each case in accordance with the agreed terms (Full Business Case and PID) and the other provisions of this Agreement.
- 19.8.2 Following the implementation of each Project, the Partner shall carry out a detailed, and objective evaluation of the impact of the implementation including a consultation with a representative cross-section of Council Staff, members of the public or other stakeholders (as appropriate given the nature of the Project) in order to obtain feedback on and to assess whether the implementation of the Project has achieved its objective (as those objectives were stated in the FBC). The timing of this evaluation and consultation shall be such as is appropriate given the target timetable for achieving the Project objectives.
- 19.8.3 Within ten (10) Business Days (or such period as is otherwise agreed) of completion of the evaluation the Partner shall provide to the Council a detailed and comprehensive written summary of the outcome of the evaluation pursuant to **clause 19.8.2** (Implementation) and of the action it proposes to take as a result. The Partner shall implement (with assistance from the Council as required) as soon as reasonably possible any improvements or other changes which the evaluation identifies are necessary in order to achieve the Project objectives, provided that this shall neither require the Partner to make improvements beyond the original objectives of the Project as indicated nor the Council to provide assistance beyond that originally anticipated in delivering the Project.

19.9 **External Business**

Where permitted in accordance with Laws and Policy, the Partner may in the future propose Projects involving the provision of services (including services similar to any part of the Services), with the co-operation and involvement of the Council, to other local authorities, public sector organisations or the voluntary sector. The parties shall in due course agree a strategy in relation to how the provision of such services to external bodies shall be progressed.

20. **SOLE RESPONSIBILITY**

Except as expressly stated to the contrary in this Agreement, the Partner shall have sole responsibility for the performance of the Services, and for the compliance with its other obligations under this Agreement. The Partner shall

have sole responsibility for the management and supervision of its Personnel and sole liability for the acts or omissions of those Personnel.

PART E: SERVICE TRANSITION

21. DUE DILIGENCE, TRANSITION AND IMPLEMENTATION

The Partner shall perform those obligations set out in the Transition Plan.

21.1 Due Diligence Exercise

- 21.1.1 The following provisions shall apply in relation to the Services to be provided as at the Commencement Date and, where the Council has accepted a proposal from the Partner for the provision or transfer of services pursuant to a Change or Project(s) the Transfer Date for such services. Accordingly references to the "Commencement Date" shall mean the Transfer Date where the context permits in relation to additional services provided pursuant to a Change or Project.
- 21.1.2 The Partner acknowledges that the Services are to be delivered by the Partner and used and/or enjoyed by the Council within the Due Diligence Environment. The Partner also acknowledges that it has, prior to the Commencement Date, been supplied with or given access to sufficient information about the Due Diligence Environment deployed by the Council and required by the Council (both existing and future) to enable the Partner to achieve Transition and to provide the Services in accordance with this Agreement.
- 21.1.3 The Partner shall not be entitled to any additional payment or be excused from any obligation or liability under this Agreement relating to the condition, functions, facilities and capabilities of the Due Diligence Environment as at the Commencement Date.
- 21.1.4 The Council gives no warranty as to the condition, fitness for purpose or state of the Transferring Assets, Use Assets, Controlled Assets, Leased Assets or Council ICT including in each case, the nature or manner of their installation or operation, or the suitability or otherwise of their environment. This shall be without prejudice to the Council's obligations in relation to the Use Assets, Leased Assets and Controlled Assets set out in **clause 33** (Assets).
- 21.1.5 Following the Commencement Date, any change in the Due Diligence Environment or Background Information which has a material and adverse effect on the Partner shall be dealt with as a Change save to the extent such Changes relate to assets or agreements in which case

clause 33 (Assets) and **clause 60** (Novation of Agreements) shall apply.

21.2 **Reliance on Due Diligence**

21.2.1 The following provisions shall apply in relation to the Background Information.

21.2.2 The Council shall use reasonable endeavours to ensure the Partner has access to the Background Information. Such Background Information, if provided, shall be provided or made available in good faith, but the Council does not give any warranty or undertaking as to the completeness, accuracy or fitness for any purpose of any of the Background Information and neither the Council nor any of the agents or servants of the Council shall be liable to the Partner in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind in the Background Information or any failure to make available to the Partner any materials, contracts, documents, drawings, plans or other information relating to the Services or any failure to make available for inspection any real property or other physical equipment or other assets or any materials, documents, contracts, drawings, plans or other information in relation thereto.

21.2.3 The Partner acknowledges to the Council that it has conducted its own analysis and review of the Background Information and that it has satisfied itself as to the accuracy and fitness for purpose of the Background Information and that it is sufficient to allow the Partner to carry out the Services.

21.2.4 Nothing in this **clause 21.2** (Reliance on Due Diligence) shall exclude any liability which the Council or any of its agents or servants would otherwise have to the Partner in respect of any fraudulent statements or representations.

21.2.5 Any backlog maintenance shall be dealt with by the Partner through the CAMP and TAMP in the provision of the Asset Management Service and the HTP Service.

21.3 **Application of Transition and Implementation Provisions**

The provisions of this **clause 21.3** (Application of Transition and Implementation Provisions) and the relevant Transition Plan shall be deemed to be applicable to the activity during Transition and in any other period during the Term which involves the implementation of a significant change in Services and/or any investment by or on behalf of the Partner in assets deployed in the provision of

the Services whether that change and/or investment arises as a result of a Change, Project or otherwise (save as expressly varied in agreeing a Change or Project). The provisions of this **clause 21.3** (Application of Transition and Implementation Provisions) and the relevant Transition Plan shall be deemed to apply to any such period.

21.3.1 The Partner shall co-operate and work efficiently with the Council to manage, oversee and direct the implementation of the Services and any Projects ("**Transition**") in a manner which is controlled, well structured and managed and save where otherwise agreed by the parties which ensures that the Services provided by the Partner during Transition are performed to at least the same standards as were enjoyed by the Council during the twelve (12) months prior to transition. The Partner shall bring its experience of managing a service transition to the Council and produce a risk management plan in respect of Transition.

21.3.2 The Partner shall deploy a team (a "**Programme Team**") to manage oversee, direct and implement the integrated programme of change, improvement and service reconfiguration during Transition. In particular the Partner shall ensure that, at all times during Transition:

21.3.2.1 a person is appointed as the Transition Manager and that he/she or an authorised deputy is available to be contacted by the Council at all times during the Core Hours on each Service Working Day and, where necessary, outside of those hours;

21.3.2.2 the Transition Manager is supported by a team identified in the Transition Plan and in the case of Projects or Change a team shall be sufficient in size to carry out Transition within the timescales and other parameters set out in the Transition Plan in relation to the relevant Project or Change;

21.3.2.3 the Partner shall, on or before the Commencement Date, give written notice to the Council of the identity and work address of the person it proposes to appoint as the Transition Manager and of the proposed members of the Programme Team together with details of their qualifications and experience. In any event the Partner shall ensure that the proposed members of the Programme Team have an appropriate level and combination of skills, training and experience in relation to implementation, training and service and process reconfigurations; and

- 21.3.2.4 the Partner shall provide reasonable assistance and co-operation to the Council to maintain the Council's business continuity during Transition.
- 21.3.3 The Partner shall work with the Council to develop and implement a communications plan for any period of Transition.
- 21.3.4 **Statutory Compliance**
- 21.3.4.1 The Partner shall following the Commencement Date, carry out a visual and desktop survey all of the Service Assets and shall, within six (6) months of the Service Commencement Date, provide written notice to the Council that each such Service Assets is either:
- (a) compliant with Law ("**Compliant**"); or
 - (b) not compliant with Law ("**Non-Compliant**"); and
- shall confirm whether the cost of servicing each such Service Asset included within Appendix 3 to Schedule 29, has been factored into the Financial Model.
- 21.3.4.2 If the Partner discovers a variance between the Service Assets included in Appendix 3 to **Schedule 29** and the assets factored into the Financial Model or the Partner does not believe it has received some or all of the budget for any of the Service Assets then the parties shall review whether the budget for such Service Asset has transferred to the Partner and:
- (a) where the budget has transferred in full, the Partner shall manage such Service Asset for the Term in accordance with this Agreement; and
 - (b) where the budget has not transferred or transferred but not in full the Council will either transfer the budget (or the outstanding part as relevant) relating to such asset to the Partner or request that the Partner's management of such asset shall be dealt with through a Volume Reprioritisation.
- 21.3.4.3 If the Partner notifies the Council in accordance with **clause 21.3.4.1(a)** (Statutory Compliance) that a Service Asset is Compliant or if the Partner provides no notice to the Council in accordance with **clause 21.3.4.1(a)** (Statutory

Compliance) or **21.3.4.1(b)** (Statutory Compliance) within six (6) months of the Service Commencement Date, the Partner shall be deemed to have been responsible for the relevant Service Asset from the Service Commencement Date.

21.3.4.4 If the Partner notifies the Council in accordance with **clause 21.3.4.1(b)** (Statutory Compliance) that a Service Assets is Non-Compliant, the Partner must, in its notice to the Council in accordance with **clause 21.3.4.1(b)** (Statutory Compliance) outline its reasons for this view and, within twenty (20) Business Days of its receipt of such notice, the Council shall either:

- (a) instruct the Partner to arrange for the necessary work to be carried out (as part of the planned maintenance service element of the Asset Management Service) to ensure the relevant Service Asset is Compliant (and the Partner shall arrange for such work to be completed in a timely manner); or
- (b) agree to fund the necessary work to be carried out in order to ensure the Service Asset is Compliant (and the Partner shall arrange for such work to be completed in a timely manner); or
- (c) relieve the Partner of the requirement to ensure that the Service Asset is Compliant to the extent or in respect of the part of the asset that the Partner has identified as Non-Compliant; or
- (d) notify the Partner in writing that the Council disagrees with the Partner's view that the Service Asset is Non-Compliant.

21.3.4.5 Within twenty (20) Business Days of the Partner's receipt of a notice from the Council in accordance with **clause 21.3.4.4(d)** (Statutory Compliance) above, the Council and the Partner shall discuss the matter, taking into consideration the following factors:

- (a) the Council's asset disposal strategy; and
- (b) custom and practice within the local authority environment.

- 21.3.4.6 If the Partner still considers the Service Asset is Non-Compliant following such discussion, the Partner shall, within five (5) Business Days of the discussion, arrange for an independent expert to decide upon the matter, which independent expert must be advised to take into consideration the factors set out at **21.3.4.5(a)** (Statutory Compliance) and **21.3.4.5(b)** (Statutory Compliance) above pending the determination of the independent expert, the Partner shall be relieved of its obligations in respect of the Service Asset.
- 21.3.4.7 If the independent expert decides that the Service Asset can be deemed Compliant, the Partner shall become immediately responsible for the relevant asset.
- 21.3.4.8 If the independent expert decides that the Service Asset cannot be deemed Compliant, the Council shall elect to either:
- (a) instruct the Partner to arrange for the necessary work to be carried out (as part of the planned maintenance service element of the Asset Management Service) to ensure the relevant Service Asset is Compliant (and the Partner shall arrange for such work to be completed in a timely manner) and following completion of such works the Partner shall be responsible for the Service Asset's statutory compliance in accordance with the Asset Management Service; or
 - (b) agree to fund the necessary work to be carried out in order to ensure the Service Asset is Compliant (and the Partner shall arrange for such work to be completed in a timely manner) and following the completion of such works the Partner shall be responsible for the Service Asset's statutory compliance in accordance with the Asset Management Service; or
 - (c) relieve the Partner of the requirement to ensure that the Service Asset is Compliant to the extent or in respect of the part of the asset that the Partner has identified as Non-Compliant.
- 21.3.4.9 The costs of the independent expert shall be borne by:
- (a) the Partner if the independent expert determines that the Service Asset is Compliant;

- (b) the Council if the independent expert determines that the Service Asset is Non-Compliant; or
- (c) pro rata by the parties if the Service Asset is deemed to be partly Compliant and partly Non-Compliant.

21.3.4.10 Where a Service Asset is agreed or is otherwise determined to be Non-Compliant, the Council shall on demand indemnify the Partner from and against all Direct Losses which the Partner suffers or incurs arising out of any Service Asset being Non-Compliant until such Service Asset becomes Compliant following the provisions set out in **clause 21.3.4.8 (a)** (Statutory Compliance) **or (b)** (Statutory Compliance) being applied.

21.3.4.11 Where a Service Asset is agreed or is otherwise determined to be Compliant, the Partner shall on demand indemnify the Council from and against all Direct Losses which the Council suffers or incurs arising out of the Partner not performing its obligations in respect of the Compliant Service Asset prior to such agreement or determination.

21.4 **Use of Records and Data**

21.4.1 From the Commencement Date the Partner shall be entitled to use and access the Partnership Information and shall keep the Partnership Information in accordance with **clause 57.1** (Service Information).

21.4.2 The Partner will comply with any further requirements in relation to the Partnership Information as set out in the relevant Transition Plan.

Data Management

21.4.3 The Partner shall carry out data cleansing and migration services in accordance with the relevant Transition Plan in order to transfer all relevant Data from the Council to the Partner in order to provide the Services.

21.4.4 Without prejudice to the following provisions of this **clause 21.4** (Data Management), the Partner shall comply, as a minimum, with the Council's data security, data processing and data quality policies set out in **Schedule 12** (Policies, Plans and Strategies) as amended, supplemented or replaced from time to time by the Council and notified in advance to the Partner in accordance with **clause 76** (Laws, Policies and Related Matters).

- 21.4.5 The Partner shall provide reasonable assistance to the Council in developing a comprehensive security and recovery system in relation to any Data comprised within the Service Information, which, in the event of partial or complete failure of the Partnership ICT, will enable the Partner to carry out its obligations under this Agreement and the Council to continue to use the Partnership ICT.
- 21.4.6 If the Partner suspects or has reason to believe that any Data containing Service Information within the Partnership ICT has or may become corrupted, lost or significantly degraded in any way for any reason, the Partner shall notify the Council immediately and inform the Council of the remedial action the Partner proposes to take.
- 21.4.7 The Partner shall promptly (in accordance with any timescales set out in the Service Levels) and accurately reconstitute any Data which is lost or corrupted within the Partnership ICT.
- 21.4.8 Having regard to the Partner's compliance with the security policies, the Partner shall ensure that all Data comprised within the Service Information is and shall remain easily accessible by the Council.
- 21.4.9 The Partner shall ensure that any Data which is transferred from the Council ICT Environment to the Partner ICT Environment is accurately copied and/or transferred and is not in any way corrupted by the Partner in such transfer process.
- 21.4.10 The Partner shall be responsible for preserving the integrity of the Service Information and preventing corruption or loss of the Data within the Service Information.
- 21.4.11 The Partner shall perform secure back-ups of all Data within the Service Information and shall ensure that up to date back-ups are store off-site in accordance with the documents contained within **Schedule 4** (Business Continuity Schedule) and the policies contained in **Schedule 12** (Policies, Plans and Strategies). The Partner shall ensure that such back-ups are available to the Council at all times upon request.
- 21.4.12 The Council shall own the media on which backup copies of Data comprised within the Service Information exist from time to time. The Partner shall keep such media free from any lien, distress, execution or other legal process and the Partner shall not have any lien in relation to the media. The Partner shall ensure that such media is identifiable and separate from other assets of the Partner.

21.4.13 The Partner shall ensure that any system on which the Partner holds any Service Information is a secure system that complies with the policies contained in **Schedule 12** (Policies, Plans and Strategies).

Malicious Software

21.4.14 The Partner shall, throughout the Term, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the Partnership ICT.

21.4.15 If Malicious Software is found, the Partner shall use reasonable endeavours to reduce the effect of the Malicious Software and mitigate any losses and to restore the Services. The Council shall co-operate with the Partner in relation to this.

21.5 Use of Agreements

Subject to **clause 60** (Novation of Agreements) and the Partner having received prior information from the Council in respect of any licences, leases or agreements to which it is a party:

21.5.1 the Partner shall be responsible for identifying any licences, leases or agreements held by the Council or the Outgoing Provider where the Partner will need to have rights under such licence, lease or agreement to use the relevant assets ("**Service Agreement**") and shall notify the Council of such Service Agreements within ninety (90) Business Days of the Commencement Date; and

21.5.2 following receipt of the notification referred to in **clause 21.5.1** (Use of Agreements) above, the Council shall notify the Partner which Service Agreements it is willing to allow the Partner to seek to obtain the benefit of and each party shall use its reasonable endeavours to secure the written consent of the Third Party to each relevant Service Agreement as soon as reasonably practicable thereafter.

21.6 Use of Assets

21.6.1 The provisions set out in **clause 33** (Assets) apply in relation to the use of the assets referred to therein by the Partner.

22. TUPE AND STAFFING

22.1 Relevant Transfers

22.1.1 The Council and the Partner agree that the following events:

22.1.1.1 the Relevant Service Transfer Date; and

22.1.1.2 where the identity of a provider (including the Council) of any service which constitutes or which will constitute one of the Services is changed whether in anticipation of changes pursuant to this Agreement or not,

shall constitute a Relevant Transfer and that the contracts of employment (together with any collective agreements) of any Relevant Employees shall have effect (subject to Regulation 4(7) of TUPE) thereafter as if originally made between those employees and the new provider except insofar as such contracts relate to any benefits for old age, invalidity or survivors under any occupational pension scheme (save as required under sections 257 and 258 of the Pensions Act 2004).

22.1.2 The Council shall and shall use reasonable endeavours to procure that any relevant Outgoing Provider shall comply with its obligations under TUPE in respect of each Relevant Transfer pursuant to this Agreement and the Partner shall comply and shall procure that each sub-contractor shall comply with its obligations (including without limitation the obligation under Regulation 13(4) of TUPE) in respect of each Relevant Transfer pursuant to this Agreement and each of the Council and the Partner shall indemnify the other against any Losses sustained as a result of any breach of this **clause 22.1** (Relevant Transfers) by the party in default.

22.2 Offer of Employment

22.2.1 If TUPE does not apply to any person who is a Council Existing Employee, the Partner shall offer to or shall procure the offer by the relevant sub-contractor to each and every such employee a new contract of employment commencing on the Relevant Service Transfer Date under which the terms and conditions including full continuity of employment shall not differ in any material respect from those enjoyed immediately prior to the Relevant Service Transfer Date (except insofar as such terms and conditions relate to an occupational pension scheme). The offer shall be in writing, shall be open to acceptance for a period of not less than ten (10) Business Days and shall be made:

22.2.1.1 if it is believed that TUPE will not apply to a person, not less than ten (10) Business Days before the Relevant Service Transfer Date; or

22.2.1.2 if it is believed that TUPE applies to a person but it is subsequently decided that TUPE does not so apply, as soon

as is practicable and in any event no later than ten (10) Business Days after that decision is known to the Partner.

- 22.2.2 Where any such offer as referred to in **clause 22.2.1** (Offer of Employment) is accepted, the Council shall indemnify and keep indemnified in full the Partner on the same terms and conditions as those set out in **clauses 22.12.1** (Indemnities), **22.12.2** (Indemnities) and **22.12.3** (Indemnities) of this Agreement as if there had been a Relevant Transfer in respect of each and every Council Existing Employee who has accepted any such offer and the provisions of **clauses 22.4** (Employment Costs) to **22.9** (Employment Costs) shall apply in the event of any resulting increase or decrease in the Remuneration Costs and Reorganisation Costs.
- 22.2.3 Where any such offer as referred to in **clause 22.2.1** (Offer of Employment) is accepted, the Partner shall act and shall procure that each relevant sub-contractor shall act in all respects as if TUPE had applied to each and every Council Existing Employee who has accepted any such offer and shall comply with **clause 23** (Pensions) of this Agreement in respect of each and every such employee who was immediately before the Relevant Service Transfer Date a Council Existing Employee.
- 22.2.4 For the avoidance of doubt, where any such offer as referred to in **clause 22.2.1** (Offer of Employment) is not accepted and TUPE does not apply, the Council Existing Employee shall remain an employee of the Council.

22.3 **Emoluments and Outgoings**

- 22.3.1 The Council shall and shall procure that any relevant Outgoing Provider shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Relevant Service Transfer Date.
- 22.3.2 The Partner shall be responsible or shall procure that any relevant sub-contractor is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Partner or any sub-contractor in connection with the provision of any of the Services, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions,

pension contributions and otherwise, from and including the Relevant Service Transfer Date.

22.4 **Employment Costs**

- 22.4.1 The Council has supplied to the Partner the information in a list on a date agreed by the Parties (the "First Employee List") regarding the number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those employees of the Council and of the Outgoing Provider (or any sub-contractor of the Outgoing Provider) who it is expected, if they remain in the employment of the Council or of the Outgoing Provider (or any sub-contractor of the Outgoing Provider) as the case may be until immediately before the Relevant Service Transfer Date, would be Relevant Employees but the Council gives no warranty as to the accuracy or completeness of this information.
- 22.4.2 The Council shall supply to the Partner an update of the First Employee List on the Commencement Date and an updated list ten (10) Business Days before the respective Relevant Service Transfer Date. The Council shall also supply to the Partner within ten (10) Business Days after the respective Relevant Service Transfer Date information, which was correct as at the Relevant Service Transfer Date, in respect of the Relevant Employees on all the same matters as should be provided in the First Employee List. This list is the "Final Employee List" and where there is more than one Relevant Service Transfer Date the "Final Employee List" means each list so prepared in respect of each Service and at each Relevant Service Transfer Date. The Council gives and shall give no warranty as to the accuracy or completeness of any information contained in any update of the First Employee List or in the Final Employee List.
- 22.4.3 The Partner has provided to the Council, and the Council has agreed, the details set out in Part 2 of **Schedule 18** (Staffing Schedule) (Proposed Workforce Information) which show, in respect of each of the Services, the following information:
- 22.4.3.1 the workforce which the Partner or sub-contractor proposes to establish to provide the Services (the "Proposed Workforce") classified by reference to grade, job description, hours worked, shift patterns, pay scales, rates of pay, terms and conditions and pension arrangements;
- 22.4.3.2 the monthly costs of employing the Relevant Employees who are expected to be engaged in the provision of the

Services. These costs (the "Remuneration Costs") have been calculated on the basis of (amongst other things) the information contained in the First Employee List; and

22.4.3.3 the costs, including any lump sum payments, which have been agreed between the Parties for the purposes of any reorganisation which may be required to establish the Proposed Workforce or a workforce which is as close as reasonably practicable to the Proposed Workforce. These costs (the "Reorganisation Costs") have been calculated by the Partner and the relevant sub-contractor on the basis of (amongst other things) the information contained in the First Employee List.

22.4.4 The Council agrees that it shall or shall use reasonable endeavours to procure that any relevant Outgoing Provider shall provide such reasonable assistance as is required by the Partner following the Relevant Service Transfer Date in connection with any Relevant Reorganisation, including but not limited to the provision of relevant employee records, assistance with any scoring and selection exercise required in connection with redundancies and attendance at collective consultation meetings.

22.5 If at any time (including, for the avoidance of doubt, after the submission of the Final Employee List) the Remuneration Costs and/or the Reorganisation Costs require to be adjusted on account of any differences between the information contained in the First Employee List and that contained in the Final Employee List, or on account of any inaccuracies in or omissions from the information contained in the First Employee List or the Final Employee List, then (subject to **clauses 22.6** (Employment Costs), **22.7** (Employment Costs) and **22.8** (Employment Costs)) there shall be a corresponding adjustment to the Contract Price to reflect any such difference.

22.6 If the circumstances described in **clause 22.5** (Employment Costs) arise:

22.6.1 in circumstances where there are more Relevant Employees than shown on the Final Employee List then the parties shall discuss the implications for the provision of Services; and

22.6.2 the Partner and the relevant sub-contractor shall take all reasonable steps to mitigate any additional costs and any adjustment to the Contract Price shall be calculated as if they had done so.

22.7 In calculating any adjustment to be made to the Contract Price pursuant to **clause 22.5** (Employment Costs):

- 22.7.1 no account shall be taken of a decrease in the Remuneration Costs or Reorganisation Costs to the extent that it arises from a reduction in the number of Relevant Employees or their whole time equivalent such that there are, immediately after the Relevant Service Transfer Date, fewer suitably qualified persons available than are required in order to establish the Proposed Workforce;
- 22.7.2 to avoid double counting the Remuneration Costs or the Reorganisation Costs used for calculating the Contract Price prior to any Indexation of the Contract Price under this Agreement shall be used;
- 22.7.3 to avoid doubt any changes in costs which fall to be dealt with under **clause 22.5** (Employment Costs) and which arise from a Change in Law shall be dealt with in accordance with the provisions of **clause 22.5** (Employment Costs) and shall not be taken into account for the purposes of **clause 28.3** (Change in Law);
- 22.7.4 no adjustments under **clause 22.5** (Employment Costs) shall be made in respect of overpayments made by the Partner or a sub-contractor to Relevant Employees which arise from reliance on the Final Employee List to the extent that the Partner or the sub-contractor is able to correct overpayments in respect of continuing employment having taken reasonable steps to do so;
- 22.7.5 if there are underpayments by the Partner or a sub-contractor to Relevant Employees, whether claimed or established as unlawful deductions from wages or as a breach of contract, which arise from reliance on the Final Employee List, there shall be an immediate increase to the Contract Price in respect of all such liabilities of the Partner or the sub-contractor for all such underpayments which are retrospective (save that any such liabilities which relate to the period prior to the Relevant Service Transfer Date shall be dealt with in accordance with **clauses 22.3.1** (Emoluments and Outgoings) or **22.12.1** (Indemnities) to **22.12.2** (Indemnities)) and an appropriate increase in respect of such liabilities of the Partner which represent ongoing costs; and
- 22.7.6 in order to prevent duplication, no adjustment shall be made under this **clause 22.7** (Employment Costs) if any indemnity given by the Council under any other provision of this Agreement would apply.
- 22.8 Either party may propose an adjustment to Contract Price pursuant to **clause 22.5** (Employment Costs) by giving not less than ten (10) Business Days notice to the other. Each party will provide or procure the provision to the other, on an Open Book basis, access to any information or data which the other party

reasonably requires for the purpose of calculating or confirming the calculation of any adjustment pursuant to **clause 22.5** (Employment Costs).

22.9 In relation to all matters described in **clauses 22.6** (Employment Costs) and **22.7** (Employment Costs) the Partner and the Council shall, and the Partner shall procure that the relevant sub-contractor shall, co-operate with the other or others and take all reasonable steps to mitigate any costs and expenses and any adverse effect on industrial or employee relations.

22.10 The Council shall and the Partner shall and shall procure that each and every sub-contractor shall take all reasonable steps, including co-operation with reasonable requests for information, to ensure that each and every Relevant Transfer pursuant to this Agreement takes place smoothly with the least possible disruption to the services of the Council including the Services and to the employees who transfer.

22.11 **Union Recognition**

22.11.1 The Council shall and shall procure if it has the contractual or legal powers to do so and shall otherwise use all reasonable endeavours to procure that every relevant sub-contractor shall supply to the Partner no later than ten (10) Business Days prior to the Relevant Service Transfer Date true copies of its union recognition agreement(s) and the Partner shall and shall procure that each and every sub-contractor shall in accordance with TUPE recognise the Trade Unions representing Relevant Employees (as relevant to each sub-contractor) after the transfer to the same extent as they were recognised by the Council or the relevant sub-contractor before the Relevant Service Transfer Date.

22.11.2 The Partner shall procure that, on each occasion on which the identity of a sub-contractor changes pursuant to this Agreement, in the event that there is a Relevant Transfer, the new sub-contractor shall in accordance with TUPE recognise the trade unions representing the employees whose contracts of employment transfer to the new sub-contractor to the same extent as they were recognised before the change of identity of the sub-contractor in respect of the provision of the Services.

22.12 **Indemnities**

22.12.1 The Council shall on demand indemnify and keep indemnified in full the Partner (for itself and for the benefit of each relevant sub-contractor) against all Losses incurred by the Partner or any relevant sub-contractor in connection with or as a result of:

- 22.12.1.1 a breach by the Council of its obligations under **clause 22.3.1** (Emoluments and Outgoings) above;
- 22.12.1.2 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 Council or any relevant Outgoing Provider in relation to any Transferring Employee prior to the Relevant Service Transfer Date including any act, fault or omission that leads to an Equal Pay Ruling; and/or
- 22.12.1.3 any claim by any trade union or staff association or employee representative (whether or not recognised by the Council in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Council or an relevant Outgoing Provider to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulation 13 of TUPE, under the Directive or otherwise.
- 22.12.2 Where the costs of an Equal Pay Ruling are to be borne by the Council pursuant to the provisions of **clauses 22.12.1.2** (Indemnities) or **22.14.9** (Compliance with Code Obligations) in respect of all future payments to the Relevant Employees and/or New Employees following the Decision Date then the Contract Price shall immediately be adjusted in respect of all such future payments to the Relevant Employees and/or New Employees by adjusting the remuneration of such employees as directed by such Equal Pay Ruling in the Contract Price on an ongoing basis. For the avoidance of doubt, in respect of all payments relating to the period prior to the Decision Date, the Council shall on demand indemnify and keep indemnified in full the Partner (for itself and for the benefit of each relevant sub-contractor) against all Losses in connection with or as a result of or in connection with the Equal Pay Ruling.
- 22.12.3 Where any liability in relation to any Relevant Employee, in respect of his or her employment by the Council or any relevant Outgoing Provider or its termination which transfers in whole or part in accordance with TUPE and/or the directive arises partly as a result of any act or omission occurring on or before the Relevant Service Transfer Date and partly as a result of any act or omission occurring after the Relevant Service Transfer Date, the Council shall on demand indemnify and keep indemnified the Partner or the relevant sub-contractor against only such

part of the Losses sustained by the Partner or any sub-contractor in consequence of the liability as is reasonably attributable to the act or omission occurring before the Relevant Service Transfer Date.

22.12.4 The Partner shall on demand indemnify and keep indemnified in full the Council, against all Losses incurred by the Council in connection with or as a result of:

22.12.4.1 any claim by any Relevant Employee that the identity of the Partner or the relevant sub-contractor is to that Relevant Employee's detriment or that any proposed or actual substantial change by the Partner or any sub-contractor to the Relevant Employees' working conditions or any proposed measures of the Partner or the relevant sub-contractor are to that employee's detriment whether such claim arises before or after the Relevant Service Transfer Date; and/or

22.12.4.2 any claim arising out of any misrepresentation or misstatement whether negligent or otherwise made by the Partner or sub-contractor to the Relevant Employees or their representatives whether before on or after the Relevant Service Transfer Date and whether liability for any such claim arises before on or after the Relevant Service Transfer Date.

22.12.5 For the avoidance of doubt, the indemnities in **clause 22.12.5** (Indemnities) shall not apply in respect of any sum for which the Council is to indemnify the Partner or a relevant sub-contractor pursuant to **clause 22.12.1** (Indemnities) or as a result of any adjustment to the Contract Price in accordance with **clause 22.5** (Employment Costs) or to the extent that the claim arises from a wrongful act or omission of the Council or any Future Service Provider.

22.12.6 **Clause 48.3** (Indemnities - General) of this Agreement shall apply where any claim is made in respect of the indemnities given under this **clause 22.12** (Indemnities).

22.13 **Provision of Details and Indemnity**

The Partner shall as soon as reasonably practicable and in any event within five (5) Business Days following a written request by the Council provide to the Council details of any measures which the Partner or any sub-contractor

envisages it or they will take in relation to any employees who are or who will be the subject of a Relevant Transfer, and if there are no measures, confirmation of that fact, and shall on demand indemnify the Council against all Losses resulting from any failure by the Partner to comply with this obligation.

22.14 **Compliance with Code Obligations**

22.14.1 The Council and the Partner shall and shall procure that any sub-contractor shall have regard to the Code in interpreting and applying the Code Obligations.

22.14.2 Subject to **clause 22.14.4** (Compliance with Code Obligations), the Partner shall procure that any New Employees shall be employed on terms and conditions of employment which are, overall fair and reasonable and no less favourable than those of the Transferring Employees engaged in the provision of the Services who are working alongside and holding the same or a similar position to that of the New Employees.

22.14.3 The Partner shall consult with and shall procure that any relevant sub-contractor shall consult with the recognised trade unions and where there is no recognised trade union any other employee representative body on the terms to be offered to the New Employees pursuant to **clause 22.14.2** (Compliance with Code Obligations).

22.14.4 In addition to its obligations under **clause 22.14.2** (Compliance with Code Obligations) above, the Partner shall procure that the New Employees are offered either:

22.14.4.1 membership of the LGPS where the employer has Admission Body status within the LGPS and makes the requisite contribution; or

22.14.4.2 membership of a good quality employer pension scheme, being either:

(a) a contracted-out final salary based defined benefit scheme, or

(b) a defined contribution scheme under which the employer must match employee contributions up to six percent (6%); or

- (c) a stakeholder pension scheme, under which the employer matches employee contributions up to at least six percent (6%).

22.14.5 During the Term, the Partner shall on request by the Council provide or procure that the Council is provided with such accurate and complete information as soon as reasonably practicable, including the terms and conditions of employment of the Transferring Employees and the New Employees, where this is required to monitor the Partner's and any relevant sub-contractor's compliance with its Code Obligations.

22.14.6 The Partner shall and shall procure that any relevant sub-contractor shall support any central Government sponsored review and monitoring programme on the impact of the Code and on request by the Council provide the Council with such accurate and complete information as soon as reasonably practicable in order to assist the Council in doing this.

22.14.7 The Council and the Partner shall in the first instance seek to resolve by discussions between them any complaints from any employee or any recognised trade union in relation to compliance by the Partner and any sub-contractor of its Code Obligations.

22.14.8 Where it appears to the Council or the Partner that it is not possible to resolve the matter by continuing discussions between them pursuant to **clause 22.14.7** (Compliance with Code Obligations) or where an employee of the Partner or any sub-contractor or any recognised trade union writes to the Council to confirm that it has been unable to resolve its complaint directly with the Partner or any sub-contractor in relation to the Partner's or relevant sub-contractor's Code Obligations:

22.14.8.1 the Council shall first write to the Partner to seek an explanation for the alleged failure by the Partner to comply with its Code Obligations. The Partner shall or shall procure that the relevant sub-contractor provide such an explanation in writing within five (5) Business Days of receipt of the request from the Council;

22.14.8.2 if the response provided by the Partner or any sub-contractor satisfies the Council that the Code Obligations have been met, then the Council will inform the

complainant of this and the matter will be deemed to have been concluded;

22.14.8.3 in the event that the Council is not satisfied with the response provided by the Partner or any sub-contractor the Council shall write to the Partner within five (5) Business Days to require the Partner to take immediate action to resolve this dispute; and

22.14.8.4 if, following such a request by the Council the Partner or relevant sub-contractor still appears to the Council not to be complying with its Code Obligations, the matter shall be dealt with in accordance with the Code Dispute Resolution Procedure in **Schedule 18** (Staffing Schedule).

22.14.9 The Council shall pursuant to **clause 22.12.1.3** (Indemnities) be responsible for any Losses relating to the terms and conditions of employment of the New Employees pursuant to compliance with the Code Obligations under this **clause 22.14** (Compliance with Code Obligations) as a result of an Equal Pay Ruling.

22.15 **Compliance with the Law and Council's Diversity Policy**

The Partner will comply (and will procure that any sub-contractor will comply) with the Law relating to equal opportunities and diversity and take all steps reasonably required by the Council to support the Council in complying with its public sector equality duties including where appropriate complying with the Council's Equality Policy as set out in **Schedule 12** (Policies, Plans and Strategies).

22.16 **Reorganisation and Redundancies**

If at any time whether on commencement or during the provision of the Services, the Partner proposes any reorganisation which may result in compulsory redundancy for any Transferring Employees, the Partner shall prior to implementing any such redundancies, (but without any obligation to incur any additional costs), use reasonable endeavours to minimise the number of such redundancies or avoid such redundancies by considering alternative options such as:

22.16.1 re-deployment (with or without re-training) within the Partner, the Council or any relevant subcontractor, in or within reasonable travelling distance of the Area or, with the consent of the Transferring Employee, further a field;

22.16.2 voluntary redundancy; or

22.16.3 early retirement.

The Partner will demonstrate to the reasonable satisfaction of the Council (via the Partnership Board) that the alternative options listed in this **clause 22.16** have been reasonably examined. It is accepted by the parties that the proposed actions shall represent an economically acceptable solution for the Partner taking into account the provisions in the Financial Model or the Business Case for the Project or the Impact Assessment for the Change (as relevant). It is noted by the parties that the Council wishes to reduce the number of compulsory redundancies where possible and provided that the Partner has complied with this **clause 22.16** the Partner's ability to make such redundancies shall not be fettered.

22.17 Secondment

[Redacted]

[Redacted]

22.17.3

[Redacted]

the Partner agrees to use its reasonable endeavours to procure alternative funding in order that such In Flight Projects can continue to be delivered, it being acknowledged by both parties that the continued secondment and employment of such Remaining Employees may not be necessary (and this will be identified in the verification process undertaken pursuant to Schedule 20 (In Flight Projects)). In the event that such alternative funding cannot be obtained or to the extent the Remaining Employees are not necessary for the continuation of such In Flight Projects, both parties will notwithstanding the aforementioned, use reasonable endeavours to identify suitable alternative employment for the Remaining Employee(s) within their respective organisations.

22.17.4 In the event that any of the Remaining Employees are made redundant by the Council, or allege that their employment did transfer or should have transferred under TUPE to the Partner or any relevant sub-contractor with effect from the Relevant Service Transfer Date or subsequently ("Alleged Transfer"), the Council shall be responsible for any monies that are payable to the Remaining Employees as a result of such redundancy or any liabilities, costs or claims arising from or in connection with a claim by either of the Remaining Employees in connection with such Alleged Transfer, including but not limited to termination of employment by reason of redundancy.

23. **PENSIONS**

23.1 **Partner to Become an Admission Body**

Where the Partner employs any Eligible Employees from a Relevant Service Transfer Date and wishes to offer those Eligible Employees membership of the LGPS, the Partner shall procure that it shall become an Admission Body. The Partner shall before the Relevant Service Transfer Date execute an Admission Agreement (in the form attached at **Schedule 10** (Pensions) or in substantially the same form and as agreed between the parties to the Admission Agreement) which will have effect from and including the Relevant Service Transfer Date.

23.2 **Admission Agreement**

The Council will before the Relevant Service Transfer Date execute the Admission Agreement referred to in **clause 23.1** (Partner to Become an Admission Body) and will use its best endeavours to ensure that the Administering Authority executes the Admission Agreement.

23.3 **Indemnity for a Breach of the Partner Admission Agreement**

Without prejudice to the generality of this **clause 23** (Pensions), the Partner agrees to indemnify the Council from and against all Direct Losses suffered or

incurred by it which arise from any breach by the Partner of the terms of this **clause 23** (Pensions) and/or the Admission Agreement to the extent that such liability arises before or as a result of the termination or expiry of this Agreement (howsoever caused).

23.4 **Indemnity or Bond**

Without prejudice to the generality of the requirements of this **clause 23** (Pensions), the Partner shall procure that prior to the Relevant Service Transfer Date it shall obtain any indemnity or bond if required, in accordance with the Admission Agreement and in the form attached at **Schedule 10** (Pensions) or in substantially the same form and as agreed between the parties to the bond. For the avoidance of doubt the Council requires the Partner to procure a bond with effect from the Relevant Service Transfer Date and to maintain such bond (or an extension or replacement of such bond) in place until the liabilities arising on termination of the Admission Agreement have been discharged or the Council has confirmed it no longer requires the Partner to maintain such bond.

23.5 **Right of Set Off**

The Council shall have a right to set off against any payments due to the Partner under this Agreement an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the Pension Regulations) due from the Partner under the Admission Agreement.

23.6 **Partner ceases to be an Admitted Body**

23.6.1 If the Partner employs any Eligible Employees from a Relevant Service Transfer Date and;

23.6.1.1 if the Council and the Partner are both of the opinion that it is not possible to operate the provisions of **clauses 23.1** (Partner to Become an Admission Body) to **23.5** (Right of set off) inclusive other than on the date of termination or expiry of this Agreement then the Partner shall procure that the Eligible Employees shall be offered membership of the Partner Scheme in accordance with **clause 23.7** (Partner Scheme); or

23.6.1.2 if for any reason after the Relevant Service Transfer Date the Partner ceases to be an Admission Body other than on the date of termination or expiry of this Agreement or because it ceases to employ any Eligible Employees then the provisions of **clauses 23.1** (Partner to Become an Admission Body) to **23.5** (Right of Set Off) inclusive shall not apply (without prejudice to any rights of the Council

under those clauses) and the provisions of **clause 23.7** (Partner Scheme) shall apply.

23.7 **Partner Scheme**

23.7.1 The Partner will, not later than the Relevant Service Transfer Date or Cessation Date (as the case may be), nominate to the Council in writing the scheme or schemes which it proposes will be the Partner Scheme for the purposes of this Agreement. Such scheme or schemes must be:

23.7.1.1 established within three (3) months prior to the Relevant Service Transfer Date or Cessation Date (as the case may be) and maintained throughout the duration of this Agreement;

23.7.1.2 reasonably acceptable to the Council (such acceptance not to be unreasonably withheld or delayed);

23.7.1.3 a registered scheme under the Finance Act 2004; and

23.7.1.4 certified by the Government Actuary's Department or an Actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department to provide benefits broadly comparable to those provided by the LGPS.

23.7.2 The Partner undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that it shall procure that:

23.7.2.1 the Eligible Employees shall by three (3) months prior to the Relevant Service Transfer Date or the Cessation Date (as the case may be) be offered membership of the Partner Scheme with effect from and including the Relevant Service Transfer Date or Cessation Date (as the case may be);

23.7.2.2 the Partner Scheme will provide benefits in respect of the Eligible Employees' periods of service on and after the Relevant Service Transfer Date or Cessation Date (as the case may be) which the Government Actuary's Department or an actuary nominated by the Council in accordance with the relevant guidance produced by the Government Actuary's Department shall determine to be broadly comparable to the benefits which the Eligible Employees

would have been entitled to under the LGPS had they continued in membership of the LGPS;

23.7.2.3 on and from the Relevant Service Transfer Date or Cessation Date (as the case may be) until the earlier of:

- (a) 3 months after the date on which the Eligible Employees are first able to join the Partner Scheme; or
- (b) the date on which the Eligible Employees joins the Partner Scheme,

the Partner 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 Council in accordance with relevant guidance produced by the Government Actuary's Department as being broadly comparable to those that would otherwise have been provided in respect of those Eligible Employees by the LGPS;

23.7.2.4 if the Partner Scheme is terminated, the Partner will provide a replacement pension scheme with immediate effect for those Eligible Employees who are still employed by the Partner. The replacement pension scheme must comply with this **clause 23.7** (Partner Scheme) as if it were the Partner Scheme;

23.7.2.5 before the Relevant Service Transfer Date or Cessation Date (as the case may be) the trustees of the Partner Scheme shall undertake by deed to the Council that they shall comply with the provisions of **clause 23.7** (Partner Scheme), **23.8.1** (Undertaking from the Partner), **23.8.3** (Undertaking from the Partner) and **23.8.4** (Undertaking from the Partner);

23.7.2.6 within two (2) Months of the Relevant Service Transfer Date or Cessation Date (as the case may be), the Partner will offer or procure that there is offered to each Eligible Employee who agrees to become a member of the Partner Scheme the opportunity to transfer the value of the benefits he had accrued under the LGPS into the Partner Scheme. For each Eligible Employee who accepts such an offer in writing within two (2) months of receipt of the offer, the Partner will procure that the Partner Scheme will provide benefits which, in the opinion of the Government Actuary's

Department in respect of past service are equal in value to and no less favourable and in respect of future service are broadly comparable in value to and no less favourable than the benefits to which the Eligible Employee was entitled under the LGPS; and

- 23.7.2.7 the transfer value paid under **clause 23.7.2.6** (Partner Scheme) will, subject only to any restrictions under the LGPS and HMRC limitations, be wholly applied under the Partner Scheme in the provision of benefits for and in respect of the Eligible Employees in respect of whom that transfer was made, in respect of service before the Relevant Service Transfer Date or Cessation Date (as the case may be). For the avoidance of doubt, the provisions of this clause are not intended to require the Partner Scheme to operate as a sectionalised scheme in respect of the Eligible Employees.

23.8 **Undertaking from the Partner**

The Partner undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) to procure that:

- 23.8.1 all information which the Council or its professional advisers may reasonably request for the administration of the LGPS or concerning any other matters raised in **clauses 23.7** (Partner Scheme) and **23.8** (Undertaking from the Partner) will be supplied to them as expeditiously as possible;
- 23.8.2 the Partner will not without the consent in writing of the Council (which will only be given subject to the payment by the Partner of such reasonable costs as the Council or the Administering Authority may require) consent to instigate, encourage or assist any event which could impose on the LGPS or on the Council 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;
- 23.8.3 until the Relevant Service Transfer Date, no announcements (whether in writing or not) will be made to the Eligible Employees concerning the matters stated in **clauses 23.1** (Partner to Become an Admission Body) to **23.8** (Undertaking from the Partner) inclusive without it obtaining the consent in writing of the Council and the Administering Authority (such consent not to be unreasonably withheld or delayed);

- 23.8.4 the Partner shall not take or omit to take any action which would materially affect the benefits under the LGPS or the Partner 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 Council (not to be unreasonably withheld or delayed) provided that Partner will be so entitled without the requirement of consent of the Council to give effect to any pre existing contractual obligations between the Council and any Eligible Employees; and
- 23.8.5 the Partner shall offer any of its Eligible Employees who cease to be engaged in the provision of the Services and thereby cease to be eligible for membership of the LGPS membership of the Partner Scheme immediately after ceasing to be so engaged, unless relevant Eligible Employees agree with the Partner for such membership not to apply to them.

23.9 **Discretionary Benefits**

23.9.1 Where

- 23.9.1.1 the Partner is an Admission Body in the LGPS, it shall (where permitted) award benefits to the Eligible Employees under the Compensation Regulations and/or the Pension Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council; and
- 23.9.1.2 the award of benefits in **clause 23.9.1** (Discretionary Benefits) is not permitted under the Pension Regulations and/or the Compensation Regulations or the Partner is not an Admission Body, the Partner shall award benefits to the Eligible Employees which are broadly comparable to the benefits the Eligible Employees would have received under the Compensation Regulations and/or the Pension Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council.

23.9.2 In either case, where such benefits are of a discretionary nature, they shall be awarded on the basis of the Council's written policy in relation to such benefits at the time of the Relevant Service Transfer Date (which the Council will provide upon request and a copy of which as at the Commencement Date is contained in **Schedule 10** (Pensions)).

Where the payment of such benefits is not, for whatever reason, possible, the Partner 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 Subject always to the Council's obligations pursuant to this **clause 23** (Pensions) the Partner hereby indemnifies the Council from and against all Direct Losses suffered or incurred by it which arise from claims by Eligible Employees of the Partner or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:

23.10.1.1 relate to pension rights accrued in respect of periods of employment on and after the Relevant Service Transfer Date until the date of termination or expiry of this Agreement; or

23.10.1.2 arise out of the failure of the Partner to comply with the provisions of this **clause 23** (Pensions) before the date of termination or expiry of this Agreement,

save to the extent that such Direct Losses are caused by the actions or omissions of the Council.

23.11 **Costs of the Admission Agreement and the certification of comparability**

23.11.1 The costs of the Administering Authority necessarily and reasonably incurred in connection with the Admission Agreement shall be borne by the Partner.

23.11.2 The costs of the Partner obtaining the necessary certification of comparability shall be borne by the Partner.

23.12 **Transfer to another Employer**

23.12.1 If during the term of the Agreement the Partner transfers to another employer (by way of a transfer under TUPE) the employment of any Eligible Employee who is or will be engaged in the Services the Partner will:

- 23.12.1.1 consult with and inform those Eligible Employees of the pension provisions relating to the transfer; and
- 23.12.1.2 use its reasonable endeavours to procure that the employer to which the Eligible Employees are transferred (the "New Employer") complies with the provisions of this **clause 23** (Pensions),

provided that references in this **clause 23** (Pensions) to the Partner on shall be construed as references to the New Employer; references to "Relevant Service Transfer Date" shall be construed as references to the date of the transfer to the New Employer and references to "Employee" shall be construed as references to the employees so transferred to the New Employer.

23.13 **Pension Issues on Expiry or Termination**

23.13.1 The Partner will:

- 23.13.1.1 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 Partner in the provision of the Services on the expiry or termination of this Agreement (including without limitation identification of the Eligible Employees);
- 23.13.1.2 promptly provide to the Council such documents and information mentioned in **clause 23.12.1.1** (Transfer to another Employer) which the Council or the Administering Authority may reasonably request in advance of the expiry or termination of this Agreement; and
- 23.13.1.3 fully co-operate (and procure that the trustees of the Partner Scheme shall fully co-operate) with the reasonable requests of the Council 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 Partner in the provision of the Services on the expiry or termination of this Agreement.

23.14 **Funding Pensions liabilities**

23.14.1 The Council hereby undertakes that:

- 23.14.1.1 it shall procure that:

- (a) the Partner will only be required to contribute to the LGPS in respect of pension benefits of the Eligible Employees which accrue for pensionable service on or after the Relevant Service Transfer Date; and
 - (b) the funding of the accrued rights of Eligible Employees in the LGPS in respect of pensionable service up to the Relevant Service Transfer Date shall be calculated on the basis that the LGPS had assets equal to its liabilities at the Relevant Service Transfer Date based on the LGPS' ongoing actuarial valuation basis;
- 23.14.1.2 it shall remain responsible to pay any contributions to the LGPS which may be required in order to maintain such fully funded position in relation to pensionable service up to the Relevant Service Transfer Date as set out in **clause 23.14.1.1(b)** (Funding Pensions Liabilities); and
- 23.14.1.3 it shall indemnify and keep indemnified the Partner on demand against all Direct Losses suffered or incurred by the Partner where the Council fails in whole, or in part, to comply with the terms of **clauses 23.14.1.1** (Funding Pensions Liabilities) and/or **23.14.1.2** (Funding Pensions Liabilities). For the avoidance of doubt, the Partner shall be permitted to claim any increase to its costs as a result of the operation of this clause.
- 23.14.2 Subject to **clause 23.14.3** (Funding Pensions Liabilities), any Pension Costs incurred by the Partner in any Pension Period that exceed the Pension Base Cost ("**Excess Amount**") shall be the sole responsibility of the Council and shall be dealt with as set out in **clause 23.14.5** (Funding Pensions Liabilities). Where the Administering Authority announces any changes to the employer contribution rate under the Admission Agreement, the Council and the Partner shall promptly meet to discuss these changes and how they are to be handled in accordance with this **clause 23.14** (Funding Pensions Liabilities) and the provisions of **clause 23.14.3** (Funding Pensions Liabilities).
- 23.14.3 Nothing in **clause 23.14.2** (Funding Pensions Liabilities) shall require the Council to be responsible for any Excess Amount to the extent that such Excess Amount has arisen as a result of:
- 23.14.3.1 a decision or exercise of discretion by the Partner which:
 - (a) increases the salaries of Eligible Employees above the greater of:

(A) the increases assumed in the relevant actuarial valuations of the LGPS; and

(B) the increases the Partner is contractually bound to provide,

which do not relate to promotions for positions currently included in the Financial Model;

(b) provides:

(A) consent under Regulation 11(2) of the Benefit Regulations in respect of the fees of a variable time employee;

(B) an increase in the total membership of an active member under Regulation 12 of the Benefit Regulations;

(C) an award to additional pension under Regulation 13 of the Benefit Regulations;

(D) consent to flexible retirement under Regulation 18 of the Benefit Regulations;

(E) a voluntary retirement without reduction on compassionate grounds under Regulation 30(5) of the Benefit Regulations;

(c) results in the early retirement of Eligible Employees due to dismissal by reason of redundancy or business efficiency under Regulation 19 of the Benefits Regulations, save in relation to those costs included in the Financial Model; and

23.14.3.2 additional liabilities under the LGPS arising under Regulation 20 or Regulation 31 of the Benefits Regulations in excess of the liabilities assumed in the relevant actuarial valuations of the LGPS arising under these Regulations, as applied to the Eligible Employees, save that for this purpose:

(a) there must be a provision in the actuarial valuation for such liabilities, and if there is not, a reasonable assumption should be assumed; and

(b) any such provision in the actuarial valuation shall not, unless reasonably justified, be different for the Eligible

Employees than applied for all other members of the LGPS.

- 23.14.4 Within twenty (20) Business Days of the end of each Pension Period the Partner shall notify the Council in writing of any Excess Amount or Shortfall Amount (as the case may be) in the immediately preceding Pension Period, together with a reasonable summary of how the Partner has arrived at its calculation of such amount. Within ten (10) Business Days of receipt of any such notice the Council shall confirm in writing to the Partner either that it agrees with or set out in writing any grounds upon which the Council disagrees with the level of the relevant amount. In the event that the Council disagrees with the contents of the notice, the parties shall resolve such disagreement in accordance with **clause 46** (Dispute Resolution Procedure (DRP)).
- 23.14.5 Following agreement (or determination in accordance with **clause 46** (Dispute Resolution Procedure (DRP)) of any Excess Amount, such Excess Amount (less an amount equal to any corporation tax relief which has been claimed in respect of the Excess Amount by the Partner) shall be dealt with as an adjustment to the Contract Price which shall be undertaken by means of a Reprioritisation in accordance with **clause 28** (Variation and Change Control) of this Agreement.
- 23.14.6 Within twenty (20) Business Days of agreement (or determination in accordance with **clause 46** (Dispute Resolution Procedure (DRP)) of any Shortfall Amount, the Partner shall pay an amount equal to the Shortfall Amount to the Council.
- 23.14.7 Where the Partner is obliged otherwise than as a result of a Partner Breach to nominate a Partner Scheme under **clause 23.7** (Partner Scheme), the Council shall cease making any payments to the Partner which relate to payments to be made to the LGPS and shall instead pay to the Partner an amount:
- 23.14.7.1 for each Eligible Employee who is a member of the Partner Scheme as calculated in accordance with the Actuary's Letter; and
- 23.14.7.2 which represents the difference between the amount paid by the LGPS to the Partner Scheme arising from the offer made under **clause 23.7.2.6** (Partner Scheme) and the amount which is calculated under the Actuary's Letter.

For the avoidance of doubt the Council and the Partner acknowledge that the statement set out at **Schedule 10** (Pensions) provides the assumptions which the Partner proposes as at the date of this

Agreement and is not in final form but is to be used as a basis for agreement of the Actuary's Letter in the event that this **clause 23.14.7** applies. The parties shall use their best endeavours to agree the terms of the Actuary's Letter in **Schedule 10** (Pensions) as soon as reasonably practicable after the Cessation Date taking into account actuarial advice and market conditions at the Cessation Date. The Council and the Partner agree that the assumption methodology to be applied on the establishment of the Partner Scheme shall be no worse than the assumptions set out at **Schedule 10** (Pensions). If the parties fail to agree the Actuary's Letter within one month (or such other period as the parties may agree) of this **clause 23.14.7** applying then the parties shall resolve the matter in accordance with **clause 46** of this Agreement (Dispute Resolution Procedure). Once agreed the terms of the Actuary's Letter shall apply in relation to the calculations to be made under this **clause 23.14.7**.

23.14.8 For the purposes of this **clause 23.14** (Funding Pensions Liabilities):

"**Actuary's Letter**" means a statement pursuant to **clause 23.14.7** to be agreed between the Council and Partner prior to the establishment of the Partner Scheme setting out assumptions methodology for contribution to the Partner Scheme;

"**Partner Breach**" means the Administering Authority duly exercising its discretion to terminate the Admission Agreement under:

- (a) **clauses 8.2.1** and/or **8.2.2** of the Admission Agreement; or
- (b) **clause 8.2.3** of the Admission Agreement,

where such termination is either accepted by the Partner or otherwise determined by an expert appointed pursuant **clause 46.5** (Dispute Resolution Procedure (DRP)) as being attributable to either a breach by the Partner of the Admission Agreement or otherwise to the fault of the Partner in connection with its membership of the LGPS (including the improper conduct of the Partner in relation to the discharge of its obligations under the Admission Agreement).

Where the expert considers it appropriate for the Administering Authority to have an input into the dispute resolution process and the Administering Authority does not provide sufficient input, the termination by the Administering Authority of the Admission Agreement shall not be deemed to be attributable to a Partner Breach for the purposes of this Agreement;

"Pension Base Cost" means 21.8% of the pensionable pay of the Eligible Employees (Indexed)

"Pension Costs" means the costs of complying with the Pension Requirements, but excluding any costs relating to:

- (a) the provision of any bond or indemnity that the Partner are required to provide under the terms of any Admission Agreement; and
- (b) the provision of advice from the actuary to the LGPS arising from the instruction from the Partner in relation to the Pension Requirements;

which will be covered by the Partner, as appropriate;

"Pension Period" means:

- (a) the period between the first Relevant Service Transfer Date and the last day of the then current Year; and
- (b) each subsequent Year;

"Pension Requirements" means the terms and conditions set out in:

- (a) **clauses 23.1** (Partner to Become an Admitted Body), **23.6** (Partner ceases to be an Admitted Body), **23.7** (Partner Scheme), **clause 23.8** (Undertaking from the Partner) and **clause 23.9** (Discretionary Benefits); and
- (b) the Admission Agreement,

but in each case in respect of Eligible Employees only;

"Shortfall Amount" means the amount by which the Pension Costs incurred by the Partner are less than the Pension Base Cost (less an amount equal to any corporation tax relief which could have been claimed by the Partner on the Shortfall Amount had the Shortfall Amount actually been paid to the relevant pension scheme).

PART F: PERFORMANCE REVIEW AND CONTINUOUS IMPROVEMENT

24. PARTNER'S PLANS AND PERFORMANCE REVIEWS

Each year the Partner and the Council shall undertake a series of essentially discreet and separate processes which shall comprise the Annual Performance

Review, the Service Development Plan and Annual Budget Setting. Though these processes are separately defined, the detail and outcome of each process interlinks with the others. It is intended that these processes shall be managed as an overall package, to ensure that the interdependencies between the processes are effectively recognised and controlled.

These processes will be conducted broadly sequentially and so as to inform the other as each progresses. The parties envisage that the sequence of activity will be (1) the Annual Service Review, (2) the Service Development Plan and (3) the Annual Budget Setting.

The defined timescales for these processes may vary from time to time, in order to fit in with the Council's strategic and financial planning cycles and the Council's budget/resource allocation process and any changes to such cycles and processes. In such cases the Council will confirm its intent to the Partner to alter the timescales, giving at least one (1) month's notice before the commencement of the earliest event.

The Council shall confirm to the Partner its estimate of the budget for each coming Year as soon as reasonably practicable before or during the preparation of the Service Development Plan. Such figure shall be in no way binding upon the Council who will confirm the actual budget to the Partner at the appropriate time in accordance with **clause 24.3** (Annual Budget Setting).

24.1 **Annual Performance Review**

24.1.1 The purpose of the Annual Performance Review is to consolidate the performance of the past Year in a review document that is suitable for distribution to the Council so as to provide senior management of both parties with an assessment of high level performance and Value for Money achieved from the Services and the Partnership with supporting collated documentation from the monthly performance and Quarterly performance reviews.

24.1.2 As soon as possible following the Financial Year end and in advance of both the submission by the Council of its performance reports to the Audit Commission and the commencement by the Council of its annual business and financial planning process (and independent of that process) the Partner shall conduct an annual review of the Services (the "Annual Performance Review") in order to:

24.1.2.1 assess performance of the Services against the Service Levels, Outcomes and the Three Year Projection agreed in respect of the previous Year and set out any improvements which the Partner must make to those Services in order to achieve the requisite Service Levels

and the Three Year Projection (the impact of any Dependencies or Excusing Causes shall be taken into account in this exercise and such Dependencies or Excusing Causes shall be referenced); and

24.1.2.2 record any continuous improvement in relation to the delivery and performance of the Services,

and shall produce a comprehensive and detailed report ("Annual Performance Review Report") to the Council on the findings of its annual review for review and agreement by the Council following which the Partner shall (subject to the other provisions of this Agreement including **clause 24.3** (Annual Budget Setting)) implement such improvements as are set out in the Annual Performance Review Report and make any adjustments to Service Levels which are appropriate to capture continuous improvement.

24.1.3 The following provisions shall apply in relation to the production of a Annual Performance Review Report in respect of the final Year of this Agreement:

24.1.3.1 where this Agreement naturally expires, the Partner shall comply with this **clause 24.1** (Annual Performance Review) in the month following the expiry date of this Agreement; or

24.1.3.2 where this Agreement is terminated, the Partner shall produce a review and report of the Services provided from the April which immediately precedes the Termination Date to the Termination Date providing as much detail as it is able to in compliance with **clauses 24.1** (Annual Performance Review) and **24.4** (Annual Performance Review) in order that the Council can use this information to compile its own annual service review and report in the April following the Termination Date.

24.2 **Service Development Plans**

The Partner shall in accordance with this **clause 24.2** (Service Development Plans) produce a draft Service Development Plan in respect of its provision of the Services, upon the following terms:

24.2.1 **Content**

24.2.1.1 The draft Service Development Plan shall set out for each forthcoming Year what the Partner proposes to do in order

to achieve within the budget the delivery of the Services and Outcomes as more particularly set out in this Agreement in alignment with the Council's objectives.

24.2.1.2 The draft Service Development Plan will include the following information in order to inform the Council and enable it to take a decision in accordance with **clause 24.2.12** (Process):

- (a) a summary of the monthly and Quarterly Performance Reviews (provided in accordance with **clause 24.4** (Performance Reviews)) and a reminder of the Service Development Plan for the current Year;
- (b) the Partner's strategies, objectives, financial and other targets, proposed activities and Service outcomes and the effect of the proposed activities on the Council, for the following three (3) years;
- (c) identify the strategic focus for Projects in the coming Year;
- (d) a list of ideas for SBCs, OBCs and/or FBCs for the next Year, which list must have been approved for inclusion in the draft Service Development Plan by the Partnership Board in accordance with **clause 19** (Projects) and which list will detail:
 - (i) each idea;
 - (ii) what level of Business Case (be it SBC/OBC/FBC) each idea will progress to in the next Year;
 - (iii) the timescales for producing each such level of Business Case; and
 - (iv) the detail of the proposed resourcing and funding for the proposed Project activity;
- (e) a review of the SBCs, OBCs, FBCs and/or PIDS and Changes under development and/or implementation within the Partnership (including detail in relation to what progress is expected to be made in respect of each such SBC, OBC, FBC and/or PID in the next Year);

- (f) any recommendations for service improvements arising from the Performance Reviews (including all relevant performance information);
- (g) a profile of the investment undertaken and to be undertaken by the Partner;
- (h) proposals for savings, dis-investment or income growth to meet the requirements of the annual budget setting process;
- (i) details of the Partner's progress on achieving any Milestones by any Milestone Dates and Longstop Milestone Dates;
- (j) a statement of proposed Dedicated Partner Asset acquisitions detailing procurement process, form of ownership, acquisition cost and the application of the Write Down Policy, where relevant;
- (k) a statement of any agreements which the Partner proposes to enter into in relation to the Services which have a term of more than twelve (12) months including details of each agreement's terms;
- (l) notification of any claims / disputes pending, submitted or settled (whether this be claims against the Partner in delivering the Services or claims the Partner is making against Third Parties in connection with the Services);
- (m) any changes to the accommodation from which Partner is delivering the Services;
- (n) details of any impact on Third Parties whose interest may be affected by any of the proposed activities of the Partner in relation to the Services;
- (o) details of the impact of the Service Development Plan on Council functions and budgets (to the extent the same is known by the Partner or should be known having regard to the Partner's performance of the Services);
- (p) a review of existing and projected volumes in relation to Service Components taking account of any information provided by the Council;

- (q) a review of the Tolerance Parameters and any proposals for widening the Tolerance Parameters
- (r) set the agreed standards for Top Quartile in accordance with **clause 6.4** (Top Quartile); and
- (s) any changes to the Service Levels as a result of continuous improvement.

24.2.1.3 The Service Development Plan shall have appended to it:

- (a) the most up to date version of the Agreement Asset Register;
- (b) an up to date staff information relating to the Personnel including numbers, posts, nature of deployment and the names of all Key Personnel and all other information as may reasonably be requested by the Council;
- (c) up to date list of Third Party agreements entered into for the purposes of providing the Services including a brief description of the subject matter;
- (d) a refreshed version of the draft Exit Plan;
- (e) a refreshed version of the Business Continuity Plan;
- (f) an updated risk register;
- (g) the Regeneration Framework and any updates or proposals in relation to the same; and
- (h) after the Council has set its budget in accordance with **clause 24.3.6** (Annual Budget Setting) an amended Financial Model that takes into account any changes that have been agreed through the annual budget setting process.

Process

24.2.2 Prior to the end of September every Year the parties shall discuss the provision of the Services and relevant Projects likely to be required in the following three Years, including the resourcing, fee, Council budget and other implications of these Services and Projects to inform the production of a draft Service Development Plan by the Partner.

- 24.2.3 The Partner shall consult the Council and take into consideration the Council's plans and objectives in proposing the draft Service Development Plan, which shall include without limitation having regard to the Council's Towards Top Performance Programme and the Council Plan, Policies, revenue budget, capital programme and medium term financial strategy and relevant Laws or Government policies and initiatives.
- 24.2.4 The Council shall co-operate with the Partner in providing information to the Partner to assist with its production of the Service Development Plan including by providing information in such a timely manner as is reasonably practicable.
- 24.2.5 The Council shall during or prior to the Service Development Plan planning process indicate to the Partner the Council's anticipated draft budget for the coming Year.
- 24.2.6 The Partner shall produce a draft Service Development Plan by November every Year and shall present such plan to the Partnership Board, which will discuss and amend the draft Service Development Plan as necessary in discussion with the Partner.
- 24.2.7 The impact of the Council's budget/resource allocation on the draft Service Development Plan shall be reviewed and discussed with the Partner each Year so that the impact of the budget can be reflected in the draft Service Development Plan as further described in **clause 24.3.2** (Annual Budget Setting).
- 24.2.8 The timescales for submission of the draft Service Development Plan may vary from time to time (with the Council's prior written consent) in order to fit in with the Council's strategic and financial planning cycles and the Council's budget/resource allocation process and any changes to such cycles and processes.
- 24.2.9 The Partnership Board shall report to the Council on the draft Service Development Plan with recommendations by December every Year in accordance with the Council's service and budget planning cycle.
- 24.2.10 The draft Service Development Plan will be reviewed in January of each Year by the Council in discussion with the Partner.
- 24.2.11 Any adjustments required to be made to the draft Service Development Plan to take account of the finalisation of the Council's budget setting process (including appending an amended Financial Model) shall take place not later than ten (10) Business Days prior to the meeting of the Council to approve the Service Development Plan.

- 24.2.12 The Council shall be entitled to approve or reject part or the whole of any draft Service Development Plan recommended to it by the Partnership Board in accordance with **clause 24.2.9** (Process). Any such approval by the Council shall not be unreasonably withheld or delayed by the Council. The Partner shall respond in a timely fashion to any clarifications or refinements and acting reasonably consider any amendments which the Council may have (acting reasonably) in relation to any of the draft Service Development Plans.
- 24.2.13 Following the Council's approval pursuant to **clause 24.2.12** (Process) and the finalisation of budget in **clause 24.3** (Annual Budget Setting) the Partner shall comply with and implement the approved Service Development Plans, within the timescales specified in the Service Development Plans.
- 24.2.14 It is acknowledged that in relation to capital expenditure in respect of elements of Highways and Asset Management the level of available funding is such that there cannot in some Years be an accomplishment of all the operational tasks which would be consistent at a granular level with the achievement of the requisite standard in relation to the subject of that particular activity. The parties agree that best practice shall comprise the identification of a priority of working driven by CAMP, TAMP, health and safety so that there is an optimisation of achievement in support of the Council's objectives within the available resource in a manner thereby achieves the optimum activity by way of application of which available budget over the course of the Year and thereby achieves VFM and Best Value in the context of the available resource and the specified standards, outputs and Outcomes.
- 24.2.15 The above process will be iterative so that there may be a number of updates to the draft Service Development Plan produced by the Partner which reflect the discussions and information being exchanged between the parties.

24.3 **Annual Budget Setting**

- 24.3.1 The Partner shall in accordance with this **clause 24.3** (Annual Budget Setting) assist the Council in its annual business and financial planning process in which the Council establishes its budget and spending priorities in detail for the coming Year (and in principle for Years two (2) and three (3) of the medium term financial plan). The timing of this shall be determined by the Council's budget development and approval timetable which shall be prescribed by the Council in detail from Year to Year and provided in advance to the Partner (with reasonable

notice) but which in general starts in the Autumn of each Year and concludes at a full Council meeting in February of the following Year.

24.3.2 As part of this annual budget setting process the Partner shall provide reasonable assistance to the Council at all relevant stages in the Council's development of its budget for the coming Year and the Council shall (subject to any confidentiality obligations) share its views with the Partner on the areas of prioritisation for the budget at the outset of the process and shall update it as regards any change to its view. The Partner's assistance shall include through dialogue with the Council provision of such information as the Council reasonably requests (including reasoned demand forecasts), impact assessments in relation to change of budget or budgetary priority, impact mitigation and such other matters as would normally be a component of the development of a Council's budget in relation to the Services.

24.3.3 Between October and December the Council shall provide the Partner with a draft of the Council's budget and the Partner shall:

24.3.3.1 within ten (10) Business Days from a draft budget being proposed verify its delivery of the Services within the budget allocated; or

24.3.3.2 within twenty (20) Business Days from a draft budget being proposed where there are changes to the draft budget allocated to the Services (as compared to the previous Year's budget (subject to any Changes)), submit a proposal to the Council for consideration upon the extent to which and how the Partner proposes to deliver the Services within the Council's draft budget (including the impact on the Outcomes, scope of the Services, Service Levels and Core Projects),

it being acknowledged and agreed by the Council that a reduction in budget may mean that the Partner cannot continue to provide the Services, the Projects and achieve the Outcomes in accordance with this Agreement, in which case the provisions of **clause 24.3.4** (Annual Budget Setting) shall apply.

24.3.4 If **clause 24.3.3.2** (Annual Budget Setting) applies (provided that the Council has delivered the budget in accordance with **clause 24.3.3** (Annual Budget Setting)), the Partner shall provide to the Council as soon as reasonably practicable and in any event prior to the full Council annual general meeting and in support of any such proposal;

- 24.3.4.1 evidence and an explanation of how the Partner's proposal will best meet the Council's requirements to achieve Value for Money, the extent to which the Partner's proposal in relation to any element of the Services will not achieve the Service Levels and how the proposal is reasonable and proportionate overall together with list of issues to be considered by the Council;
 - 24.3.4.2 an assessment of any impact the proposed budget has on Personnel and the Partner's proposals on the re-deployment of any Personnel or where this is not possible (following the Partner's compliance with **clause 22.16** (Reorganisation and Redundancies)) an estimate of the redundancy costs (including any increased liabilities that may be incurred under the LGPS) which have been factored into the Partner's proposed Financial Model for the forthcoming Year and the date on which the reduction in budget would take effect (having taken account of the date when payment of any redundancy costs would need to be made); and
 - 24.3.4.3 sufficient information to allow the Council to make a reasoned decision as to how to allocate the budget in respect of the Services.
- 24.3.5 The budget setting process shall be iterative so that there may be a number of updates to the draft Council budget which reflect the discussions and information being exchanged between the parties.
- 24.3.6 The Council shall set a budget at its full Council meeting before the end of February each Year at which point the Service Development Plan for the forthcoming year shall be effective.
- 24.3.7 If:
- 24.3.7.1 the Council's budget shall be amended in the period following its release and the full Council annual general meeting so as to make a further alteration to the allocation of budget in relation to all or any of the Services or the Council is obliged to revise its budgets as a result of a change in policy by central government (such as a midterm budget review in consequence of a change in government or similar) such that the Partner cannot deliver the Services and/or any Core Project within the allocated budget; or

24.3.7.2 the Council and the Partner fail to reach agreement in respect of the Council's proposed budget following consideration by the parties of the documentation produced by the Partner in accordance with **clause 24.3.4** (Annual Budget Setting),

the Partner shall within two (2) Business Days submit to the Council its reasoned proposal for the adjustment to the Services in order to achieve delivery within budget. The parties shall seek to reach agreement within ten (10) Business Days, failing which either party may refer the matter to dispute resolution in accordance with **clause 46** (Dispute Resolution Procedure (DRP)), in respect of which the parties will use reasonable endeavours to act expeditiously. The Partner shall be obliged to continue the delivery of the Services in full pending the outcome of this process and shall be paid in full for such delivery.

24.3.8 For the avoidance of doubt, any reduction in the Council's budget shall not result in a reduction in the Partner's profit as a percentage as shown in the Financial Model. The Partner shall use reasonable endeavours to mitigate the impact of the budget reduction on the fixed and variable overhead costs set out in the Financial Model.

24.3.9 For the avoidance of doubt, Strategic Projects are not referred to in **clause 24.3.7.1** (Annual Budget Setting) as they are currently envisaged to be funded through external funding or budgets which are not transferring to the Partner as at the Commencement Date. To the extent that Strategic Projects are funded from transferring Council budgets then reference to them shall be deemed to be added to **clause 24.3.7.1** (Annual Budget Setting).

24.4 **Performance Reviews**

24.4.1 The Partner will conduct a:

24.4.1.1 monthly Performance Review of the Services at the end of each calendar month subject to **clause 24.4.4** (Performance Reviews) and paragraph 2.5 of **Schedule 17** (Reporting and Review Schedule);

24.4.1.2 a Quarterly Performance Review at the end of each Quarter; and

24.4.1.3 an Annual Performance Review following the end of each Year,

and report to the Council on the findings of such Performance Reviews, on the basis set out in the provisions of this **clause 24** (Partner's Plans and Performance Reviews) and **Schedule 17** (Reporting and Review) and submit such reviews to the Council in accordance with **Schedule 17** (Reporting and Review). For the avoidance of doubt: (i) the report on the Annual Performance Review shall be contained in the Annual Performance Review Report; and (ii) when an Annual Performance Review Report is produced the monthly and Quarterly Performance Review reports that would be required in relation to the last month and Quarter in the Year do not need to be separately produced as this information shall be contained in the Quarterly Performance Review and Annual Performance Review.

24.4.2 Performance Reviews and reports on Performance Reviews shall:

- 24.4.2.1 provide sufficient detail to enable the Council to verify the accuracy of the relevant Statement of Account;
- 24.4.2.2 assess the Services in terms of the Partner's performance, the quality and the availability of the Services when compared with the requirements in the Services Schedules and the Service Levels;
- 24.4.2.3 identify any areas of poor performance and unavailability of the Services which require improvement, and the remedial action to be taken by the Partner as a result;
- 24.4.2.4 collate and set out the information required for the operation of the Price Performance Mechanism to enable the Council to verify the accuracy of the Service Credits calculated by the Partner, and which are to be applied in accordance with **clause 35** (Price Performance Mechanism); and
- 24.4.2.5 in relation to Annual Performance Reviews only:-
- 24.4.2.6 compare the provision of Services with the relevant Service Development Plan;
- 24.4.2.7 identify and provide a record of any changes in relation to the Services; and
- 24.4.2.8 monitor performance by the Partner against any benchmarking process carried out.

- 24.4.3 The Partner shall ensure performance data has been collected and processed in accordance with the appropriate methodology, guidance, policy and standards. The Partner shall verify and ensure the accuracy of all performance data relating to the Services and enter such data as is required by the Council onto the Council's Corporate Performance Management software (Performance Plus) in order to satisfy the Council's corporate deadlines. The Partner shall also carry out any other activities which are required by the Council to satisfy the Council's performance reporting obligations. The Partner, in carrying out its obligation under this **clause 24.4.3** (Performance Reviews), shall act in accordance with all relevant Policies (including the Council's data quality strategy contained in **Schedule 12** (Policies, Plans and Strategies)).
- 24.4.4 The Partner shall not be obliged to undertake the Monthly Performance Review until the month that follows completion of the 90 Day Plan, in accordance with paragraph 2.5 of **Schedule 17** (Reporting and Review). In respect of the first three (3) months following the Service Commencement Date the Partner shall produce an interim monthly report as set out in the Reporting and Review schedule.

24.5 **Quarterly, Annual and Project Performance Review Reports**

- 24.5.1 The Partner shall provide each performance review report within the period indicated in **Schedule 17** (Reporting and Review).
- 24.5.2 The Partner undertakes that the process of the review and the content of its report shall be objective, fair and reasonable and that the assessment shall be conducted and the report shall be written in good faith.
- 24.5.3 The Council shall consider the contents of each performance review report and discuss such content and implications with the Partner. Upon reasonable request of the Council, the Partner shall provide any additional detail to support or clarify the Performance Review.
- 24.5.4 If the Council is not satisfied (acting reasonably) with the performance review report issued by the Partner including any additional detail provided in accordance with **clause 24.5.3** (Quarterly, Annual and Project Performance Review Reports), or if the Council requires that the Partner rectifies any failure of the Partner to carry out the review in accordance with this **clause 24** (Partner's Plans and Performance Reviews) and **Schedule 17** (Reporting and Review) the Council shall make a written request for the same. The Partner will, acting reasonably, consider such request and either carry out such

rectification within ten (10) Business Days of receipt by the Partner of such request or liaise with the Council in good faith in order that the parties can agree a satisfactory position in order to finalise the performance review report.

24.5.5 The Partner shall implement any action plan or recommendations set out in the final approved version of the performance review report.

25. **EXTERNAL ASSESSMENT**

25.1 **External Assessment**

25.1.1 The Partner shall provide such information, documentation and assistance in connection with the Services as the Council may reasonably require from time to time in order to enable the Council to discharge its duties in connection with External Assessment in relation to the Services or any other services or activities which directly or indirectly relate to, are dependent on or are affected by the Services.

25.1.2 The Council will be entitled to monitor and undertake an ongoing review of the Partner's performance and the satisfaction of customers (internal Council Staff and members of the public who are receiving the Services) against the criteria applicable to External Assessment regimes and processes. The Partner shall provide such information as the Council may reasonably require from time to time to enable the Council to undertake the monitoring and review.

25.1.3 If in the Council's reasonable opinion the results of any External Assessment reviews, audits or Council monitoring and review carried out in accordance with **clause 25.1.2** (External Assessment) disclose that the provision of the Services (or any part) should be improved in any way, then the Council may serve a Council request for a Change to this Agreement in accordance with **clause 28** (Variation and Change Control). Where the recommended improvements are required as a result of a failure by the Partner to carry out its obligations under this Agreement then the change shall be a Scoped Change and the Partner shall bear the costs of implementing such a Change.

25.1.4 The Partner shall support and assist the Council in its efforts to attain and achieve "excellent" status or equivalent within the CAA framework.

25.1.5 The Partner shall support and assist the Council in its efforts to meet the objectives identified in the Council Plan and Towards Top Performance Programme.

25.2 **Value for Money assessments**

25.2.1 The Council shall, at any time and as frequently as the Council may, in its sole discretion, determine, be entitled to assess the Value for Money of the Services delivered using the following processes:

25.2.1.1 benchmarking exercises; and/or

25.2.1.2 soft market testing; and/or

25.2.1.3 Open Book pricing; and/or

25.2.1.4 assessing the value for money component of the CAA; and/or

25.2.1.5 testing the Partner's compliance with **clause 6.5** (Continuous Improvement) and any other obligations the Partner has in relation to continuous improvement in this Agreement; and/or

25.2.1.6 assessing the Partner's contribution to the Service Development Plan,

and the Council may require the Partner to carry out full benchmarking exercises in relation to the Services, at the Partner's cost, not more than twice during the Initial Period and one partial benchmarking exercise of a Service Area during the Initial Period. Benchmarking will operate as a tool to sense check price and quality it will not determine pricing or quality issues but where price/quality is significantly out of line with the benchmarked price it will trigger a review to determine whether VFM is being delivered and the onus will be on the Partner to justify misaligned pricing.

25.3 **Benchmarking Proposal**

25.3.1 Within six (6) calendar months of the Service Commencement Date, the Partner will propose in writing to the Council its preferred arrangements for benchmarking the quality and competitiveness of the Services ("Benchmarking Process") such proposal to be made by the Partner in good faith, to be reasonable in all the circumstances and to comprise a Benchmarking Process which meets the following minimum requirements:

25.3.1.1 the Benchmarking Process must be capable of ascertaining the relative performance of the Services in terms of economy, efficiency, effectiveness and/or quality of the individual components of the Services' ("the Benchmarked Services");

- 25.3.1.2 on the basis of the Benchmarked Services, the Benchmarking Process must be capable of ascertaining the economy, efficiency, effectiveness and/or quality of the Services in terms of the Service Levels, KPIs, the mode of delivery of the Services and the assets deployed by the Partner in order to provide the Services, in each case, either individually or collectively and either in whole or in one or more components of each such criteria, as required by the Council from time to time, (all of the above criteria together referred to as "the Benchmarking Criteria");
- 25.3.1.3 the Benchmarking Process must be such that it enables the Partner to benchmark the Services (on the basis of the Benchmarked Services and the Benchmarking Criteria) on a like for like comparison with a group of bodies receiving services which are comparable with the Services ("Benchmarking Pool") provided that the Benchmarking Pool must:
- (a) be of sufficient size to enable the Benchmarking Process to be carried out in such a way as achieves the objectives for the process set out in **clauses 25.2** (Value for Money assessments) and **25.3** (Benchmarking Proposal) and enables the Benchmarking Process to satisfy the principles for its operation set out in this **clause 25.3.1** (Benchmarking Proposal);
 - (b) include appropriate public or private sector organisations; and
 - (c) be selected by the Partner and approved by the Council on a fair and objective basis;
- 25.3.1.4 the Benchmarking Process must be such that it supports the Council in satisfying its requirements under the Comprehensive Spending Review, CAA and its duty of Best Value from time to time and must take into account any orders or relevant statutory guidance issued by the Secretary of State under Part 1 of the Local Government Act 1999, the Local Government and Public Involvement in Health Act 2007 and recognised best practice from time to time;
- 25.3.1.5 the Benchmarking Process must take account of all relevant factors in the provision of the Services so a

conclusion on Value for Money can be drawn in the round including:

- (a) the contractual and commercial environment in which the Services are provided by the Partner (including the complexity, inter-relations between the Core Services and scale of the Services);
- (b) the risk profile assumed by the Partner under this Agreement (including the Price Performance Mechanism, commitment to Outcomes and financial risk);
- (c) any investment costs incurred by the Partner during the Term;
- (d) the financial profile and pricing mechanism used;
- (e) any up front capital investment made by the Partner; and
- (f) any other relevant factors which the Partner (acting reasonably) believes may unfairly reflect upon its pricing when considered as part of a benchmarking exercise.

25.3.1.6 if the Council is not satisfied (acting reasonably) that the Partner's proposed Benchmarking Process (including the Benchmarking Pool) satisfies the minimum requirements of this **clause 25.3** (Benchmarking Proposal), the Partner will make such amendments to the proposed Benchmarking Process as the Council may reasonably require so that it does so satisfy those requirements; and

25.3.1.7 prior to any commencement of the Benchmarking Process at any time by the Partner, the Council will notify the Partner in writing of any changes which the Council wishes to make to the Benchmarking Process (acting reasonably) and the Partner will comply with any such request. References in **clause 25.4** (Benchmarking Process) to the Benchmarking Process shall be deemed to mean the process proposed by the Partner in accordance with this **clause 25.3** (Benchmarking Proposal), as amended by the Partner pursuant to **clause 25.3.1.4** (Benchmarking Proposal) and incorporating any changes made to the process in accordance with a request from the Council to make the same as aforesaid.

25.4 **Benchmarking Process**

- 25.4.1 The Council shall notify the Partner in writing of the period which will be covered by the review and benchmarking ("Benchmarked Period").
- 25.4.2 The Partner will conduct the Benchmarking Process by comparing the Benchmarked Services during the Benchmarked Period on the basis of the Benchmarking Criteria applicable during that Year using the Benchmarking Pool applicable for that Year. The Partner will conduct each Benchmarking Process on a fair and objective basis and in good faith.
- 25.4.3 The Council acknowledges that the Partner may require its assistance in obtaining data from other local authorities which comprise the Benchmarking Pool (pursuant to **clause 25.3.1.3** (Benchmarking Proposal) include appropriate public or private sector organisations; and) and the Council shall use reasonable endeavours to assist in procuring the provision of such data from other local authorities.
- 25.4.4 The Partner will issue to the Council within a reasonable time from the expiry of the Benchmarked Period, a detailed written report of the outcome of its conduct of the Benchmarking Process. The report shall include:
- 25.4.4.1 an explanation of the process undertaken by the Partner including confirmation of the Benchmarked Services, the Benchmarking Criteria and the Benchmarking Pool used for the purposes of the process and the timing and method of collecting all of the information which has been used in generating the report;
 - 25.4.4.2 the results of the process undertaken by the Partner including the results of the comparisons made by the Partner in accordance with **clause 25.3.1.3** (Benchmarking Proposal);
 - 25.4.4.3 (where necessary) the improvement which needs to be made to the Services (whether this be in respect of method of delivery of the Services; changes to Service Levels or KPIs) in order to make the Services received by the Council Value for Money; and
 - 25.4.4.4 the Partner's proposed plan (including timetable) for implementing such improved Service Levels and KPIs) described in **clause 25.3.1** (Benchmarking Proposal). The Partner will issue to the Council within a reasonable time from the expiry of the Benchmarked Period, a detailed written report of the outcome of its conduct of the

Benchmarking Process. The report shall include details of the quality and competitiveness of the Benchmarked Services in terms of the National Indicator Set and other relevant data sets relevant to the Services.

- 25.4.5 The Partner undertakes that the contents of its report shall be objective, fair and reasonable in all the circumstances and that the report shall be made in good faith. The Partner will include in its report a detailed breakdown, justification and validation of all of the matters set out in the Partner's report.
- 25.4.6 If the Council is not satisfied (acting reasonably) with the report issued by the Partner pursuant to **clause 25.4.4** (Benchmarking Process) or if the Council requires clarification of any aspect of its content, the Partner will provide such clarification or refinement as the Council may reasonably request within ten (10) Business Days of a request by the Council in writing for the same.
- 25.4.7 If, notwithstanding the receipt by the Council of any clarification or refinement to the Partner's report pursuant to **clause 25.4.6** (Benchmarking Process), the Council (acting reasonably) is not satisfied with the report issued by the Partner and/or is not satisfied that the Partner has carried out the Benchmarking Process in accordance with this **clause 25.4** (Benchmarking Process), the Council may appoint an independent Third Party bench-marker, the identity of whom shall be agreed in writing between the Partner and the Council, and in default of agreement by the Chartered Institute of Public Finance Accountancy. The independent Third Party bench-marker shall carry out an independent benchmarking exercise on the same basis as the process set out in this **clause 25.4** (Benchmarking Process) and the results of such process shall be final and binding on the Council and the Partner (save in the event of manifest error or fault). The Partner shall provide such assistance, co-operation, documentation and information to the Third Party as the Third Party may reasonably require in connection with such process. If the Third Party bench-marker is at material variance with the position set out in the Partner's report or recommends significant improvements to the report or the Partner's conduct of the Benchmarking Process then the Partner shall bear the costs of the Third Party bench-marker, otherwise the Council shall bear such costs. The President for the time being of the Chartered Institute of Public Finance and Accountancy (or his nominated representative) shall be the sole arbiter of whether such difference is material or suggested improvement is significant.

25.4.8 The results of the Benchmarking Process shall also be used to inform the Annual Performance Review pursuant to **clause 24.4** (Performance Reviews) and (where applicable) feed into the Service Development Plan (as set out in **clause 24.2** (Service Development Plans)).

25.4.9 For the avoidance of doubt, the outcome of the Benchmarking Process will not (in itself) result in a right of termination for either party or an adjustment to the Contract Price.

26. **CONTRACT MANAGEMENT**

26.1 **Partner's Partnership Director**

26.1.1 The Partner shall ensure that, at all times during the Term, a person is appointed as the Partner's Partnership Director and that he/she or an authorised deputy is available to be contacted by the Council at all times during the Core Hours on each Service Working Day and, where necessary, outside of those hours.

26.1.2 The Partner shall, on or before the Commencement Date, give written notice to the Council of the identity and work address of the person it proposes to appoint as the Partner's Partnership Director and of any person it proposes to authorise to act for any period as a deputy for the Partner's Partnership Director together with details of their qualifications and experience.

26.1.3 The Partner shall forthwith give written notice to the Council of any subsequent proposed appointments to the post of Partner's Partnership Director or deputy.

26.1.4 Any person proposed to be appointed as the Partner's Partnership Director or deputy must first be approved in writing by the Council, such approval not to be unreasonably withheld or delayed.

26.1.5 The Partner's Partnership Director or any duly authorised deputy shall be the authorised representatives of the Partner and as such empowered on behalf of the Partner for all purposes connected with this Agreement.

26.1.6 Any notice, information, instruction or other communication given or made to the Partner's Partnership Director or deputy shall be deemed to have been given or made to the Partner.

26.1.7 The Partner's Partnership Director or duly authorised deputy shall:

26.1.7.1 have day to day responsibility for all aspects of the Partner's contribution to the Partnership including the

performance by the Partner of its obligations under this Agreement and for the ongoing development of the business relationship with the Council;

26.1.7.2 consult with the Council's Partnership Director as often as may reasonably be necessary to ensure the continuous and efficient provision of the Services in accordance with this Agreement; and

26.1.7.3 follow and comply with any reasonable instructions or directions given or issued by the Council's Partnership Director from time to time in connection with the provision of the Services (provided they are consistent with and reflective of this Agreement).

26.1.8 The Partner shall ensure that the Partner's Partnership Director has a suitably skilled and experienced team to support him or her in carrying out his or her role. The Partner shall ensure that the team is flexible and scalable in size to accommodate change in the Partnership through Projects or Change.

26.2 **Council's Partnership Director**

26.2.1 The Council shall ensure that, at all times during the Term a person is appointed as the Council's Partnership Director and that he/she or an authorised deputy is available to be contacted by the Partner at all times during the Core Hours on each Service Working Day and, where necessary, outside of those hours.

26.2.2 The Council shall give written notice to the Partner of the identity and work address of the person it proposes to appoint as the Council's Partnership Director and of any person it proposes to authorise to act for any period as a deputy for the Council's Partnership Director together with details of their qualifications and experience. The first Council Partnership Director shall be the Council's Executive Director of Regeneration.

26.2.3 The Council shall forthwith give written notice to the Partner of any subsequent proposed appointments to the post of Council's Partnership Director or deputy.

26.2.4 Any person proposed to be appointed as the Council's Partnership Director or deputy must first be approved in writing by the Partner, such approval not to be unreasonably withheld or delayed.

- 26.2.5 The Council's Partnership Director or any duly authorised deputy shall be the authorised representatives of the Council and as such empowered on behalf of the Council for all purposes connected with this Agreement.
- 26.2.6 Any notice, information, instruction or other communication given or made to the Council's Partnership Director or deputy shall be deemed to have been given or made to the Council.
- 26.2.7 The Council's Partnership Director or duly authorised deputy shall:
- 26.2.7.1 have day to day responsibility for all aspects of the Council's contribution to the Partnership including the performance by the Council of its obligations under this Agreement and for the ongoing development of the business relationship with the Partner;
 - 26.2.7.2 consult with the Partner's Partnership Director as often as may reasonably be necessary to ensure the continuous and efficient provision of the Services in accordance with this Agreement; and
 - 26.2.7.3 follow and comply with any reasonable instructions or directions given or issued by the Partner's Partnership Director from time to time in connection with the provision of the Services (provided they are consistent with and reflective of this Agreement).
- 26.2.8 The Council shall ensure that the Council's Partnership Director has a suitably skilled and experienced team to support him or her in carrying out his or her role. The Council shall ensure that the team is flexible and scaleable in size to accommodate change in the Partnership through Projects or Change.
- 26.3 Any notice given or made pursuant to **clauses 26.1** (Partner's Partnership Director) or **26.2** (Council's Partnership Director) shall be in accordance with **clause 73** (Notices).

27. **ACCOMMODATION ARRANGEMENTS**

The parties shall comply with their obligations in **Schedule 1** (Accommodation).

28. **VARIATION AND CHANGE CONTROL**

For the avoidance of doubt any change to this Agreement other than in relation to Projects and/or budget setting and the consequences thereof shall be subject

to change by means of a variation or Change in accordance with this **clause 28** (Variation and Change Control).

28.1 **Scoped Changes**

28.1.1 Any variation to the Services and/or any part of this Agreement from time to time which falls into any of the following categories will constitute a Scoped Change:-

28.1.1.1 Scoped Change in Law;

28.1.1.2 change in Policy to the extent such change directly implements a Scoped Change in Law;

28.1.1.3 improvements to be carried out by the Partner pursuant to **clause 25.1.3** (External Assessment);

28.1.1.4 variations required to enable the Partner to deal with changes in volumes of the Services and other like changes within the Tolerance Parameters as further set out in **clause 28.5** (Volume Management);

28.1.1.5 variations (within the existing scope of the Services) which result from recommendations and action plans approved pursuant to **clause 24.5.5** (Quarterly, Annual and Project Performance Review Reports) and which have been made following any failure by the Partner to attain Service Levels or to comply with its obligations in this Agreement as described in **clause 28.1.1.7**;

28.1.1.6 minor variations to the Services or any part of this Agreement such variations shall include transient variations and variations having little or no cost impact (in any case which are not covered by other processes in this Agreement (including the processes at **clauses 6.1.9** (Services - Objectives and Outcomes), **13.0** (Managed Contracts), **21.3.4** (Statutory Compliance), **clauses 23.14.5** (Funding Pensions Liabilities), **33.2** (Agreement Asset Register), **33.5** (Transferring Assets), **clause 33.7.1** (Leased Assets), **60.5** (Review of Transferring Agreements) **76.1.3** (Laws, Policies and Related Matters) as none of these shall be Scoped Changes); and

28.1.1.7 variations required to rectify a breach by the Partner of this Agreement (except to the extent that such breach has been

caused by the Council) or to enable the Partner to comply with its obligations under this Agreement.

- 28.1.2 The Partner will implement all Scoped Changes in accordance with the protocol for Scoped Changes set out in **Schedule 5** (Change Control). For the avoidance of doubt, **Schedule 5** (Change Control) shall govern all Scoped Changes. The Partner will implement all Scoped Changes as aforesaid without any increase to the Contract Price or any other charges being made to the Council. If the Scoped Change results in a reduction in the Partner's costs in delivery of the Services then where this cost reduction has a material impact on the Partner's ability to comply with the Value for Money obligations in this Agreement then the Partner shall present in the Scoped Change, Change Request or Impact Assessment (as the case may be) a proposal for the parties to share the benefit of the reduction in cost which will ultimately reduce the price payable by the Council upon implementation of the Scoped Change. The Partner will continue to be obliged to comply with all of its other obligations under this Agreement during the implementation by the Partner of any Scoped Change and thereafter.
- 28.1.3 In relation to all other changes or variations to the Services and/or any part of this Agreement which do not fall within the categories of Scoped Changes, the Partner shall use reasonable endeavours to accommodate or resolve the matter or circumstances by way of a Volume Reprioritisation or a Reprioritisation (as the case may be). Without prejudice to the foregoing, the Council acknowledges that a Reprioritisation may not be possible in all circumstances and neither party shall be obliged to agree to any Reprioritisation which has a financial or other material adverse effect (on its own or in aggregate) on such party. Where the parties are unable to agree a Reprioritisation pursuant to **clauses 23.14.5** (Funding Pensions Liabilities) **33.2** (Agreement Asset Register) **33.5** (Transferring Assets), **60.5** (Review of Transferring Agreements) **76.1.3** (Laws, Policies and Related Matters) only, the parties shall refer the matter to the Partnership Board for consideration and failing agreement shall utilise the Dispute Resolution Procedure (the outcome of which shall be recorded as a Change). Unless the parties agree otherwise, the Partner will continue to be obliged to comply with all of its other obligations under this Agreement during the implementation by the Partner of any Reprioritisation and thereafter. In relation to any Volume Reprioritisation, the provisions of **clause 28.5** (Volume Management) shall apply. In relation to all other Reprioritisations, the procedure set out in **Schedule 5** (Change Control) in relation to Scoped Changes shall apply.

- 28.1.4 The development and implementation by the Partner of Projects (including, the financial consequences thereof) shall be dealt with in accordance with **clause 19** (Projects) and shall not be dealt with on the basis of **clause 28.4** (Unscoped Change Process).
- 28.1.5 Any changes which are required to the Services as a result of the implementation of a Project shall be documented, funded and agreed as part of the Projects process and once implemented the changes to this Agreement which have arisen as a result of the Project shall be documented as if it were a Change for contract management purposes but the Change process itself shall not be required to be complied with.
- 28.1.6 The budget setting process shall be dealt with in accordance with **clause 24.3** (Annual Budget Setting) but any changes which are required to the Services as a result of the budget setting process shall be documented as if it were a Change for contract management purposes.

28.2 **Unscoped Changes**

Where a change is in part a Scoped Change and in part an Unscoped Change it shall be dealt with pursuant to **clause 28.4** (Unscoped Change Process), provided that the Partner shall only be able to propose an increase in the Contract Price or propose that the Council make a capital payment in relation to the aspect of the change which constitutes an Unscoped Change. Change Control shall be specific to the Change and shall not trigger a general price change.

28.3 **Changes in Law**

- 28.3.1 The procedure for dealing with the consequences of Unscoped Changes in Law shall be as set out in **clause 28.4** (Unscoped Change Process) save in the following respects:-
- 28.3.1.1 the parties shall inform the Partnership Board of any forthcoming Changes in Law which will generate the need for the Partner to produce a Change Request and/or an Impact Assessment (as the case may be) to ensure the Change is implemented in advance of the Law coming into force; and
- 28.3.1.2 the Council shall not be entitled to reject any Change Request or Impact Assessment properly made by the Partner in accordance with **clause 28.4** (Unscoped Change Process) and **Schedule 5** (Change Control) to the extent that it relates to variations required to be implemented as a

result of any Unscoped Changes in Law set out in paragraph 8.1.2 of **Schedule 5** (Change Control).

28.3.2 For the avoidance of doubt, where a Scoped Change in Law or an Unscoped Change in Law results from a change in case law the Partner shall not be deemed in breach of this Agreement for the period it takes to raise, authorise and implement the Scoped Change in Law or the Unscoped Change in Law.

28.4 **Unscoped Change Process**

28.4.1 Either party may issue a Change Request to the other party at any time during the Term in accordance with the procedure set out in **Schedule 5** (Change Control).

28.4.2 As soon as reasonably practicable, and in any event within ten (10) Business Days of service of a Change Request, the Partner shall, if necessary, supply to the Council a detailed, comprehensive and reasoned Impact Assessment in accordance with the process set out in **Schedule 5** (Change Control). If in relation to a specific Change Request, the Partner, acting reasonably, requires a longer period in which to prepare such an Impact Assessment, it will notify the Council within five (5) Business Days of the service of the relevant Change Request specifying the extended period it requires to prepare the Impact Assessment and the reasons for such requirement. Any extension of such period shall be subject to prior approval of the Council (not to be unreasonably withheld or delayed) and in no circumstances will it exceed sixty (60) Business Days

28.4.3 If the Council approves the Unscoped Change in writing in accordance with **Schedule 5** (Change Control) the Partner shall implement the Change in accordance with the Impact Assessment.

28.4.4 The cost of the Partner producing the Impact Assessment shall be as described in paragraph 5 of **Schedule 5** (Change Control).

28.4.5 Where the Council wishes to reduce the scope of the Services such that a Service Area is proposed to be removed from scope, the provisions of **clause 55** (Termination at Will) in respect of partial termination shall apply as opposed to the Unscoped Change provisions.

28.5 **Volume Management**

This **clause 28.5** (Volume Management) shall only apply to those aspects of the Services that have agreed volumes and tolerance levels in **Schedule 14** (Pricing) ("Service Component").

28.5.1 Agreed Volumes in respect of each Service Component are set out in **Schedule 14** (Pricing) and those Agreed Volumes will continue to be applicable throughout the Term unless otherwise agreed in writing by the parties.

28.5.2 If the Actual Volume for a Service Component is within the relevant Tolerance Parameters, then the relevant Service Component will be provided by the Partner to the Council within the Contract Price and in accordance with the Service Levels and all other terms and conditions of this Agreement.

28.5.3 If at any time during a Year:

28.5.3.1 the Partner believes (acting reasonably) that the Actual Volume will exceed the Tolerance Parameters, taking into account any properly anticipated seasonal or other variations in demand;

28.5.3.2 the Actual Volume has exceeded the Tolerance Parameters; or

28.5.3.3 the Council requires a Volume Reprioritisation;

then provided that **clause 28.5.6** (Volume Management) does not apply, then the Partner will be entitled to undertake a Volume Reprioritisation, subject to **clause 28.5.4** (Volume Management). Where the Actual Volume falls below the Tolerance Parameters, the Council may propose an Unscoped Change.

28.5.4 If **clause 28.5.3** (Volume Management) applies, the Partner shall provide to the Council as soon as reasonably practicable:

28.5.4.1 a proposal in respect of any Volume Reprioritisation ("**Reprioritisation Note**") which is necessary in order to satisfy the Actual Volume for the relevant Service Component within the Contract Price in respect of the relevant Service Component, together with its proposal as to what Reprioritisation Relief may be required. The Partner may provide a single proposal or a number of proposal options where the context provides;

28.5.4.2 evidence and an explanation of the manner in which the Volume Reprioritisation will meet the Council's requirements to achieve Value for Money, meet the Service Levels (except in relation to the specific area of

Reprioritisation Relief) and is reasonable and proportionate overall; and

- 28.5.4.3 sufficient information to allow the Council to make a reasoned decision as to whether to proceed with the Volume Reprioritisation or not.
- 28.5.5 The Council shall, within five (5) Business Days of receipt of the Partner's Reprioritisation Note, respond to the Partner with any reasonable adjustments to the proposed Volume Reprioritisation and/or proposed Reprioritisation Relief and will:
 - 28.5.5.1 agree with the Partner the Volume Reprioritisation to be effected, in which case the Partner shall implement the terms of the Volume Reprioritisation in accordance with the Reprioritisation Note (as adjusted pursuant to **clause 28.5.5.2** (Volume Management));
 - 28.5.5.2 require the Partner to rework the Reprioritisation Note in accordance with the Council's recommendations; or
 - 28.5.5.3 reject the Reprioritisation Note, in which case the increased volume will be dealt with as a Change (or at the Council's option, a Project).
- 28.5.6 The Partner shall undertake a Volume Reprioritisation in accordance with **clauses 28.5.4** and **28.5.5** (Volume Management) unless and until the Council wishes to deal with a volume change by way of a Change or Project and in such event the relevant volume change will be dealt with by way of a Change or Project.
- 28.5.7 The period of any Reprioritisation Relief shall be proportionate to the demand issues it is seeking to address and the parties expect that this will generally not exceed three (3) months unless otherwise agreed between the Parties.
- 28.5.8 Other than in respect of the specific Reprioritisation Relief, the Partner shall be obliged to meet the obligations under this Agreement (including the Service Levels) at the Contract Price.
- 28.5.9 The Partner is committed to delivering the Services and if Actual Volumes exceed the Tolerance Parameters then the Partner shall use reasonable endeavours to provide the Services in accordance with the Service Levels, notwithstanding that a Reprioritisation, Change or Project (as applicable) has not yet been agreed, pending agreement of such Volume Reprioritisation, Change or Project. Where appropriate

and agreed by the Council (not to be unreasonably withheld or delayed) the terms of the Volume Reprioritisation, Change or Project shall take effect retrospectively.

28.5.10 The Partner shall record each Volume Reprioritisation in the form of an Reprioritisation Note, as amended as agreed by the parties in writing.

28.5.11 Volume Reprioritisation is an exception and the parties shall use reasonable endeavours to minimise the number of Volume Reprioritisations.

29. **PERSONNEL**

29.1 **Partner Personnel**

29.1.1 The Partner shall secure the employment of sufficient Personnel (appropriately qualified, skilled, reliable and competent and having received appropriate training) to ensure that the Services are provided in accordance with this Agreement at all times, with reserves of Personnel to ensure that those obligations are met in times of sickness, leave or other unavailability of Personnel. Within twenty (20) Business Days of written request from the Council from time to time the Partner shall provide to the Council a detailed and comprehensive written report of the numbers and types of Personnel (in terms of their job description, seniority, skills, experience the name of their employer and details of pension provision offered and its take-up) engaged or otherwise deployed by the Partner or a Partner Party in relation to the Services as at the date of the report.

29.1.2 The Partner shall, in sufficient time, which shall not be less than twenty (20) Business Days prior to the Services Commencement Date provide such details about the Key Personnel as the Council may reasonably require "**Key Personnel Information**". The Council must confirm its approval of such Key Personnel within five (5) Business Days of receipt of the Key Personnel Information (such approval not to be unreasonably withheld). The provisions of this **clause 29.1.2** (Partner Personnel) are without prejudice to the obligations of the Partner under **clause 29.1.3** (Partner Personnel) and the Council's approval of any Key Personnel shall not affect or release the Partner from any of its obligations under this Agreement and is without prejudice to any other right or remedy which the Council may have available to it.

29.1.3 The following provisions shall apply in relation to all Personnel or prospective Personnel who fill or are intended to fill the posts identified in **Schedule 18** (Staffing Schedule) who have or will have access to

Personal Data, or who have or will have one to one contact with vulnerable individuals:

- 29.1.3.1 the Partner shall provide to the Council a list of names of such Personnel and the names of their employers (in each case) and promptly update the list as necessary;
- 29.1.3.2 subject to **clause 29.1.3.5** (Partner Personnel) below, the Partner shall where required by Law, or any Council policy which has been disclosed no later than 30 Business Days prior to the Relevant Service Transfer Date to the Partner carry out criminal records bureau checks on such Personnel:
 - (a) prior to the Relevant Service Transfer Date as applicable; or
 - (b) prior to any new Personnel commencing engagement on the Services; and
 - (c) thereafter from time to time (as the Council shall require at its absolute discretion further to external requests or requirements for such checks or as otherwise reasonably required by the Council);
- 29.1.3.3 the Council's approval to the appointment, or the continuing appointment, as the case may be of any Personnel will be required where the Personnel has committed an offence revealed to the Council pursuant to **clause 29.1.3.2** (Partner Personnel) and/or where the Personnel has access to confidential and/or sensitive information or otherwise operates within a sensitive service area of the Council; and
- 29.1.3.4 the Partner shall carry such other staff vetting procedures as set out in Council's Local Safeguarding Children's Board Code of Practice (set out in **Schedule 12** (Policies, Plans and Strategies) (which is required to be disclosed to the Partner no less than thirty (30) Business Days prior to the Relevant Service Transfer Date or within such other period as is agreed by the parties) in relation to the Personnel. The Partner confirms that any of its Personnel which are employed or engaged by the Partner immediately prior to the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Council's staff vetting procedures referred to above or will be so vetted within thirty (30) Business Days following the

Relevant Service Transfer Date in accordance with **clause 29.1.3.5** (Partner Personnel) below;

29.1.3.5 in the event that it is not reasonably practicable for the Partner to complete the checks required by **clauses 29.1.3.2** (Partner Personnel) and **29.1.3.4** (Partner Personnel) above ("**Employee Checks**") prior to the Relevant Service Transfer Date or the Partner is awaiting responses from the criminal records bureau the Council agrees that the Partner shall have a period of 30 Business Days following the Relevant Service Transfer Date ("**Permitted Period**") in which to complete the Employee Checks. The Partner shall notify the Council where it considers the Permitted Period will expire due to delays on the part of the criminal records bureau and in this case, the Partner and the Council shall agree such extension to the Permitted Period as is reasonable in the circumstances. For the avoidance of doubt, during the Permitted Period, any Personnel in respect of whom the Partner has not yet completed the Employee Checks or is awaiting a criminal records bureau response ("**Unchecked Personnel**") shall be permitted to work on the Services provided that, but for the Relevant Transfer and the fact that the Employee checks are not portable from the Council to another employer, the Unchecked Personnel would have had a valid unexpired Criminal Records Bureau check for the entirety of the Permitted Period; and

29.1.3.6 the Council shall prior to the Relevant Service Transfer Date in respect of Relevant Employees use all reasonable endeavours to:

- (a) assist the Partner in carrying out and obtaining the results of the Employee Checks; and
- (b) obtain consent from the Relevant Employees to the disclosure to their existing employer of the results obtained prior to the Relevant Service Transfer Date in relation to completion of the Employee Checks.

29.1.4 The Partner shall:

29.1.4.1 use its best endeavours to ensure that its Personnel keep all sensitive and confidential information secure at all times.

The Partner shall put in place appropriate security procedures for ensuring compliance with the provisions of this **clause 29.1.4.1** (Partner Personnel) and shall provide training for Personnel in compliance with **Schedule 12** (Policies, Plans and Strategies);

- 29.1.4.2 seek the Council's approval of appointments of Personnel that will work within sensitive service areas of the Council and/or have access to sensitive and/or Confidential Information (such approval not to be unreasonably withheld or delayed);
- 29.1.4.3 remove any Personnel from their posts if such Personnel hold sensitive posts and the Council exercising its discretion in a non discriminatory way requests their removal on reasonable and lawful grounds;
- 29.1.4.4 maintain strict discipline and good order amongst its Personnel;
- 29.1.4.5 ensure that the Personnel are properly attired and presentable at all times when they are performing their duties;
- 29.1.4.6 ensure that the Personnel carry out their duties in a manner which minimises any disruption and/or inconvenience to the Council, its employees, members of the public and others permitted to use the Council Premises;
- 29.1.4.7 comply with all applicable Laws, regulations, policies and practices (pursuant to **clause 76** (Laws, Policies and Related Matters) including any Laws and Policies on equal opportunities and non discrimination);
- 29.1.4.8 comply with such reasonable rules, regulations and requirements of the Council relating to the conduct of staff (including those in respect of security arrangements) as may be notified by the Council to the Partner from time to time and shall ensure that the Personnel do likewise;
- 29.1.4.9 take and/or procure the taking of appropriate disciplinary action against any individual who transgresses any such reasonable rules, regulations and requirements (which may include the removal from work in or about the provision of the Services of any such individual); and

29.1.4.10 take all appropriate steps to ensure that the Personnel will not:-

- (a) perform Services while under the influence of alcohol or any controlled substance;
- (b) use illegal drugs or possess, use, distribute or sell illicit or controlled drugs whilst on the Council Premises; or
- (c) possess, use or distribute or sell alcoholic beverages on the Council Premises save as specifically set out in **Schedule 18** (Staffing Schedule).

For the purposes of this **clause 29.1.4.10** (Partner Personnel) "controlled drugs" will have the same meaning as in the Misuse of Drugs Act 1971.

29.1.5 The Council reserves the right (acting reasonably) to refuse to admit to the Council Premises any Personnel whose admission would be, in the reasonable opinion of the Council, undesirable.

29.1.6 Without prejudice to **clause 29.1.5** (Partner Personnel), the Council (subject to such action being compliant with the Law, the Council's Policies and the terms and conditions of employment of the relevant Personnel) reserves the right to require removal from the Services and from Council Premises of any Personnel who, in the reasonable opinion of the Council:-

- 29.1.6.1 is not competent, qualified and/or trained to undertake the work which has been assigned to him;
- 29.1.6.2 is not performing work in compliance with the Agreement;
- 29.1.6.3 is found guilty of misconduct, fraud, dishonesty or negligence;
- 29.1.6.4 is acting in a manner which is detrimental to the Council's interests or reputation;
- 29.1.6.5 is not medically fit to perform the Services;
- 29.1.6.6 provides a risk to the health or safety of those with whom that person may come into contact during provision of the Services;

- 29.1.6.7 is not complying with the Policies in respect of the use of the Council's buildings, for example, its fire safety policy; and/or
 - 29.1.6.8 has committed a criminal offence, the nature of which, in the Council's reasonable opinion, makes it inappropriate for such Personnel to perform the Partner's obligations under this Agreement.
- 29.1.7 If the Council exercises its right to require the removal of any Personnel from the Services, the Partner shall remove the relevant Personnel within five (5) Business Days of the date of the request by the Council, or in the case of removal on the grounds of **clauses 29.1.6.3** (Partner Personnel) or **29.1.6.6** (Partner Personnel), the Partner shall remove the relevant Personnel from the provision of the Services forthwith in either case subject to the timescales for removal of the Personnel from the Services being compliant and/or consistent with any Law in force relating to the removal or dismissal of Personnel, the terms and conditions of employment of the relevant Personnel and any applicable Policies.
- 29.1.8 The decision of the Council as to whether any person is to be refused admission to its premises pursuant to **clause 29.1.5** (Partner Personnel) or whether any person is to be removed from the Services pursuant to **clause 29.1.6** (Partner Personnel) shall be final and conclusive.
- 29.1.9 If the Council exercises its right under **clause 29.1.5** (Partner Personnel) or **29.1.6** (Partner Personnel), the Partner will as soon as reasonably possible provide a suitably qualified and experienced replacement person or persons acceptable to the Council at no additional cost to the Council. For the avoidance of doubt the exercise by the Council of its rights under **clause 29.1.5** (Partner Personnel) or **29.1.6** (Partner Personnel) shall not affect or release the Partner from any of its obligations under this Agreement and is without prejudice to any other right or remedy which the Council may have available to it.
- 29.1.10 The Partner shall take reasonable steps to prevent and detect fraud or dishonesty amongst the Personnel. The Partner shall notify the Council immediately if any Personnel make any significant error in connection with performing the Services or commit any act or omission which may be fraudulent, dishonest or negligent.

29.2 **Non-Solicitation**

- 29.2.1 The Partner shall not, whether directly or indirectly and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, employee, agent, consultant, contractor or otherwise:
- 29.2.1.1 at any time during the Term solicit, induce or entice away or endeavour to solicit, induce or entice away or endeavour to solicit, induce or entice away from the Council any person employed by or contracted to the Council in a senior and/or skilled capacity where such person is engaged at any time during the Term in the performance of this Agreement whether or not such person would commit any breach of his or her contract of employment or engagement by leaving the employment of the Council;
 - 29.2.1.2 at any time during the Term of this Agreement employ, engage or appoint any person employed by the Council in any senior and/or skilled capacity where such person is engaged at any time during the Term in the performance of this Agreement and where such person would commit a breach of his or her contract of employment or engagement by leaving the employment of the Council;
 - 29.2.1.3 at any time during the period of twelve (12) calendar months following the end of the Term, solicit, induce or entice away or endeavour to solicit, induce or entice away, from the Council any person employed by or contracted to the Council in a senior and/or skilled capacity where such person was engaged at any time during the final calendar month of the Term in the performance of this Agreement (including employees whose employment has transferred to the Council pursuant to TUPE after the end of the Term) whether or not such person would commit any breach of his or her contract of employment or engagement by leaving the employment of the Council; or
 - 29.2.1.4 at any time during the period of twelve (12) calendar months following the end of the Term employ, engage or appoint any person employed by the Council in a senior and/or skilled capacity where such person was engaged at any time during the final months of the Term in the performance of this Agreement and where such person would commit a breach of his or her contract of employment or engagement by leaving the employment of the Council.

29.2.2 The Partner shall not be in breach of the provisions of **clause 29.2.1** (Non-Solicitation) where any person is appointed following an application made by such person in response to a general advertisement of employment by the Partner.

30. **ACTING ON BEHALF OF THE COUNCIL**

30.1 **Acting as Agent**

30.1.1 The Partner shall not act as agent or in any other way be entitled to act on behalf of the Council or bind the Council in any way, except as expressly authorised under this Agreement (including under **clause 13** (Managed Contracts)) or otherwise authorised in advance by the Council in writing.

30.1.2 The Partner shall not indicate nor represent itself as being approved by the Council except as expressly authorised under this Agreement or otherwise authorised in advance by the Council in writing.

30.2 **Trade Descriptions Act 1968**

The Partner shall not indicate nor represent itself as being approved by the Council as described under Section 2(1)(g) of the Trade Descriptions Act 1968.

30.3 **Restricted Acts**

Without prejudice to **clause 30.1** (Acting as Agent) the Partner shall not (except as expressly authorised under this Agreement or otherwise authorised in advance by the Council in writing):

30.3.1 enter into a contract, deed or arrangement (whether in writing or orally) or vary any contract, deed or arrangement, on behalf of the Council;

30.3.2 incur liability or expenditure, on behalf of the Council;

30.3.3 give a loan or advance on behalf of the Council or pledge the security or credit of the Council or guarantee an obligation of any person on behalf of the Council; and/or

30.3.4 settle or waive any claims or potential claims or rights which the Council may have or admit any liability on behalf of the Council.

30.4 **Council and Partner Names and Logos**

The Council and the Partner shall agree ways in which the Partnership can be branded and publicised, upon the following terms:

- 30.4.1 ten (10) Business Days prior to the Service Commencement Date, the Partner shall provide a detailed and comprehensive written proposal (the "Branding Proposal") to the Council containing suggestions for ways in which the Partnership relationship between the Partner and the Council shall be publicised, including suggestions for a logo and name for the Partnership. Save to the extent the Partnership name and/or logo incorporates the name and/or logo of the Council, the Partner shall ensure that the partnership name and partnership logo would not infringe the Intellectual Property Rights of any Third Party and shall indemnify the Council from and against all Losses arising in respect of any such infringement or alleged infringement;
- 30.4.2 the Council shall be entitled to approve, reject or modify the Branding Proposal at its sole discretion and the Council shall liaise with the Partner and agree in writing a final form of partnership logo, ways in which the partnership name and partnership logo shall be used and any other ways in which the Partnership shall be publicised (together referred to as the "Branding Arrangements"). The Council and the Partner shall negotiate in good faith and use reasonable endeavours to agree the Branding Arrangements within 20 Business Days of receipt by the Council of the Branding Proposal. The Council shall have an ultimate right to veto the Branding Arrangements; and
- 30.4.3 the Council and the Partner shall each promptly implement any agreed action pursuant to the Branding Arrangements, in accordance with any agreed timescales for such implementation.

30.5 **The Council's Name and the Council's Logo**

- 30.5.1 The Council warrants to the Partner that it either owns all Intellectual Property Rights in the Council's Name and the Council's Logo or that they are licensed to it and it has the power to licence the use of the same to the Partner on the terms below. The Council hereby grants a licence to the Partner to use the Council's Name and the Council's Logo solely in connection with providing the Services and upon the following terms:
- 30.5.1.1 the Partner shall use the Council's Name and the Council's Logo only in a manner which is compliant with the contents of the document entitled "**NELC Corporate Style Guide '09**" set out at **Schedule 9** (Logos);
- 30.5.1.2 the Council's Name and Council's Logo, where they appear on material which also displays the Partner's

Name or the Partner's Logo, must be more prominent than the Partner's Name and the Partner's Logo;

- 30.5.1.3 the Partner must, prior to making any use of the Council's Name or the Council's Logo, first submit to the Council a sample of the proposed format in which it intends to use the Council's Name and/or Council's Logo so that the Council can (acting reasonably) give its written consent to the proposed form of such use. The Partner may not make any use of the Council's Name and Council's Logo without first obtaining such consent and shall ensure that references to the Council's Name and Partner's Name use the format of either "North East Lincolnshire Council working in partnership with Balfour Beatty Workplace" or "Balfour Beatty Workplace working in partnership with North East Lincolnshire Council" as a minimum requirement. The Partner must seek further approval from the Council for each different format (or variation to an already approved format) in which it intends to use the Council's Name and/or the Council's Logo;
- 30.5.1.4 the Partner shall ensure that all stationery (including notepaper, compliments slips, forms, facsimile paper, invoices, receipts and other stationery) used in connection with the Partnership shall bear the Council's Name and the Council's Logo from time to time and the Partner shall be responsible for providing such stationery, vehicles and equipment and for adding the Council's Names and the Council's Logos. The Partner and the Council shall agree written protocols for the use of such stationery;
- 30.5.1.5 the Partner shall keep all documentation and equipment displaying the Council's Name, and/or the Council's Logo, safe and secure and prevent any Personnel, and any other Third Party who is not authorised to use the same, from gaining access to them and shall dispose of such documentation in a secure and confidential manner, but without prejudice to the Partner's obligations pursuant to **clause 57.1** (Service Information) and **clause 59** (Confidentiality) with regard to Records; and
- 30.5.1.6 the Partner shall return any unused documentation displaying the Council's Name, and/or the Council's Logo

to the Council at the end of the Term or if the Council changes its name or logo from time to time.

30.6 **The Partner's Name and the Partner's Logo**

The Partner warrants to the Council that it either owns the Intellectual Property Rights in the Partner's Name and the Partner's Logo or that they are licensed to it and that it has the power to licence the use of the same to the Council on the terms below. The Partner hereby grants a licence to the Council to use the Partner's Name and the Partner's Logo solely in connection with the Services and upon the following terms:

- 30.6.1 the Council shall use the Partner's Name and the Partner's Logo only in a manner which is consistent with the contents of the document entitled "**BBW Brand Toolkit Section 7**" set out in **Schedule 9** (Logos);
- 30.6.2 the Council shall return any unused documentation displaying the Partner's Name, and/or the Partner's Logo to the Partner at the end of the Term or if the Partner changes its name or logo from time to time; and
- 30.6.3 the Council must, prior to making any use of the Partner's Name or the Partner's Logo, first submit to the Partner a sample of the proposed format in which it intends to use the Partner's Name and/or Partner's Logo so that the Partner can (acting reasonably) give its written consent to the proposed form of such use. The Council may not make any use of the Partner's Name and Partner's Logo without first obtaining such consent and shall ensure that references to the Partner's Name and Partner's Name use either the format of "North East Lincolnshire Council working in partnership with Balfour Beatty Workplace" or "Balfour Beatty Workplace working in partnership with North East Lincolnshire Council" as a minimum requirement. The Council must seek further approval from the Partner for each different format (or variation to an already approved format) in which it intends to use the Partner's Name and/or the Partner's Logo.

30.7 **Priority**

The Partner and the Council agree that should there be any inconsistency between the terms of this **clause 30** (Acting on behalf of the Council) and the contents of **Schedule 9** (Logos), the terms of this clause shall prevail.

31. **COUNCIL MEETINGS AND ASSISTANCE IN OTHER PROCEEDINGS**

31.1 **Council Meetings**

- 31.1.1 If requested to do so by the Council from time to time, the Partner shall attend and take part in meetings and consultations with the Council and other bodies which include full Council Cabinet meetings with Council members and officers, Corporate Management Team, Joint Management Board, Committees, Parish Councils, the Local Strategic Partnership and individual members of the Local Strategic Partnership.
- 31.1.2 In attending the meetings referred to in **clause 31.1.1** (Council Meetings), the Partner shall co-operate with the Council in each meeting and respond to its requests for information in connection with the Partner's provision of the Services and any other policies, proposals or activities of the Partner.
- 31.1.3 The Partner shall attend scrutiny area panels or similar meetings and shall provide assistance and advice to officers within the scope of the Services including providing assistance with drafting and the interpretation of documentation. Nothing in this **clause 31.1.3** (Council Meetings) requires the Partner to provide legal advice to the Council.
- 31.1.4 In addition to undertaking the specific activities listed in **clause 9** (Renaissance Service) to **clause 12** (Architectural Service) and the Services Schedules, the Partner shall provide support to the Council through attendance at meetings and other functions as is reasonably required and consistent with the level of activity normally expected in the delivery of services similar to the Services in local authorities broadly of the Council's size, economic make-up and geo-economic location.

31.2 **General Assistance in Proceedings**

- 31.2.1 If requested to do so by the Council from time to time, the Partner shall (to the extent not prohibited by Law):
- 31.2.1.1 provide to the Council any relevant information, documentation and statements from Personnel in connection with any legal enquiry, Ombudsman investigation, arbitration or court proceedings (including judicial review), external audit of the Council and any inspection or investigation undertaken by any Governmental department, agency, inspectorate or other body in which the Council may become involved including inspections in connection with Comprehensive Area Assessments or Best Value, or any relevant disciplinary hearing internal to the Council or meeting of a scrutiny or

standards committees internal to the Council, arising out of the provision of the Services or the Partner's presence on the Council Premises; and/or

31.2.1.2 procure that its Personnel shall, give evidence in such inquiries, investigations, arbitrations, proceedings, hearings, meetings, audits and inspections and provide such other co-operation and assistance to the Council in relation thereto as the Council may reasonably require from time to time.

31.2.2 Where:

31.2.2.1 the Partner or any of its Personnel (excluding Inherited Contractors) become aware through its compliance with **clauses 43** (Complaints, Comments and other Feedback) and **71** (Health and Safety); and/or

31.2.2.2 any person in a supervisory role or above with the Partner or its Subcontractors (excluding Inherited Contractors) becomes aware in the course of the provision of the Services,

of any accident, incident, complaint or other matter which is likely to give rise to a claim or legal proceedings by a Third Party in respect of the provision of (or failure to provide) the Services, in respect of the Partner's presence on the Council Premises or Premises or otherwise in connection with this Agreement, the Partner shall notify the Council immediately in writing. Such notification shall include all relevant information which the Partner holds or is reasonably able to obtain a copy of to enable the Council to investigate the matter fully.

31.2.3 The terms of this **clause 31.2** (General Assistance in Proceedings) shall survive the termination or expiry of this Agreement.

PART G: AGREEMENTS AND ASSETS

32. AGREEMENTS

32.1 Assignment/Novation of Agreements

If prior to the Commencement Date or at any time during the Term the parties agree to transfer by way of assignment or novation any agreements or licences then, unless the parties agree otherwise in writing, the provisions of this **clause 32** (Agreements) and **clause 60** (Novation of Agreements) shall take effect and

the Partner shall perform and assume responsibility for the Transferring Agreements upon the terms of **clause 60** (Novation of Agreements).

32.2 **Not Used**

32.3 **Transfer Date Accruals, Prepayments and Apportionments**

If and to the extent that the Council has prior to the Service Commencement Date or Transfer Date (as the case may be) received any deposit or payment in advance in respect of any Transferring Agreement or any Use Asset or Controlled Asset the Council will account to the Partner for the same within twenty (20) Business Days of receiving such payment, in accordance with the principles in **clause 60.7.4** (Accruals, Prepayments and Apportionments).

33. **ASSETS**

33.1 **Agreement Asset Register**

33.1.1 Within ninety (90) Business Days of the Service Commencement Date the Partner shall;

33.1.1.1 validate that the Agreement Asset Register provided by the Council at the Commencement Date accurately reflects the Transferring Assets, Use Assets, Leased Assets and Controlled Assets provided or made available by the Council; and

33.1.1.2 compile the register of Partner Assets as part of the Agreement Asset Register and warrant to the Council that it is complete and accurate in all respects.

33.1.2 In the absence of any written notification by the Partner to the Council to the contrary within such period as specified in **clause 33.1.1** (Agreement Asset Register), such Agreement Asset Register shall be deemed to be accurate in all respects.

33.1.3 Within a reasonable period of time following any changes to the Agreement Assets (such period being not more than thirty (30) Business Days from the date of such change), the Partner shall update the Agreement Asset Register and provide the Council with such updated version.

33.2 Where:

33.2.1 the Partner discovers any discrepancy in the Agreement Asset Register pursuant to the validation exercise in **clause 33.1.1.1** (Agreement Asset Register) such that the Agreement Asset Register contains more

assets than anticipated or the Council discloses more assets following the Commencement Date then:

- 33.2.1.1 where the assets have previously been funded by the Council out of the budget which is transferred to the Partner pursuant to this Agreement, the Partner shall adopt such assets in accordance with this **clause 33** (Assets); or
- 33.2.1.2 where the assets have previously been provided by the Council but the budget to which such assets relate has not transferred to the Partner, then the Partner shall inform the Council of whether it wishes to adopt such assets to deliver the Services, in which case the Partner shall inform the Council of any financial impact and shall present such information on an Open Book basis for the Council's consideration. Where the Council agrees such proposal the Partner shall adopt such assets in accordance with this **clause 33** (Assets) and the Council shall finance the same through a Reprioritisation; or
- 33.2.2 the Partner discovers any discrepancy in the Agreement Asset Register pursuant to the validation exercise in **clause 33.1.1.1** (Agreement Asset Register) such that the Agreement Asset Register contains less assets than the Partner has priced for in the Financial Model then the Partner shall use this funding to adjust the Financial Model or purchase new assets (and such assets shall be deemed Transferring Assets).

33.3 **Partner Assets**

- 33.3.1 The Partner may, at its discretion from time to time, employ Temporary Partner Assets in the delivery of the Services. This shall be at the discretion of the Partner. The Council shall not at any time acquire any rights to or title in such Temporary Partner Assets and they shall not form part of the Termination Assets. The Temporary Partner Assets shall be used, maintained and refreshed by the Partner (at its discretion).
- 33.3.2 The Partner shall be responsible for acquiring Dedicated Partner Assets and shall be responsible for demonstrating to the Council that such Dedicated Partner Assets are purchased in accordance with and meet the terms of this Agreement. The Partner shall be responsible for the ownership, use, maintenance and refreshment of the Dedicated Partner Assets.
- 33.3.3 In the event that the Partner intends to acquire any new or replacement Use Asset, Control Asset, Transferring Asset or Partner

Asset, it shall consult with the Council at least thirty (30) Business Days in advance of such acquisition as to the procurement process, form of ownership, acquisition cost and the application of the Write Down Policy, where relevant.

33.4 **Use of Use Assets**

33.4.1 From the Commencement Date or in the case of a Project or Change following the Transfer Date, the Council hereby grants to the Partner a non exclusive licence to use the Use Assets, in consideration of performance by the Partner of the Services and its other obligations under this Agreement during the Term. Such licence shall be on the following basis:

33.4.1.1 legal and beneficial ownership of the Use Assets shall remain with the Council at all times; and

33.4.1.2 the Partner shall be entitled to use the Use Assets solely for the purpose of performing the Services and its other obligations pursuant to this Agreement.

33.4.2 Notwithstanding the grant of licence pursuant to **clause 33.4.1** (Use of Use Assets), the Council shall continue to have the right to use the Use Assets licensed to the Partner. The right to Use Assets shall extend to the Partner Parties to the extent necessary for the performance of the Services and compliance with the Partner's other obligations under this Agreement. This right to use shall terminate upon expiry or earlier termination of this Agreement. During the Term, the Partner shall be responsible for maintaining the Use Assets and (where it receives the relevant budget as set out in **Schedule 2 (Asset Register)**) refreshing the Use Assets. Where as at the Commencement Date, the Partner does not receive the relevant budget for refreshing a Use Asset, the Council shall be responsible for refreshing such Use Asset.

33.4.3 The Partner shall:

33.4.3.1 keep the Use Assets in such a way that they remain readily identifiable as the Council's property;

33.4.3.2 not destroy, deface or obscure any identifying mark on or relating to the Use Assets;

- 33.4.3.3 not damage or destroy the Use Assets and shall keep them in the condition they were in at the Commencement Date, fair wear and tear excepted (and in the case of Controlled Assets only, maintain such assets in a safe working order);
- 33.4.3.4 use the Use Assets in accordance with any restrictions notified to it by the Council in advance of the Partner's use of the same (such restrictions shall be no greater than the restrictions by which the Council itself abides by);
- 33.4.3.5 subject to the licence granted pursuant to **clause 33.4.1** (Use of Use Assets) and save for any refresh of the same by the Council where the asset changes categorisation hold to the Council's order and not dispose of or alienate the Use Assets without the Council's prior written consent; and
- 33.4.3.6 make its own enquiries as to the condition, fitness for purpose state and adequacy of any Use Assets and confirms that it has satisfied itself as to the condition, fitness and state of all the Use Assets upon which it places reliance. The Council gives no warranty as to the condition, fitness for purpose or state of the Use Assets including the manner of their installation or operation or suitability or otherwise of their environment.

33.5 **Transferring Assets**

Subject to the following provisions of this **clause 33.5** (Transferring Assets), on the Service Commencement Date or such other dates as are agreed, or in respect of a Project or Change, the Transfer Date the Council shall transfer to the Partner and the Partner will acquire the Transferring Assets on the following terms:

- 33.5.1 the price payable by the Partner for the Transferring Assets shall be one pound (£1) (if demanded) unless otherwise agreed in writing. Within five (5) Business Days of receipt by the Partner of a properly submitted invoice therefore, the Partner shall pay to the Council the sum payable for the Transferring Assets;
- 33.5.2 the Council will forthwith transfer to the Partner (with full title guarantee) free from Encumbrances legal and beneficial title to all Transferring Assets and shall forthwith release to the Partner the control of all such assets;
- 33.5.3 the provisions of **clause 21.1** (Due Diligence Exercise) shall apply;

- 33.5.4 following transfer of the Transferring Asset in accordance with this **clause 33.5** (Transferring Asset), the Partner shall own the Transferring Assets and be responsible for the use and maintenance of the same;
- 33.5.5 the Partner shall be responsible for the costs of refreshment of a Transferring Asset where prior to the Commencement Date the asset was refreshed out of a Service Area budget;
- 33.5.6 the Council shall be responsible for the costs of refreshment of a Transferring Asset where the budget for the refresh of the asset has not transferred to the Partner or where the asset was previously funded from the Council's capital programme or grant funding;
- 33.5.7 where the Transferring Asset was previously funded through the Council's capital programme, the Partner shall be entitled to present a Business Case for replacement of the asset through the Council's capital programme. The Partner shall present such Business Case in accordance with the Council's capital allocation process for consideration;
- 33.5.8 where the Transferring Asset was previously funded through grant funding then the Partner shall seek to replace such asset through any other appropriate grant funding application;
- 33.5.9 where the Partner is unable to refresh the Transferring Asset through application to the Council's capital programme in accordance with **clause 33.5.7** or grant funding in accordance with **clause 33.5.8**, the parties shall discuss whether the asset is necessary for the performance of the Services and in the event it is, the asset shall be funded through the Reprioritisation process; and
- 33.5.10 any Transferring Asset refreshed in accordance with this **clause 33.5** (Transferring Asset) shall remain classified as a Transferring Asset.

33.6 **Controlled Assets**

- 33.6.1 Without prejudice to **clause 33.4** (Use of Use Assets), the following provisions of this **clause 33.6** (Controlled Assets) shall apply where the parties agree in writing (including as part of a Project or Change) to transfer responsibility and control of any assets of the Council ("Controlled Assets").
- 33.6.2 From the Service Commencement Date or Transfer Date, the Council hereby grants to the Partner a licence to use the Controlled Assets in consideration of the performance by the Partner of the Services and its

other obligations under this Agreement during the Term. Such licence shall be on basis set out in **clause 33.4** (Use of Assets) (save that the Council shall not be entitled to use the Controlled Assets (as it can the Use Assets)) and the Partner shall comply with the provisions of **clause 33.4** (Use of Assets). The following provisions in this **clause 33.6.2** (Controlled Assets) shall also apply to Controlled Assets:

33.6.2.1 control of and risk in the Controlled Assets shall transfer free from Encumbrances to the Partner on the Transfer Date; and

33.6.2.2 the Partner shall be entitled to use the Controlled Assets for the purposes of performing the Services and complying with its other obligations under this Agreement. Where any Controlled Asset was, immediately prior to the Transfer Date, used in connection with both functions which are part of the Services and functions which are retained by the Council, the Council shall continue to have rights to use the Controlled Asset. This right to use shall extend to any Partner Party to the extent necessary for the performance of the Services and compliance with the Partner's other obligations under this Agreement. This right to use shall terminate upon expiry or earlier termination of this Agreement.

33.6.3 During the Term, the Partner shall be responsible for maintaining the Controlled Assets and (where as at the Commencement Date it receives the relevant budget as set out in **Schedule 2** (Asset Register)) refreshing the Controlled Assets. Where as at the Commencement Date the Partner does not receive the relevant budget in accordance with **Schedule 2** (Asset Register), the Council shall be responsible for refreshing the Controlled Asset.

33.6.4 The Partner grants or shall forthwith procure the grant to the Council an irrevocable licence at any time to enter any premises (including the Premises) where the Controlled Assets are or may be stored or otherwise accommodated in order to inspect them, or, where this Agreement is terminated in accordance with its terms, to recover them.

33.7 **Leased Assets**

33.7.1 The following provisions shall apply to the Leased Assets:

33.7.1.1 any lease, hire purchase, rental, conditional sale or other similar agreement under which (immediately prior to the

Service Commencement Date or in the case of a Project or Change, the Transfer Date) a Third Party leases or otherwise makes available to the Council any Leased Assets ("Lease Agreement") shall be retained by the Council and shall not transfer to the Partner pursuant to **clause 32** (Agreements). The Council shall provide to the Partner copies of such Lease Agreements within five (5) Business Days from the Commencement Date or, as applicable, the Transfer Date (such date being, in either case, the "Lease Transfer Date") and within ten (10) Business Days of their receipt the Partner shall inform the Council in writing:

- (a) if the terms of any such Lease Agreement will prevent the Partner from meeting its obligations under this Agreement with respect to the affected Leased Assets;
- (b) if the terms of any such Lease Agreement prevent the Partner managing such Leased Assets; and
- (c) if the budget for Leased Assets is within the Financial Model;

33.7.1.2 subject to there being no conflict between the Partner performing its obligations in this Agreement and being able to perform the obligations in the Lease Agreement then unless otherwise agreed in writing by the parties, the Council shall liaise with the lessor, and obtain their consent in relation to the Partner managing the Leased Assets on the Council's behalf and in doing so it shall also liaise with the lessor in respect of any necessary changes to the Lease Agreements to allow the Partner to perform such management;

33.7.1.3 from the Service Commencement Date or in the case of a Project or Change, the Transfer Date the Partner shall have the exclusive right to use the Leased Assets the subject of the Lease Agreements which can be managed by the Partner and which have received the lessors approval pursuant to **clause 33.7.1.2** (Leased Assets) and shall (subject to receiving the Council's budget in respect of the Lease Agreement) make all payments due under the Lease Agreements in each case to the relevant Third Party to the Lease Agreement, including any penalties, compensation or damages accrued from the Service Commencement Date or Transfer Date, as applicable, and payable to or properly

demanded by the Third Party in connection with a Lease Agreement;

- 33.7.1.4 where there is a conflict between the Partner performing its obligations in this Agreement and performing the obligations in the Lease Agreement or the Partner is unable to comply with the terms of such Lease Agreement or the lessor does not consent to such management (or any required changes), then the Council shall retain responsibility for such Lease Agreement (including the budget for the same) and the Partner shall provide advice to the Council in accordance with **clause 6.7** (Advice) to enable the Council to fulfil its obligations in respect of such Leased Assets (as is relevant).
- 33.7.2 At least twenty (20) Business Days prior to expiry or termination of any Lease Agreement or in sufficient time to enable the Council to comply with the Lease Agreement, whichever is sooner, the Partner shall notify the Council in writing of the expiry or termination of that Lease Agreement. Following receipt of the notification the Council may require the Partner to forthwith deliver up to the Council (or at the written request of the Council, to a Third Party specified by the Council) the Leased Assets which are the subject of the relevant Lease Agreement. The Partner shall ensure that the Leased Assets are in such a condition as to comply with the relevant Lease Agreement.
- 33.7.3 The Partner shall provide evidence to the Council that the payments pursuant to **clause 33.7.1.3** (Leased Assets) under any Lease Agreement have been properly made on a timely basis. Such information and evidence shall be contained in the monthly Performance Review report pursuant to **clause 24.5** (Quarterly, Annual and Project Performance Review Reports). If the Council reasonably believes that any payments have not been made it shall be entitled to deduct such payments from the following Periodic Payment.
- 33.7.4 The Council will hold the Lease Agreements on trust for the benefit of the Partner and the Partner will (to the extent not prohibited by such agreements), as the Council's agent perform all obligations of the Council there under.
- 33.7.5 The Partner shall on demand indemnify the Council from and against any Direct Losses suffered or incurred by the Council as a result of any act or omission of the Partner in connection with a Leased Asset or Lease Agreement or in connection with any breach by the Partner of this **clause 33.7** (Leased Assets).

- 33.7.6 The Council shall on demand indemnify the Partner from and against any Direct Losses suffered or incurred by the Partner as a result of any act or omission of the Council in connection with a Leased Asset or Lease Agreement prior to the date that the right to use the Leased Asset was granted to the Partner or in connection with any breach by the Council of this **clause 33.7** (Leased Assets).
- 33.7.7 On expiry or termination of any Lease Agreement the Partner shall have sole responsibility to procure or take a lease in respect of any replacement assets as necessary to enable the Partner to provide the Services to the Council.

33.8 **Asset Refresh**

- 33.8.1 The Council agrees that prior to acquiring new or replacement assets for those that it is responsible for refreshing under this **clause 33** (Assets) and Schedule 2 (Asset Register), it shall consult with the Partner as to the replacement and allow the Partner to make representations to it as to the suitability or otherwise of such replacement.
- 33.8.2 Where the Council fails to replace the Use Asset or Controlled Asset in accordance with this Agreement, then provided that the Partner can demonstrate to the Council (both parties acting reasonably) that such asset has exhausted its useful life, is unsafe or likely to be condemned so that the Partner is unable to perform its obligations in accordance with this Agreement then without prejudice to its other rights under this Agreement (including pursuant to **clause 8** (Council Dependencies)):
- 33.8.2.1 such failure by the Partner to perform, and any poor performance of, an affected part of the Services shall not constitute a breach by the Partner of the provisions of this Agreement;
- 33.8.2.2 such failure shall be disregarded when measuring the performance of any affected part of the Services in accordance with the Price Performance Mechanism, which shall be operated as though the relevant part of the Services has been performed free of such failure;
- 33.8.2.3 any such failure shall be deemed not to have occurred so that the Partner shall be entitled to payment under the Agreement as if there had been no such failure of the Services and/or the Partner (as the case may be).

33.8.3 All maintenance, repair and refreshment of assets by the parties in accordance with this **clause 33** (Assets) shall take place in the case of ICT in accordance with **clause 14** (ICT), **Schedule 8** (ICT) and **Schedule 25** (Council Supplied Services) and in all other cases, in accordance with Best Industry Practice.

PART H: PRICE AND PAYMENT

34A COUNCIL SUPPLIED SERVICES

34A.1 The Council shall provide to the Partner the Council Supplied Services which shall be supplied on the terms and conditions set out in the Council Service Level Agreement (a pro forma of which is contained in **Schedule 25** (Council Supplied Services Agreement)). Subject to **clauses 34A.7** (Council Supplied Services) and **34A.8** (Council Supplied Services) all other services provided by the Council to the Partner shall unless the Parties agree otherwise be through an Interface Relationship. The Council shall provide the Interface Services and on receiving Interface Services, the Partner shall comply with such internal procedures, processing requirements and timetables of the Council as shall be in place from time to time.

34A.2 Provision by the Council of the Interface Services shall be governed exclusively by the terms and conditions mentioned in this **clause 34A** (Council Supplied Services) and for the avoidance of doubt, all the provisions of this Agreement (other than this **clause 34A** (Council Supplied Services), **clause 8.1** (Dependencies) and **Schedule 26** (Interfaces) which set out the scope of Council obligation and liability in respect of the same) shall not apply to them. The Council shall not be liable for failure to provide the Interface Services in accordance with **Schedule 26** (Interfaces).

34A.3 Termination of an Interface Service shall occur on the earlier of:

- (a) termination or expiry of this Agreement; and
- (b) in respect of the printing service only, the service of reasonable notice of termination by the Partner (provided that the Partner shall consult the Council first in relation to its printing requirements as partner of choice).

34A.4 For the avoidance of doubt, any liability in respect of the Council or the Partner in relation to Council Supplied Services and any termination of the provision of such services shall be dealt with within the Council Service Level Agreement.

34A.5 The parties acknowledge that the Council will not supply legal services to the Partner. The Council shall supply legal services only to itself in connection with

issues relating to the Partnership and the Partner shall have an Interface Relationship in this respect.

34A.6 Although the Council will not be providing legal services to the Partner, the parties acknowledge that the execution of the legal component in respect of certain Services (for example the legal component of planning appeals) may have an impact on end to end service performance. The parties shall through the governance process set out in **Schedule 15** (Partnership Framework) keep under regular review the operational impact of the function of the Council's legal team and the legal support component utilised by the Services and its impact upon the performance and provision of Services by the Partner.

34A.7 Should the provision of legal services by the Council in support of the Services result in undue delays or otherwise adversely impact the end to end Services, the Partner shall raise the issue through the Partnership Board. If the issues are not subsequently resolved and there is an adverse and material impact upon the Partner and its ability to provide the Services, then either party may require the establishment of a formal service level agreement to give formal structure to the operation of this part of the legal process.

34A.8 The provisions of **clause 34A.6** (Council Supplied Services) and **34A.7** (Council Supplied Services) shall apply to the other Interface Services between the Council and the Partner.

34. **CONTRACT PRICE AND PAYMENT TERMS**

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

35. **PRICE PERFORMANCE MECHANISM**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 8 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 8 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

36. **INTEREST ON LATE PAYMENT**

If any party becomes liable to pay another party any sum pursuant to this Agreement, whether a liquidated sum or by way of damages or otherwise, that party will be liable to pay interest on such sum from the due date for payment at the annual rate of 2% above the base rate of the Council's bank from time to time (as notified by the Council to the Partner) accruing on a daily basis until payment is made whether before or after any judgement. The parties agree that this **clause 36** (Interest on Late Payment) is a substantial remedy for late payment of any sum payable under this Agreement in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.

37. **VALUE ADDED TAX**

- 37.1 Sums expressed to be payable to the Partner pursuant to this Agreement are exclusive of any amount in respect of value added tax ("VAT").
- 37.2 The Council will pay to the Partner in the manner set out in this **clause 37** (Value Added Tax) an additional amount equal to any VAT properly chargeable on the supply by the Partner of the Services at the appropriate rate (such VAT amounts being due at the same time as the underlying payment is due under this Agreement).
- 37.3 Any invoice or other request for payment of monies due to the Partner under this Agreement shall, if the Partner is a taxable person, be in the same form and contain the same information as if the same was a tax invoice for the purposes of regulations made under the Value Added Tax Act 1994.
- 37.4 The Partner shall, if so requested by the Council, furnish such information as may reasonably be required by the Council as to the amount of VAT chargeable on the value of the Services supplied in accordance with this Agreement and payable by the Council to the Partner.
- 37.5 Where the supplier of any supply is required to refund any amount to the recipient under this Agreement, such refund shall be made together with an amount equal to the VAT arising in respect of the refunded amount and the supplier shall provide a VAT credit note to the recipient.

38. **INDEXATION**

On the 1 April 2011 and each subsequent anniversary thereof (in each case "Indexation Date") indexation shall be applied on the basis set out in **Schedule 14** (Pricing).

39. **SET-OFF**

- 39.1 Without prejudice to any other right or remedy, the Council reserves the right (at its sole discretion) to set off any amount owing at any time from the Partner to the Council against any sums payable by the Council to the Partner under this Agreement.

40. **ASSET DEPRECIATION**

- 40.1 The Partner shall operate a write down policy in relation to the depreciation of each component of the Dedicated Partner Assets:
- 40.1.1 in relation to Dedicated Partner Assets in use at the Service Commencement Date, as set out in the Agreement Asset Register; and

40.1.2 in relation to Dedicated Partner Assets acquired after the Service Commencement Date, whether as a refresh or upgrade of existing Dedicated Partner Assets or entirely new Dedicated Partner Assets on such terms as shall be agreed pursuant to **clause 33.3.3** (Partner Assets),

such policy to be applied consistently throughout the Term, and to be consistent with the write down policy operated within the Financial Model ("Write Down Policy").

40.2 Unless otherwise agreed pursuant to **clause 40.1** (Asset Depreciation), the Write Down Policy shall operate such that the Partner shall depreciate each component of the Dedicated Partner Assets on a straight line basis over the useful life of the asset.

40.3 In relation to the Transferring Assets, such assets shall appear on the Partner's books at zero (0) value unless the parties agree a specific monetary consideration (and application of the Write Down Policy) for those assets in which case the assets shall appear in the books at that written down value.

40.4 For the avoidance of doubt, the Partner shall demonstrate its compliance with **clause 40.1** (Asset Depreciation) by allowing the Council access to its records from time to time in accordance with **clause 44** (Provision of Accounts / Records).

41. **FINANCIAL MODEL**

41.1 The Partner shall maintain the Financial Model in the form contained in **Schedule 14** (Pricing) or such other form as shall be agreed between the parties in writing from time to time.

41.2 The Partner shall update and refresh the Financial Model at least annually in accordance with **clause 24** (Partner's Plans and Performance Reviews) and more frequently as required upon agreement of any Change or Project which has a material impact on the contents of the Financial Model. Such updated Financial Model shall take account of planned service volumes, agreed Projects and agreed Changes.

41.3 The Partner shall ensure that all Changes are priced using the principles and high level assumptions contained in the Financial Model (or, to the extent that they are not appropriate, other reasonable and transparent assumptions).

41.4 The Partner shall ensure that all Projects are priced on the basis set out in **clauses 19.6** (Projects) and **19.7** (Projects) and using the principles and high level assumptions contained in the Financial Model (or, to the extent that they are not appropriate, other reasonable and transparent assumptions).

PART I: PERFORMANCE REVIEW & REMEDIES

42. QUALITY ASSURANCE

The Partner agrees to comply, at all times, with the quality assurance requirements set out in the Services Schedules.

43. COMPLAINTS, COMMENTS AND OTHER FEEDBACK

43.1 Record of Complaints

43.1.1 The Partner shall maintain an up to date, comprehensive and detailed written record of all complaints, comments and other feedback it receives regarding the Services (or any other aspect of the Partner's performance of this Agreement) which shall be available to the Council upon request from time to time and as soon as practicable or in any event within five (5) Business Days of such request by the Council. Such records shall contain all relevant details of the complaint, comment or other feedback including the following details:

43.1.1.1 the name, position and contact details of the person to whom the complaint, comment or other feedback was made;

43.1.1.2 the name, position and contact details of the person making the complaint, comment or other feedback and in what capacity the complaint, comment or other feedback was made;

43.1.1.3 a brief summary of any relevant circumstances surrounding the complaint, comment or other feedback;

43.1.1.4 the nature and extent of any known default to which a complaint relates including details of any personal injury suffered or property lost or damaged;

43.1.1.5 the date and time when the complaint, comment or other feedback was made;

43.1.1.6 any action taken in response to the complaint, comment or other feedback and if no action is to be taken, the reasons why no action is to be taken; and

43.1.1.7 any measures to be taken to prevent further complaints.

43.2 Notification of Complaints

- 43.2.1 If in its provision of the Services the Partner receives complaints in relation to the provision of Services without prejudice to **clause 31.2.2** (General Assistance in Proceedings) the Partner shall notify the Council in writing as soon as reasonably practicable and provide the details of the complaint referred to in **clauses 43.1.1.1** (Record of Complaints) to **43.1.1.6** (Record of Complaints) inclusive as soon as practicable or in any event within five (5) Business Days of becoming aware of the complaint.
- 43.2.2 If in its provision of the Services the Partner receives complaints by e-mail, letter, fax or telephone in relation to the Council and services not within the scope of this Agreement then the Partner shall refer the complainant or complaint to the relevant Council department.
- 43.2.3 The Council shall have the right to investigate all complaints which fall within **clause 43.2.1** (Notification of Complaints) and to take such steps, or require the taking of such steps by the Partner, as it deems necessary (acting reasonably) in order to deal with the complaint. The Partner shall promptly provide such documentation, information and assistance (including access to Personnel) as the Council may reasonably require in order to enable the Council to investigate and deal with the complaint.

44. **PROVISION OF ACCOUNTS/RECORDS**

44.1 **Assets and Accounts/Records**

- 44.1.1 The Partner shall keep full, complete, adequate and accurate accounts and records relating to the provision of the Services in a form containing equivalent detail of resources, costs and fees as that contained in the Financial Model. These accounts shall be available to the Council on an Open Book basis so that they can be audited and verified by the Council from time to time and the Partner shall update the said accounts at least annually.
- 44.1.2 The Partner shall provide copies of such accounts to the Council annually, by the end of April each Year and shall provide to the Council a comprehensive and detailed written explanation (if requested by the Council) of such accounts (or any part thereof).
- 44.1.3 The Partner shall provide annual reconciliation statements to the Council by the end of April each Year which contain details of all invoices submitted to the Council and all payments received.

44.1.4 The Partner shall provide copies of its audited and published financial accounts each Year within twenty (20) Business Days of such accounts being filed with the Registrar of Companies.

44.1.5 The Partner shall provide to the Council a comprehensive and detailed written explanation of any accounts provided under this **clause 44** (Provision of Accounts/Records) (if requested by the Council).

44.2 **The Partner's Accounts/Records**

Without prejudice to the foregoing, the Partner shall notify the Council in writing of any wider governance issues of which it becomes aware in its provision of the Services, including governance issues in relation to the Council, reputational issues or matters related to the provision of the Services, such notification to be made by the Partner as soon as reasonably possible and contain a reasonable level of detail to enable the Council to understand the issue and any impact on its reputation.

44.3 If the Council commissions any internal or external audit or other reports or review which relate to or cover (amongst other things) the provision of the Services by the Partner, the Council will provide to the Partner a copy of such audit, report or review (or, where appropriate, such part thereof as relates to the Partner's provision of the Services).

44.4 The rights set out in this **clause 44** (Provision of Accounts/Records) are subject to the overriding duties of legal privilege, confidentiality and/or the duties owed to Third Parties.

45. **AUDIT RIGHTS**

45.1 Not used.

45.2 The Council and such other persons as may be authorised by the Council in writing from time to time (including persons from the Council's internal audit team, the Audit Commission and other external auditing or inspection bodies), shall during normal office hours have access to:

45.2.1 the Premises and, upon reasonable notice, all other premises occupied by the Partner (including the Council Premises) and other locations where any Records and Data relating to the Services or this Agreement are located from time to time for the purpose of reviewing the Services and inspecting Records and Data kept in connection with the provision of the Services, including the Service Information including the right to copy and remove such Records and Data, and if reasonably necessary, remove originals of such Records and Data, or

copies where there is a statutory requirement upon the Partner to retain the originals of such documentation;

- 45.2.2 any Personnel for these purposes or of the Partner for the purpose of interviewing any such person in connection with the carrying out of all or any part of the Services (including the right to keep written or taped record of such interview) provided always that the Partner shall be entitled to have one of its representatives present at such an interview;
- 45.2.3 all technology, resources, equipment, systems, software and procedures used by the Partner or proposed to be used in connection with the performance of the Services (including the Partner Assets and Transferring Assets);
- 45.2.4 the accounts referred to in **clause 44.1.1** (Assets and Accounts/Records); and
- 45.2.5 without prejudice to **clause 45.2.4** (Audit Rights) any other information relating to this Agreement and/or the Services to enable the Council to track the statements, invoices and reports submitted by the Partner pursuant to this Agreement to enable the Council to verify such statements, invoices and reports on an Open Book basis.

45.3 The right of the Council to carry out an audit pursuant to this **clause 45** (Audit Rights) shall be subject to the overriding duties of legal privilege, confidence or obligations of the Partner to Third Parties. The Council shall ensure that all persons authorised by the Council to access the locations referred to in this **clause 45** (Audit Rights) (other than the Council Premises and the Premises) comply with the Partner's reasonable instructions during such access. The Council shall use reasonable endeavours to ensure that such persons who exercise the audit rights granted pursuant to this **clause 45** (Audit Rights) are bound by obligations to keep confidential all information so gleaned, subject always to the provisions of **clauses 59.11** (Confidentiality) and **59.16** (Confidentiality).

45.4 The Partner will provide to the Council, and/or such other persons as may be authorised by the Council in writing from time to time, all reasonable assistance and facilities that they require in connection with audits and inspections, including copies of any Records and Data and any and all audit reports prepared by Third Parties. Should the Council require access to any of the items listed in **clause 45.2** (Audit Rights) which are occupied, provided or employed (as the case may be) by a sub-contractor of the Partner then the Partner shall use its best endeavours to secure such access for the Council save that this shall not

(amongst other things) oblige the Partner to secure any contractual obligation from any such sub-contractor to enable the same to occur.

- 45.5 Without prejudice to the foregoing and any other right or remedy which the Council may possess in respect of such failure (under this Agreement or otherwise), if any audit or inspection reveals any over payment by the Council under this Agreement against an amount actually invoiced, the Partner shall forthwith provide the Council with a credit equal to the amount of such overpayment against the Partner's next invoice. Where an audit or inspection reveals any underpayment, the Council shall pay such underpayment to the Partner following receipt of the Statement of Account which refers to it and the invoice relating to such Statement of Account.
- 45.6 Upon the request of the Council, the Partner will make reasonable changes recommended or required by such audit or inspection to achieve full compliance with the provisions of this Agreement taking into account the recommendations of the audit or inspection in respect thereof. Any such request by the Council shall be documented as a Scoped Change.
- 45.7 Any such audit or inspection, or failure to audit or inspect, will not in any way release the Partner from any of its obligations under this Agreement.
- 45.8 Any audits, inspections or reviews carried out pursuant to this **clause 45** (Audit Rights) are in addition to any Performance Reviews carried out by the Council pursuant to its duty of Best Value and the provisions of this **clause 45** (Audit Rights) are without prejudice to the requirements of **clause 24** (Partner's Plans and Performance Reviews) and **clause 25** (External Assessment), including information, reporting and review procedures in relation to Performance Reviews and the benchmarking process.
- 45.9 The Council shall conduct each audit in a businesslike and professional manner.
- 45.10 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this **clause 45** (Audit Rights), unless the audit identifies a material default or a material miscalculation by the Partner in which case the Partner shall reimburse the Council for all of the Council's reasonable costs incurred in the course of that part of the audit which related to the discovery of that material default and/or material miscalculations (as the case may be).

46. **DISPUTE RESOLUTION PROCEDURE (DRP)**

Without prejudice to any other express dispute resolution process set out in this Agreement, any dispute or claim arising out of or in relation to this Agreement (including disputes as to the interpretation of the Agreement) between the Council and the Partner which cannot be resolved by the Partnership Directors,

shall be dealt with in accordance with this **clause 46** (Dispute Resolution Procedure (DRP)).

- 46.1 On the written request of either the Partner or the Council, each of them shall within ten (10) Business Days after the date of service of such written request appoint a designated representative (being the Chief Executive of the Council and the Managing Director of the Partner) and the designated representatives shall meet within fifteen (15) Business Days of the dispute being referred to them with a view to the designated representatives working with the Partnership Directors and endeavouring to resolve such dispute subject to the further provisions of this **clause 46** (Dispute Resolution Procedure (DRP)).
- 46.2 If the dispute is resolved by the designated representatives with the assistance of the Partnership Directors, the resolution shall be recorded in writing and signed by the designated representatives who shall have full authority to bind the Council and the Partner respectively, and that resolution shall be final and binding.
- 46.3 The following provisions shall apply to any attempt to resolve a dispute made pursuant to **clause 46.1** (Dispute Resolution Procedure (DRP)):
 - 46.3.1 the designated representatives may meet as often as the Council and the Partner reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which they believe to be appropriate and relevant in connection with its resolution. The designated representatives will discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceedings relating thereto; and
 - 46.3.2 during the course of such negotiation, all reasonable requests made by one party to the other for information will be honoured in order that each of the Council and the Partner may be fully advised of the relevant facts. The specific format for such discussions will be left to the discretion of the designated representatives but may include the preparation of agreed statements of fact or written statements of position furnished to the other party.
- 46.4 If the dispute has not been resolved within twenty-five (25) Business Days of the date on which the designated representative first met, either the Council and/or the Partner may escalate the dispute to mediation (and require the other party to participate in such mediation) in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure as amended or any equivalent replacement procedure from time to time or in the case of financial and/or technical issues, the parties may pursue resolution through a Third Party

expert as described in **clause 46.5** (Dispute Resolution Procedure (DRP)). Any mediation shall be conducted on the following terms:

- 46.4.1 to initiate a mediation under this clause a party must first give notice in writing ("Mediation Notice") to the other party or parties to the dispute requesting a mediation;
 - 46.4.2 within five (5) Business Days of receiving the notice referred to in **clause 46.4.1** (Dispute Resolution Procedure (DRP)) above, the other party shall respond stating whether or not it agrees that the dispute should be referred to mediation. If it does not agree that the dispute should be referred to, no mediation shall take place;
 - 46.4.3 upon the consent of both parties to the mediation, a copy of the Mediation Notice shall be sent to CEDR by the party giving it;
 - 46.4.4 the procedure in the CEDR Model Mediation Procedure will be amended to take account of any additional agreement which the parties may enter into in relation to the conduct of the mediation;
 - 46.4.5 if within ten (10) Business Days of the Mediation Notice the Council and the Partner are unable to agree on the identity of the mediator these matters shall be determined by CEDR on the application of either party;
 - 46.4.6 the appointed mediator shall have full discretion to issue a timetable for the exchange of written position statements together with any other documents relevant to the issue or issues in dispute, and the Council and the Partner will endeavour to agree the contents of a core bundle;
 - 46.4.7 the commencement of a mediation will not prevent the parties commencing court proceedings; and
 - 46.4.8 neither party may terminate the mediation until each party has made its opening presentation and the mediator has met each party for at least one hour. Thereafter paragraph 14 of the Model Mediation Procedure (as amended or any equivalent replacement provision from time to time) will apply.
- 46.5 Where the parties agree that a dispute or part of a dispute (as the case may be) should be resolved by a Third Party expert, the following provisions shall apply:
- 46.5.1 the party wishing to refer the dispute to a Third Party expert shall give notice to that effect to the other party. The notice shall contain sufficient details of the dispute to allow the other party to understand

the nature of the dispute and the profession or discipline of the Third Party expert to be appointed;

- 46.5.2 within five (5) Business Days of receiving the notice referred to in **clause 46.5.1** (Dispute Resolution Procedure (DRP)) above, the other party shall respond stating whether or not it agrees that the dispute should be referred to a Third Party expert. If it does not agree that the dispute should be referred to a Third Party expert, no Third Party expert shall be appointed;
- 46.5.3 if the parties agree that the dispute should be referred to a Third Party expert but they are unable to agree on the identity of the Third Party expert to be appointed within fifteen (15) Business Days of the date of the notice referred to in **clause 46.5.1** (Dispute Resolution Procedure (DRP)) above, upon application by either party (to be copied to the other party) the Third Party expert shall be appointed by the President or Vice President of the Law Society (or other such appropriate Professional Body depending on the nature of the dispute) from time to time, who shall have absolute discretion as the identity of the Third Party expert to be appointed;
- 46.5.4 within five (5) Business Days of his appointment, the Third Party expert shall establish a timetable and procedure for the resolution of the dispute, including but not limited to, the extent, form, and time limits for the submission by the parties of any documentary or oral evidence. The Third Party expert shall also, in his absolute discretion, consider whether a hearing or site visit is necessary in order to resolve the dispute;
- 46.5.5 any failure by a party to respond to any request or direction of the Third Party expert shall not invalidate the Third Party expert's determination;
- 46.5.6 the Third Party expert shall deliver his determination in writing with reasons within thirty (30) Business Days of his appointment or such other period as the parties agree in writing;
- 46.5.7 the Third Party expert shall act impartially and in good faith;
- 46.5.8 the Third Party expert's determination shall be binding upon the parties, save in the event of manifest error;
- 46.5.9 each party shall be solely responsible for its own legal and professional costs arising out of the reference of the dispute to the Third Party expert;

- 46.5.10 each party shall be jointly responsible for the Third Party expert's fees and expenses, unless the Third Party expert determines otherwise; and
- 46.5.11 the Third Party expert shall not be an Arbitrator for the purposes of the Arbitration Act 1996.
- 46.6 Where Part II of the Housing Grants, Construction and Regeneration Act 1996 applies to any dispute either party may refer such dispute for adjudication in accordance with the rules of the Technology and Construction Solicitors' Association current at the date of reference or such other rules as the parties may agree. Either party may by written notice to the other at any time during the period between service of a notice to refer a dispute to adjudication and the adjudicator's determination of that dispute (or the discontinuance of the adjudication) suspend the provisions of **clause 46.1** (Dispute Resolution Procedure (DRP)) to **46.5.11** (Dispute Resolution Procedure (DRP)) inclusive (as appropriate).
- 46.7 The parties agree to continue performing their respective obligations under this Agreement while any dispute is being resolved (including obligations to make any undisputed payments pursuant to **clause 34** (Contract Price and Payment Terms)) unless and until this Agreement is terminated in accordance with its terms.
- 46.8 Nothing in this **clause 46** (Dispute Resolution Procedure (DRP)) will prevent the Council and/or the Partner from:
- 46.8.1 pursuing any claim or seeking any relief or remedies (including injunctive or interlocutory relief or remedies) from the courts in relation to any dispute irrespective of whether the parties have commenced an alternative dispute resolution process including mediation, adjudication or referred the dispute to a Third Party expert;
- 46.8.2 terminating this Agreement in accordance with its terms or pursuant to common Law. The right of termination shall operate entirely independently from the procedure under this **clause 46** (Dispute Resolution Procedure (DRP)); and/or
- 46.8.3 exercising its rights to step-in and provide Services pursuant to **clause 51** (Step-In).
- 46.9 For the avoidance of doubt, any dispute relating to the Code shall be dealt with solely in accordance with the Code Dispute Resolution Procedure.
47. **WARRANTIES**
- 47.1 Partner Warranties

The Partner warrants and represents to and undertakes with the Council as follows:

47.1.1 neither the Partner nor any Associated Company of the Partner has directly or indirectly canvassed any member or officer of the Council with a view to gaining more favourable consideration for its proposals.

47.1.2 that the Partner has obtained or will have obtained within a reasonable period from the Service Commencement Date all and any necessary consents, licences and permissions and that such consents, licences and permissions provided or procured by the Partner pursuant to this Agreement (including without limitation **clause 58** (Intellectual Property Rights)) shall be, and shall remain, sufficient and adequate to enable the Council to enjoy the benefit of the Services to the full extent anticipated by this Agreement (including use and enjoyment by any Third Party as anticipated by this Agreement (including without limitation **clause 58** (Intellectual Property Rights))); and

47.1.3 all Personnel shall be vetted in accordance with Best Industry Practice and relevant Policies and Law.

47.2 Subject to **clause 47.3** (Warranties) if the Partner receives notification from the Council of any breach of the warranties and/or undertakings in **clause 47.1** (Partner Warranties), without prejudice to the Council's other rights whether arising under this Agreement or otherwise the Partner shall at its own expense remedy the defect, failure, omission or error in question as expeditiously as possible and in any event within ten (10) Business Days of receipt of such notification. Such remedy to be to the Council's satisfaction (acting reasonably).

47.3 If the Partner fails to comply with its obligations under **clause 47.2** (Warranties) or if any breach of warranty and/or undertaking is not remediable and the impact of such failure to comply or breach renders the Council's enjoyment of the Services materially adversely affected, the provisions of **clause 53** (Termination for Breach) may apply at the Council's absolute discretion (without prejudice to the Council's other rights whether arising under this Agreement or otherwise) and the breach of warranty and/or undertaking shall be deemed to be a material breach of this Agreement.

48. **INDEMNITIES AND LIMITATION OF LIABILITY**

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

49. **PARENT COMPANY GUARANTEE/BOND**

49.1 It is a condition precedent to this Agreement coming into force that the Partner shall procure that the Guarantor shall enter into the guarantee set out in **Schedule 7** (Parent Company Guarantee).

49.2 It is a condition precedent to this Agreement coming into force that the Partner shall procure a pensions bond as further set out in **clause 23** (Pensions) and **Schedule 10** (Pensions).

50. **COMPLIANCE WITH TIMESCALES**

50.1 The parties shall comply with and achieve the Milestones by the Milestone Dates.

50.2 The Partner shall meet all other timescales (including response times, deadlines and other timescales) as set out in or required by this Agreement and where there are no specified timescales, respond within a reasonable time period.

51. **STEP-IN**

51.1 **Right to Step-In**

If:-

- 51.1.1 the Partner commits a breach of this Agreement which would entitle the Council to terminate this Agreement under **clause 53** (Termination for Breach); or
 - 51.1.2 the Partner fails to perform the Services resulting in an accrual and/or accumulation of Service Credits in the manner set out in **Schedule 13** (Price Performance Mechanism) and stated in that **Schedule 13** (Price Performance Mechanism) as being a failure to perform the Services which (amongst other things) would entitle the Council to exercise its right of step-in; or
 - 51.1.3 the Council reasonably believes that it needs to step-in to perform the Services:-
 - 51.1.3.1 in order to discharge a statutory or other legal duty;
 - 51.1.3.2 because a serious risk exists to the health and safety of persons or property or to the environment; or
 - 51.1.3.3 because there is a real and imminent threat of material interruption in relation to a material part of the Services,

without prejudice to any other right of or remedy available to the Council, the Council may step-in and provide or perform on a temporary basis, by its own staff or another contractor, all or the relevant part of the Services identified in the notice given pursuant to **clause 51.2** (Right to Step-In) below. In such event the Partner and Council shall comply with the following provisions of this **clause 51** (Step-In).
- 51.2 If the Council wishes to exercise its rights under **clause 51.1** (Right to Step-In), the Council shall notify the Partner in writing of the following:-
- 51.2.1 the actions it wishes to take in identifying the Services for which step-in would apply;
 - 51.2.2 the reasons for the step-in, the objective of taking the action and in the case of **clause 51.1.3** (Right to Step-In), whether the Council reasonably believes that the primary cause of the action is due to a breach of the Partner (and if so details of the same shall be included);
 - 51.2.3 the date it wishes step-in to commence and the likely timescales of the step-in; and
 - 51.2.4 to the extent practicable and known to the Council, the likely effect on the Partner and its obligations to provide Services during the period of step-in,

and the Council shall give the Partner not less than twenty (20) Business Days (or such other shorter period as is reasonable in all the circumstances) to:

- (a) address the reasons for the step-in and rectify any deficient performance (as identified in the notice under this **clause 51.2** (Right to Step-In)) where the circumstances giving rise to the step in are those set out in **clauses 51.1.1** (Right to Step-In) or **51.1.2** (Right to Step-In), or are those set out in **clause 51.1.3** (Right to Step-In) and such circumstances have arisen due to a breach by the Partner of its obligations under this Agreement, provided that where the Council had previously issued to the Partner a formal written notice under this **clause 51** (Step-In) of the failure in question and given the Partner opportunity to remedy the failure then this requirement need not be followed; or
- (b) demonstrate to the Council's reasonable satisfaction that the Partner is still able to provide the Services in accordance with the terms of this Agreement where the circumstances giving rise to the step in pursuant to **clause 51.1.3** (Right to Step-In) are caused otherwise than due to the breach by the Partner of its obligations under this Agreement and thereafter perform the Services.

51.3 If the Partner has not complied with its obligations set out at **clauses 51.2.4(a)** (Right to Step-In) or **51.2.4(b)** (Right to Step-In) (as the case may be) within the time period in the notice the Council may step-in as set out in such notice.

51.4 **Notice and Assistance**

51.4.1 Following service of such notice, and in the event that the Council is entitled to step-in, the Council shall take such action as notified under **clause 51.2** (Right to Step-In) and any consequential additional action as it reasonably believes is necessary to perform all or part of the Services (together, the "Required Action") and the Partner shall give all reasonable assistance to the Council whilst it is taking the Required Action. The Council shall co-operate wherever reasonable with the Partner in order to enable the Partner to continue to provide any Services in relation to which the Council is not assuming control.

51.4.2 For the period of step-in the Council shall be permitted to use all or any part of the Partner Assets, Transferring Assets and/or Personnel which were allocated to the performance of the Services in relation to

which the Council is taking the Required Action, to assist in the performance of such Services.

- 51.4.3 For the avoidance of doubt throughout the period of step-in the provisions of **clause 59** (Confidentiality) shall continue to apply to the Partner and Council as applicable.

51.5 **Step-In without Partner Breach**

- 51.5.1 If the Partner is not in breach of its obligations under this Agreement, but the Council steps in pursuant to its rights under **clause 51.1.3** (Right to Step-In) then for so long as and to the extent that the Required Action is taken, and this prevents, hinders or delays the Partner from performing the Services or any part of the Services and/or from complying with its obligations, rights and duties under this Agreement:-

51.5.1.1 the Partner shall be relieved from its obligations to perform such part of the Services or where the Partner is delayed from performing its obligations, the Partner shall be granted such extension of time as reasonably necessary in the circumstances;

51.5.1.2 the Council shall not be entitled to Service Credits or to otherwise make deductions to the Contract Price pursuant to the Price Performance Mechanism, or to make any claim pursuant to this Agreement relating to such non-performance by the Partner in relation to the Services which are the subject of the step-in (without prejudice to any rights or remedies of the Council in relation to those Services which may accrue prior to or after the step-in);

51.5.1.3 the Contract Price shall continue to be payable by the Council in relation to the Services for the period when Required Action is taken as though the Council had not exercised its right to step in; and

51.5.1.4 the Council shall on demand indemnify and keep indemnified the Partner in relation to any material accidental damage and/or any material wilful damage to the property and assets of the Partner arising out of the Required Action being taken.

51.6 **Step-In on Partner Breach**

51.6.1 If the Council exercises its right pursuant to **clauses 51.1.1** (Right to Step-In) or **51.1.2** (Right to Step-In) or pursuant to **clause 51.1.3** (Right to Step-In) where the circumstances set out in **clause 51.1.3** (Right to Step-In) have arisen as a result of the Partner being in breach of its obligations under this Agreement then for so long as and to the extent that the Required Action is taken and this prevents, hinders or delays the Partner from providing any part of the Services and/or from complying with its obligations, rights and duties under this Agreement:-

51.6.1.1 the Partner shall be relieved of its obligations to provide such part of the Services or where the Partner is delayed from performing its obligations, the Partner shall be granted such extension of time as reasonably necessary in the circumstances;

51.6.1.2 the Council shall not be entitled to Service Credits or to otherwise make deductions to the Contract Price pursuant to the Price Performance Mechanism, or to make any claim pursuant to this Agreement relating to such non-performance by the Partner, in relation to the Services which are the subject of the Required Action (without prejudice to any rights or remedies of the Council in relation to those Services which accrue prior to or after the step-in);

51.6.1.3 the Contract Price shall cease to be payable by the Council in relation to those Services that the Council has taken Required Action in relation to together with any other Services provided that this is only to the extent that the relevant breach has had a consequential impact upon such other Services for the period of step-in; and

51.6.1.4 the Council shall on demand indemnify and keep indemnified the Partner in relation to any material accidental damage and/or any material wilful damage to the property and assets of the Partner arising out of the Required Action being taken.

51.7 **Use of Assets and Personnel on Step-In**

51.7.1 Where the failure to perform the Services is owing to any failure of the Personnel or is owing to the absence of or insufficiency of such Personnel, the Council may, where it is reasonable in all the circumstances, use Council staff, or the staff of another contractor to perform or manage the Services.

- 51.7.2 Where the failure to provide or perform the Services is due to the failure of the Partner to provide adequate equipment or materials to perform the work properly (including insufficiency of equipment or materials or provision of equipment or materials of inferior quality), the Council may where it is reasonable in all the circumstances provide or procure the provision of adequate and appropriate equipment or materials to be used in the performance of the Services. The Partner shall be able to use the assets in the provision of the Services if it resumes such provision pursuant to **clause 51.8** (Step-Out and Termination Rights) and that equipment, or materials shall be deemed to form part of the Use Assets from the date of such resumed provision, such date being deemed to be the Transfer Date for the purposes of **clause 33** (Assets).
- 51.7.3 If the Council exercises its step-in rights as set out in the foregoing provisions of this **clause 51** (Step-In) (whether itself or via another contractor) the Partner shall afford to the Council or the Third Party (as the case may be) such co-operation, assistance, information, documentation, facilities and Data as are reasonably required by the Council or Third Party. The Partner shall also provide to the Council or Third Party (as the case may be) access to the Partner's Know-how to the extent necessary in connection with the exercise of step-in or provision of the Services.
- 51.7.4 In the event that the Council employs (whether on a temporary or permanent basis) new staff in connection with exercising its right of step-in, such staff shall be and shall remain the sole responsibility of the Council both during and after the Required Action (except where expressly agreed to the contrary).

51.8 **Step-Out and Termination Rights**

- 51.8.1 Within a reasonable period prior to the end of the period of step-in by the Council pursuant to this **clause 51** (Step-In), the Partner shall provide a plan to the Council upon how it proposes to resume the full performance of the Services. If the Partner is able to reasonably demonstrate to the Council that the Partner is able to resume performance of all or part of the Services which were or are subject to step-in, to the Service Levels (where relevant), then the Council shall notify the Partner of this in writing and the Partner, following five (5) Business Days prior notice in writing by the Council, shall resume performance of such Services. The Council shall be entitled to require such evidence as it considers reasonably necessary to demonstrate that the Partner is able to resume performing the Services to the Service Levels as aforesaid.

51.8.2 Save as specifically set out in this **clause 51** (Step-In), the operation of this **clause 51** (Step-In) shall not relieve the Partner of any obligations under this Agreement in respect of the Services as a whole, nor restrict the Council's right to terminate this Agreement in accordance with its terms.

52. **LIQUIDATED DAMAGES**

52.1 Liquidated damages will be identified, where relevant, for Projects in the relevant FBC or PID. Liquidated damages are not relevant to the provision of the Core Services.

PART J: TERMINATION AND EXPIRY

53. **TERMINATION FOR BREACH**

53.1 **Right of Termination**

53.1.1 The Council shall be entitled to terminate this Agreement in whole or in part in accordance with this **clause 53** (Termination for Breach) forthwith by notice in writing to the Partner if the Partner is in:-

53.1.1.1 Material Breach of this Agreement (defined in **clause 53.2** (Material Breach)); or

53.1.1.2 Persistent Breach of this Agreement (defined in **clause 53.4** (Persistent Breach))

and shall have failed (where a remedy period is granted pursuant to **clause 53.3** (Remedy Period)) to remedy the same within the remedy period so granted.

53.1.2 The Council shall be entitled to terminate this Agreement in part (whether for Material Breach or Persistent Breach) in respect of a Service, Area, or part thereof, affected by the breach of this Agreement by the Partner.

53.2 **Material Breach**

53.2.1 "Material Breach" shall mean any material or fundamental breach by the Partner of this Agreement or part of this Agreement (as the case may be) or the occurrence of any of the following matters:-

53.2.1.1 an accrual and/or accumulation of Service Credits in the manner set out in **Schedule 13** (Price Performance Mechanism) and stated in that **Schedule 13** (Price

Performance Mechanism) as constituting a material breach of this Agreement (or part thereof);

- 53.2.1.2 in relation to a Project, any failure by the Partner to achieve any Milestone by the relevant Longstop Milestone Dates for such Project;
- 53.2.1.3 the commission of a Prohibited Act the extent of which provides the Council with a right of termination pursuant to **clause 69.2** (Corrupt Gifts);
- 53.2.1.4 any failure by the Partner to provide and continue to provide the guarantee referred to in **clause 49** (Parent Company Guarantee/Bond);
- 53.2.1.5 the Partner committing a breach of its obligations under this Agreement (other than as a consequence of a breach by the Council of its obligations under this Agreement which is not itself caused by a breach by the Partner of its obligations hereunder) which results in:
 - (a) the criminal investigation, prosecution and conviction of the Partner, its statutory directors or Key Personnel or the Council under the Health and Safety Regime (an **H&S Conviction**); or
 - (b) any criminal conviction (other than a H&S Conviction) of the Partner its statutory directors or Key Personnel or imposition of a sanction by a Professional Body on the Partner, its statutory directors or Key Personnel (**Other Conviction**),

save where immediately following the date of the H&S Conviction or Other Conviction of a statutory director of the Partner or a Key Employee(as the case may be) the Partner terminates the involvement in the Services of each such relevant person(s) and a replacement is appointed by the Partner. The Council shall, in determining whether to exercise any right of termination in relation to this **clause 53.2.1.5** (Material Breach):

- (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence (motoring offences by way of example being treated as immaterial), whether the H&S Conviction or Other Conviction (as the

case may be) has an adverse and material impact on the Council's reputation, the seriousness of the damage done to the Partner's reputation by the H&S Conviction or Other Conviction (as the case may be) and the identity of the person committing it; and

- (ii) give all due consideration, where appropriate, to action other than termination of this Agreement.

53.3 **Remedy Period**

- 53.3.1 Where a Material Breach is capable of remedy the Partner shall be granted a remedy period of twenty (20) Business Days (or such longer period as the Council agrees acting reasonably having regard to the steps required to be taken to remedy the breach) from the date of receipt by the Partner of a notice in writing from the Council specifying the breach and requiring the Partner to remedy the breach.
- 53.3.2 In the circumstances referred to in **clauses 53.2.1.1** (Material Breach) to **53.2.1.5** (Material Breach) and **53.4** (Persistent Breach) the Partner shall not be granted any remedy period and the Council shall be entitled to terminate this Agreement forthwith on notice.
- 53.3.3 Where a breach is irremediable, the Partner shall not be granted any remedy period and the Council shall be entitled to terminate this Agreement forthwith on notice. For the avoidance of doubt, a breach shall not be classified as irremediable where (amongst other things) it can be remedied save as to stipulations relating to time of performance).

53.4 **Persistent Breach**

"Persistent Breach" shall mean:-

- 53.4.1 any persistent or reoccurring breach or breaches of this Agreement (whether of the same nature or not); or
- 53.4.2 a single breach committed persistently; or
- 53.4.3 multiple different breaches committed once (or more),

which in any of the above cases have or will have in aggregate a material and adverse effect on the Council and/or the Services and/or a Service Area and such breaches relied upon have occurred within a period of thirty six

(36) months prior to the Council serving notice to terminate for Persistent Breach.

53.5 **Termination by the Partner**

53.5.1 If a Council Default has occurred and the Partner wishes to terminate this Agreement, the Partner must serve a termination notice (the Partner Termination Notice) on the Council within thirty (30) Business Days of becoming aware of the Council Default.

53.5.2 The Partner Termination Notice must specify the type of Council Default which has occurred entitling the Partner to terminate.

53.5.3 This Agreement will terminate on the day falling thirty (30) Business Days after the date the Council receives the Partner Termination Notice, unless the Council rectifies the Council Default within twenty (20) Business Days of receipt of the Partner Termination Notice (or such longer period as the Partner agrees acting reasonably having regard to the steps required to be taken to remedy the breach).

53.6 **No Fault Termination**

53.6.1 The parties shall monitor the levels of liability incurred against each parties respective cap on liability at **clauses 48.5.4** (Liability of the Parties) and **48.5.3.2** (Liability of the Parties) throughout the Term. Where either party considers there is a risk of a cap being reached or exceeded prior to the termination or expiry of this Agreement then the parties shall meet in good faith and, acting reasonably, consider whether a cap should be revised upwards.

53.6.2 Where the Council reaches or exceeds its maximum aggregate cap on liability referred to in **clause 48.5.4** (Liability of the Parties), the Partner may agree in writing to a revised cap provided always such agreement is without prejudice to the prior liability of the Council.

53.6.3 Where the Partner reaches or exceeds its cap on liability referred to in **clause 48.5.3.2** (Liability of the Parties), the Council may agree in writing to a revised cap provided always such agreement is without prejudice to the prior liability of the Partner.

53.6.4 Where pursuant to **clauses 53.6.2** (No Fault Termination) or **53.6.3** (No Fault Termination) there is no consent to revise a party's cap then the party who has not reached or exceeded their cap shall be entitled to terminate this Agreement upon twenty (20) Business Days written notice to the other party. Any such termination shall be deemed to be a no fault termination and in these circumstances each party shall:

53.6.4.1 save to the extent described in paragraph 7 of **Schedule 23** (Compensation on Termination); and

53.6.4.2 save to the extent such loss falls within a category of uncapped liability at **clause 48.4.1** (Limitation of Liability - General) (in which case the relevant party shall be entitled to claim in respect of any such loss),

bear their own losses.

53.7 **Step Back**

53.7.1 The Partner and the Council recognise the potential for all or part of the economic development and external funding aspects of the Renaissance Service to be terminated at some stage during the Term, but agree that such termination shall not take effect before the end of Year 3. For the avoidance of doubt, such economic development and external funding aspects of the Renaissance Service are as set out in paragraphs 3.1.5, 3.1.7 to 3.1.11 and 3.1.13 to 3.1.16 of **Schedule 27** (Renaissance Services) and funded by the budget identified in column M of **Schedule 27** (Renaissance Services), and as set out in rows 822 to 853 and 856 to 864 of the Affordability Envelope in the Financial Model.

53.7.2 Within two (2) months of the end of Year 3 the Council shall assess whether the Partner has met the Outcome Criteria and supply the results to the Partner together with a notice as to the Council's intention if the Partner has failed to satisfy any of the Outcome Criteria.

53.7.3 The Partner shall have a period of one month to consider the results provided by the Council pursuant to **clause 53.7.2** (Step Back) and to raise any clarifications with the Council and to dispute the results. Any dispute shall be determined in accordance with the Dispute Resolution Procedure and pending the resolution of the dispute, the Partner shall continue to provide and to be paid for those aspects of those services in accordance with the Agreement.

53.7.4 If the Partner accepts any failure or a dispute is resolved in the Council's favour then within one (1) month of the expiry of the period set out in **clause 53.7.3** (Step Back) or a dispute being resolved (as the case may be) the Partner shall provide the Council with an Exit Plan and Impact Assessment setting out how the transfer of those services will be managed. Such Impact Assessment will include (without limitation):

- 53.7.4.1 details of the Personnel who would transfer;
 - 53.7.4.2 details of those assets and agreements that would transfer;
 - 53.7.4.3 any Change that would be required to the Agreement as a result of the removal of those services
 - 53.7.4.4 any remodelling of the Service Credit regime under the Price Performance Mechanism that is required as a result of the removal of such services;
 - 53.7.4.5 any breach, in relation to such services, which the Council may have recorded for the purposes of assessing whether there has been a Persistent Breach, such breaches to be disregarded by the Council for the purposes of assessing any future breach; and
 - 53.7.4.6 details of a communication plan which ensures neither parties reputation suffers as a result of the step back decision.
- 53.7.5 If the Council does not assess whether the Partner has met the Outcome Criteria within the time-frame set out in **clause 53.7.2** (Step Back) then the Council will not be able to exercise its rights under this **clause 53.7** (Step Back).
- 53.7.6 The Council retains the right not to carry out the step back process set out in this **clause 53.7** (Step Back), or to carry out the step back process outlined at **clauses 53.7.2** (Step Back) to **53.7.4** (Step Back) (inclusive) but not thereafter to implement the Exit Plan and Impact Assessment so that in each case the Partner continues providing the Services.
- 53.7.7 In the event of termination by the Council pursuant to this **clause 53.7** (Step Back):-
- 53.7.7.1 the provisions of **clauses 56** (Termination and Expiry Consequences) shall apply to the economic development and external funding aspects of the Renaissance Service;
 - 53.7.7.2 the Periodic Payment shall be reduced by the component of the Periodic Payment which relates to the economic development and external funding aspects of the Renaissance Service (as set out in **clause 53.7.1** (Step Back)); and

53.7.7.3 for the avoidance of doubt this shall be deemed a no fault termination and each party shall:

- (a) save to the extent described in paragraph 7.2 of **Schedule 23** (Compensation on Termination); and
- (b) save to the extent such loss falls within a category of uncapped liability at **clause 48.4.1** (Limitation of Liability - General) (in which case the relevant party shall be entitled to claim in respect of any such loss),

bear their own losses.

54. **INSOLVENCY ETC**

54.1 The Council shall be entitled to terminate this Agreement forthwith by notice in writing to the Partner if the Partner:-

54.1.1 becomes the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986;

54.1.2 is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 provided that in the case of a written demand served pursuant to Section 123(A) of the Insolvency Act 1986 the Partner shall have ten (10) Business Days to provide satisfactory evidence to the Council that:

54.1.2.1 the statutory demand in question relates to a sum of less than five hundred thousand pounds (£500,000), in which case this right to terminate shall not apply. The Partner shall inform the Council where it receives a statutory demand for a sum in excess of five hundred thousand pounds (£500,000); or

54.1.2.2 the statutory demand in question has been served with frivolous, malicious or vexatious intent or relates to a sum which is not in dispute;

54.1.3 has a receiver, supervisor, manager, administrator or administrative receiver appointed in respect of it or over all or any parts of its undertaking, assets or income;

54.1.4 has passed a resolution for its winding up provided always that a resolution by the Partner or a court order that the Partner be wound up for the purpose of a bona fide reconstruction or amalgamation shall not fall within the scope of this **clause 54.1** (Insolvency etc); or

- 54.1.5 has an order granted by any court for its winding-up; or
- 54.1.6 if any distraint execution or other process is levied or enforced on any property of the Partner (including the Transferring Assets and Partner Assets) and is not paid out, withdrawn or discharged within fifteen (15) Business Days.

54.2 Termination for Change of Control

54.2.1 The Council may terminate this Agreement by giving not less than twenty (20) Business Days prior written notice to the Partner if there is a Change of Control to which the Council objects except where the Council:

54.2.1.1 has given its prior written consent to the particular Change of Control (such consent not to be unreasonably withheld or delayed), which subsequently takes place as proposed; or

54.2.1.2 has not served its notice within six months of the later of the date the Change of Control took place or the date on which the Council was given notice of the Change of Control.

54.2.2 The Partner shall notify the Council in writing within one month of any Change of Control taking place.

54.3 Replacement of Permitted Sub-Contractor

54.3.1 Where the provisions of **clause 54.1** (Insolvency etc) apply to any Permitted Sub-contractor, the Council may in its sole discretion either:

54.3.1.1 exercise its right to terminate this Agreement for Partner breach of **clause 54.1** (Insolvency etc); or

54.3.1.2 require the Partner, by setting out such requirement in a written notice to the Partner, to replace the Permitted Sub-contractor.

54.3.2 If, pursuant to **clause 54.3.1.2** (Replacement of Permitted Sub-Contractor), the Council notifies the Partner of the requirement to replace the Permitted Sub-contractor, then the Partner shall put forward an acceptable replacement programme within ten (10) Business Days after the date the Partner receives the written notice from the Council and shall, if such programme is acceptable to the Council, implement such programme in accordance with its terms (and at no additional cost to the Council).

54.3.3 The Partner shall on demand indemnify the Council fully and effectively against all Direct Losses of the Council associated with or arising from the replacement of a Permitted Sub-contractor under **clause 54.3.1.2** (Replacement of Permitted Sub-Contractor).

55. **TERMINATION AT WILL**

55.1 At any time following the Commencement Date, the Council shall be entitled to terminate this Agreement at will upon giving a minimum of six (6) months prior written notice to the Partner.

55.2 The Council shall be entitled to terminate any part of this Agreement in accordance with the following procedure:

55.2.1 the Council shall issue to the Partner a written notice of its intention to terminate part of this Agreement, such notice to include details of the Services to be terminated ("Initial Notice");

55.2.2 within twenty (20) Business Days of receipt of the Initial Notice, the Partner shall prepare and present the Council with an Impact Assessment (in accordance with **Schedule 5** (Change Control))

addressing the technical, operational and commercial implications of the proposed partial termination (with recognition that the commercial viability of the remaining Services to the Partner should be taken into account, including the percentage profitability, and overhead recovery which shall reconcile back to the Financial Model) and including proposals as to the timing of such termination and any compensation due with reference to the Compensation on Termination Schedule , which shall be no later than 6 months following the date of the Initial Notice;

55.2.3 the parties shall comply with the procedure for agreement of Impact Assessments set out in **Schedule 5** (Change Control) save that, in relation to the Impact Assessment prepared pursuant to **clause 55.2.2** (Termination at Will), the Council shall respond within 30 Business Days of receipt of the Impact Assessment, and confirm to the Partner whether it approves the Impact Assessment or otherwise;

55.2.4 if, following the procedure for agreement of Impact Assessments set out in **Schedule 5** (Change Control), the Impact Assessment is unacceptable to the Council, the Council shall be entitled (but not obliged) to require the Partner to terminate the relevant part of the Services in any event within 6 months of the issue of the Initial Notice, and the parties shall refer the disputed Impact Assessment to the Dispute Resolution Procedure; and

55.2.5 where it approves the Impact Assessment, then the Council shall be entitled to proceed with the termination in part and shall issue a notice to terminate in accordance with **clause 55.2** (Termination at Will).

55.3 In the event that the Council proceeds with the termination of part or whole:-

55.3.1 the provisions of **clauses 56** (Termination and Expiry Consequences) shall apply and, in relation to any termination of part, shall apply to such part of the Services as the termination affects;

55.3.2 in relation to any termination of part, the Contract Price shall be adjusted as set out in the Impact Assessment; and

55.3.3 the Partner shall be entitled to recover from the Council the amounts set out in **Schedule 23** (Compensation on Termination).

56. **TERMINATION AND EXPIRY CONSEQUENCES**

56.1 **Exit Plan**

The Partner shall provide an Exit Plan within six (6) months of the Service Commencement Date and thereafter the Partner shall maintain, review, update (if appropriate) and provide the Exit Plan as part of each subsequent Annual Performance Review, which Exit Plan will be reasonable and acceptable to the Council (acting reasonably). Where the Partner fails to comply with this obligation or any obligation under this **clause 56.1** (Exit Plan), then the Council may appoint a Third Party to review and revise the Exit Plan and the Partner shall (a) reimburse the Council its costs incurred from such Third Party's engagement and (b) provide reasonable access and assistance to such Third Party in order that it can review and revise the Exit Plan.

56.2 **Effect of Termination**

Any termination or expiry of this Agreement for any reason shall not affect any accrued rights or liabilities of either party, nor the coming into force, or the continuance in force, of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

56.3 **Rights of Occupation and Use**

Upon termination or expiry of this Agreement any rights of occupation granted pursuant to **Schedule 1** (Accommodation) and rights to use the Use Assets and rights to use and responsibilities for the Controlled Assets pursuant to **clause 33** (Assets) will terminate forthwith, except where such rights are expressly specified to continue during the Exit Period as set out in the Exit Plan. The Partner shall ensure that all Personnel have vacated the Council Premises no

later than expiry of the Exit Period save where access is required as part of the Exit Plan.

56.4 **Data and Records**

56.4.1 Upon termination or expiry of this Agreement the following provisions shall apply:

56.4.1.1 the Partner will forthwith supply to the Council a copy of all work-in-progress, tangible Know-How to which it is entitled under this Agreement, Service Information, including an up to date copy of all Service Process Maps, as is necessary to enable the Council or a Third Party provider to continue providing the Services or Replacement Services. The provisions of this **clause 56.4** (Data and Records) are without prejudice to the provisions of **clause 58** (Intellectual Property Rights) in relation to the ownership of Intellectual Property Rights and rights and licences granted in respect thereof;

56.4.1.2 the Partner will forthwith either itself or, at the Council's option, provide to a Third Party such co-operation as is necessary in the circumstances to identify, collate and access all Data within the Service Information and to ensure that it is in a standard format which is accessible to a Third Party. If requested by the Council the Partner shall cleanse, transfer and port the Data to any new systems whether such systems are owned or operated by the Council or any Third Party, provided that the Council pays the Partner for such cleansing, transfer and porting of Data at the Partner's reasonable day rate for such work applicable at that time; and

56.4.1.3 the Partner shall forthwith deliver to the Council the original and all copies of the Records within the Service Information held by or on behalf of the Partner or, at the Council's option, shall deliver to the Council the originals of all such Records and destroy all copies at the Council's discretion and certify to the Council in writing that they have been so destroyed.

56.5 **Transition and Co-operation**

56.5.1 In the event of termination or expiry of this Agreement (howsoever arising) the Partner shall co-operate with the Council and facilitate the efficient transfer of the Services to a Future Service Provider with the

minimum possible disruption to service provision, such co-operation to be provided on the terms set out in **clause 56.5.2** (Transition and Co-operation).

- 56.5.2 The Partner shall for a period of twelve (12) calendar months prior to the date of termination or expiry and for a period of twelve (12) calendar months after the date of termination or expiry, provide reasonable assistance to the Council or the Future Service Provider, including access to the relevant personnel and information or materials to permit the Council or the Future Service Provider to familiarise itself with the Services, to the extent necessary to take over the provision of the Services. If the Agreement terminates (in accordance with the provisions of this Agreement) by either party giving less than twelve (12) calendar months' notice then the period of assistance pursuant to this **clause 56.5.2** (Transition and Co-operation) shall be the same duration as the period of notice and a further period of twelve (12) calendar months thereafter. Any obligation in this Agreement up to the date of termination or expiry shall, for the avoidance of doubt, be discharged within the Contract Price. Any assistance provided by the Partner pursuant to this **clause 56.5.2** (Transition and Co-operation) and **Schedule 6** (Exit) after the date of termination or expiry shall be chargeable by the Partner in accordance with the day rates set out in **Schedule 14** (Pricing). In the event that termination has arisen due to limb (a) of Council Default occurring, then if at any time during the provision of assistance following termination, the Council fails to pay any sums not in dispute due to the Partner within 4 weeks of the amount falling due, the Partner shall be entitled to forthwith cease providing such assistance.
- 56.5.3 If this Agreement terminates forthwith by notice, in the circumstances anticipated by **clauses 53** (Termination for Breach) or **54** (Insolvency etc) the period in relation to which the Partner shall provide the assistance required by virtue of this **clause 56.5** (Transition and Cooperation) shall be the period of twelve (12) calendar months from the date on which termination takes effect. Any obligation in this Agreement up to the date of termination or expiry shall, for the avoidance of doubt, be discharged within the Contract Price. Any assistance provided by the Partner pursuant to this **clause 56.5.3** (Transition and Co-operation) and **Schedule 6** (Exit) after the date of termination or expiry shall be chargeable by the Partner in accordance with the day rates set out in **Schedule 14** (Pricing).
- 56.5.4 The Council shall ensure that any such Third Party Future Service Provider is bound by obligations to keep confidential all confidential information disclosed to it pursuant to this **clause 56.5** (Transition and

Co-operation), subject always to the provision of **clauses 59** (Confidentiality).

- 56.5.5 The Partner shall provide such further information and documentation as the Council may reasonably require in order to facilitate the efficient transfer of the Services to a Future Service Provider with the minimum possible disruption to service provision.
- 56.5.6 Without prejudice to the Partner's obligations pursuant to **clauses 56** (Termination and Expiry Consequences) and **56.5** (Transition and Co-operation), the Council shall be entitled to place with the Partner such number of Council Staff as it reasonably requires for a period of up to six (6) calendar months prior to any termination or expiry of this Agreement, to enable the Council to gain further information and knowledge in relation to the Services. The Partner shall from within the resource utilised to provide the Services provide all necessary co-operation and assistance to the Council Staff to facilitate this. For the avoidance of doubt, the Council shall remain responsible for the supervision and conduct of the Council Staff and for payment of their salaries and other benefits and payments in relation to them. The Partner shall not be entitled to use the Council Staff in the actual performance of the Services or other obligations of the Partner pursuant to this Agreement.
- 56.5.7 The Partner shall ensure that all information and documentation referred to in **clause 56** (Termination and Expiry Consequences) is delivered to the Council at least twenty (20) Business Days before the date of termination or expiry or, if this Agreement terminates forthwith by notice, in the circumstances anticipated by **clauses 53** (Termination for Breach) or **54** (Insolvency etc), within twenty (20) Business Days of such termination. The Partner shall ensure that all such information and documentation (and the processes which lead to its creation) are at least sufficient (in terms of level of detail, clarity of expression, scope and content) to enable any person with a basic working knowledge of the operation of activities within services the same or similar to the Services to understand the detailed operation of the Services provided by the Partner and the other obligations performed by the Partner pursuant to this Agreement.

56.6 **Assets**

- 56.6.1 The following provisions shall apply in relation to termination or expiry of this Agreement:

- 56.6.2 The Partner shall within thirty (30) Business Days prior to the date of termination or expiry of this Agreement provide to the Council a full, up to date and accurate copy of the register of the Partner Assets, other accounts and records held by the Partner in relation to the Dedicated Partner Assets pursuant to **clause 44.1.1** (Assets and Accounts/Records) (together "Asset Information"). The Council shall acquire the Dedicated Partner Assets from the Partner upon termination or expiry of this Agreement, and any Transferring Assets (such assets shall be "Termination Assets").
- 56.6.3 Within twenty (20) Business Days of receipt by the Partner of the Council's notice given pursuant to **clause 56.6.2** (Assets), the Partner shall provide to the Council such supporting documentation and other information in relation to the Termination Assets, as the Council may reasonably require.
- 56.6.4 The price payable by the Council for any Transferring Assets (being returned to the Council as Termination Assets), on expiry or termination of this Agreement shall be one pound (£1) (if demanded).
- 56.6.5 Subject to paragraph 6.1 of **Schedule 23** (Compensation on Termination) applying, the price payable by the Council for any Dedicated Partner Assets transferred to the Council upon termination of this Agreement (howsoever arising) shall be the Written Down Value for such assets.
- 56.6.6 The price payable for any Dedicated Partner Assets transferred to the Council upon expiry of this Agreement shall be the Written Down Value for such assets.
- 56.6.7 Within five (5) Business Days of receipt by the Council of the further supporting documentation and information pursuant to **clause 56.6.3** (Assets) together with a properly submitted invoice therefore, the Council shall pay to the Partner the sum payable for the assets calculated as set out in **clauses 56.6.4** (Assets) to **56.6.6** (Assets).
- 56.6.8 On receipt of such sums referred to in **clauses 56.6.4** (Assets) to **56.6.6** (Assets) above, the Partner will forthwith transfer to the Council (with full title guarantee) legal and beneficial title to all such Termination Assets in relation to which the Council is acquiring, and shall forthwith release to the Council the control of all such Termination Assets.
- 56.6.9 The Partner hereby warrants that those Termination Assets which did not transfer to the Partner from the Council during the Term are:-

- 56.6.9.1 solely, legally and beneficially owned by the Partner and free from all charges and liens; and
- 56.6.9.2 at the date of transfer of ownership pursuant to this **clause 56.6** (Assets), are in good workable condition, fair wear and tear excepted.
- 56.6.10 Any of the Temporary Partner Assets which are located at the Council Premises shall be removed by the Partner without causing any damage to the property of the Council (or making good any damage so caused) and without causing any disruption or inconvenience to the Council, its staff, members of the public or any other person permitted to use the Council Premises and/or Council's facilities and/or who use the Council's services.
- 56.6.11 Until such time as the Council takes possession of the Termination Assets the Partner shall neither remove, change or swap out any Termination Assets nor delay, postpone, cancel or suspend the refreshment and upgrade of the Termination Assets to be carried out in anticipation of, or in consequence of, the termination or expiry of this Agreement.

56.7 **Agreements**

- 56.7.1 The Partner shall, within thirty (30) Business Days prior to the date of termination or expiry of this Agreement provide to the Council a full up to date and accurate copy of all agreements and licences in relation to the provision of the Services ("Relevant Contracts" and each a "Relevant Contract"). The Council shall prior to the date falling twenty (20) Business Days after the date of expiry or termination of this Agreement, take a novation (or procure that the Third Party of its choice takes a novation) of such Relevant Contracts including any such contracts as relate to the use of assets held by the Council under a lease, hire purchase, rental, conditional sale or similar agreement with a Third Party and where those assets were substantially used by the Partner in the provision of the Services immediately prior to the date of expiry or termination provided that such action shall not deem the Partner or Council to be in breach of the Third Party contracts or licences.
- 56.7.2 Insofar as a Relevant Contract cannot be novated except with the consent of a Third Party:-
 - 56.7.2.1 the Partner will use its reasonable endeavours, with the reasonable co-operation of the Council to procure that such consent is obtained (provided always that the Council will

not be obliged to make any payment or provide any guarantee as the basis for any such consent);

- 56.7.2.2 if such consent is not obtained until after the date on which the novation was due to be completed in accordance with the foregoing provisions of this **clause 56.7** (Agreements) such novation will instead be completed when such consent has been obtained or novation agreement entered into by all relevant parties; and
 - 56.7.2.3 if notwithstanding the reasonable endeavours of the Partner the Relevant Contract cannot be transferred, whether by way of novation or otherwise, because any necessary consent is not forthcoming, then the rights and obligations thereunder will (subject to **clause 56.7.3** (Agreements)) remain with the Partner.
- 56.7.3 For so long as the Partner remains party to a Relevant Contract which has not been novated to the Council pursuant to the foregoing provisions of **clause 56.7** (Agreements) the Partner will hold the benefit of the same as trustee for the Council and the Council will, as the Partner's agent, perform all the obligations of the Partner there under insofar as the same relate to a period on or after the expiry or termination of this Agreement.
- 56.7.4 Pending novation of a Relevant Contract, the Partner shall not terminate, or serve notice to terminate, assign, novate or otherwise transfer to a Third Party any Relevant Contract.
- 56.7.5 For the purposes of this **clause 56.7** (Agreements), the term "Contract Transfer Date" shall mean in relation to each Relevant Contract the date on which the Relevant Contract has been successfully novated to the Council pursuant to this **clause 56.7** (Agreements).
- 56.7.6 Pending the novation of the Relevant Contract and following the relevant Contract Transfer Date, the Partner shall on demand indemnify the Council from and against any Direct Losses suffered or incurred by the Council as a result of any act or omission or in connection with any breach by the Partner of any Relevant Contract which occurs prior to the date it begins to be held on trust for the Council as set out in **clause 56.7.3** (Agreements).
- 56.7.7 Pending the novation of the Relevant Contract and following the relevant Contract Transfer Date, the Council shall on demand indemnify the Partner from and against any Direct Losses suffered or

incurred by the Partner as a result of any act or omission or in connection with any breach by the Council of any Relevant Contract which occurs on or after the date such agreement begins to be held on trust as set out in **clause 56.7.3** (Agreements).

56.7.8 On novation as aforesaid of any Relevant Contract in relation to assets held by the Council under a lease, hire purchase, rental, conditional sale or similar agreement, the Partner shall forthwith deliver up to the Council all such assets covered by the contracts. The Partner shall ensure that all such assets are in such a condition as to comply with the Relevant Contract and in any event are in a good workable condition and state of repair, fair wear and tear excepted.

56.7.9 Nothing in this **clause 56.7** (Agreements) shall require that the Council take a novation of any Relevant Contract if the Third Party in question is proposing terms which are commercially unreasonable or if the Third Party is proposing a material variation of the Relevant Contract as a pre-condition of the assignment or novation.

56.8 **TUPE and Staffing on Retendering, Transfer Change and Termination of Agreement**

56.8.1 The Partner shall (and shall procure that any sub-contractor shall) within the period of twelve (12) calendar months immediately preceding the expiry or termination of this Agreement or following the service of a notice under **clauses 53** (Termination for Breach) to **55** (Termination at Will) or as a consequence of the Council notifying the Partner of its intention to retender this Agreement or as a consequence of a Transfer Change:

56.8.1.1 on receiving a written request from the Council provide in respect of any person engaged or employed by the Partner or any sub-contractor in the provision of the Services ("the Assigned Employees") full and accurate details regarding the number, age, sex, length of service, job title, grade, pensions entitlement and terms and conditions of employment of and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Partner or of any sub-contractor as the case may be until immediately before the date for the implementation of the Transfer Change or the Termination Date, would be Returning Employees (the "Retendering Information");

- 56.8.1.2 where any Assigned Employees are not engaged or employed by the Partner or any sub-contractor wholly or mainly in the provision of the Services such that they will not be Returning Employees the Retendering Information will be limited to full and accurate details regarding each such Assigned Employees job title, remuneration, pension entitlement, all other terms and conditions of employment which are relevant to the determination of total Remuneration Costs of all Assigned Employees engaged or employed in the provision of the Services and the amount of time expressed as a percentage of full time working hours that each such Assigned Employee spends on the provision of the Services;
 - 56.8.1.3 provide the Retendering Information promptly and at no cost to the Council;
 - 56.8.1.4 notify the Council forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;
 - 56.8.1.5 be precluded from making any material increase or decrease in the numbers of Assigned Employees other than required by Law or in the ordinary course of business and with the Council's prior written consent (such consent not to be unreasonably withheld or delayed);
 - 56.8.1.6 be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Council's prior written consent (such consent not to be unreasonably withheld or delayed); and
 - 56.8.1.7 be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services save with the Council's prior written consent (such consent not to be unreasonably withheld or delayed).
- 56.8.2 The Partner shall indemnify on demand and shall keep indemnified in full the Council and at the Council's request any Future Service Provider against all Losses arising from any claim by any party as a result of the Partner or any sub-contractor failing to provide or

promptly to provide the Council with any Retendering Information or to provide full Retendering Information or as a result of any material inaccuracy in or omission from the Retendering Information provided that this indemnity shall not apply to the extent that such information was originally provided to the Partner by the Council and was materially inaccurate or incomplete when originally provided.

56.9 **Termination of Agreement or Transfer Change**

- 56.9.1 On the expiry or earlier termination of this Agreement or on the implementation of a Transfer Change, the Council and the Partner agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to a Service but the position shall be determined in accordance with the Law at the date of expiry or termination or the date for the implementation of a Transfer Change as the case may be and this clause is without prejudice to such determination.
- 56.9.2 For the purposes of this **clause 56.9.2** (Termination of Agreement or Transfer Change) "Returning Employees" shall mean those employees wholly or mainly engaged in the provision of the Services as the case may be as immediately before the expiry or termination of this Agreement or the date for the implementation of a Transfer Change whose employment transfers to the Council or a Future Service Provider pursuant to TUPE. Upon expiry or termination of this Agreement or upon the implementation of a Transfer Change for whatever reason (such date being termed the "Return Date"), the provisions of this **clause 56.9** (Termination of Agreement or Transfer Change) will apply.
- 56.9.3 The Partner shall or shall procure that all remuneration, benefits, entitlements and outgoings of the Returning Employees and other employees or former employees of the Partner or any sub-contractor (who had been engaged in the provision of the Services) including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise in respect of the employment of the Returning Employees and such other employees or former employees of the Partner or sub-contractor up to the Return Date are satisfied. The Partner will on demand indemnify and keep indemnified in full the Council against all Losses incurred by the Council in connection with or

as a result of a breach by the Partner of this **clause 56.9.3** (Termination of Agreement or Transfer Change).

56.9.4 The Council shall be responsible or shall procure that any Future Service Provider is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Returning Employees and any other person who is or will be employed or engaged by Council or any Future Service Provider in connection with the provision of any of the Services, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, on and after the Return Date. The Council will on demand indemnify and keep indemnified in full the Partner against all Losses incurred by the Partner in connection with or as a result of a breach by the Council of this **clause 56.9.4** (Termination of Agreement or Transfer Change).

56.9.5 Without prejudice to **clause 56.9.3** (Termination of Agreement or Transfer Change), the Partner shall:

56.9.5.1 remain (and procure that any sub-contractor shall remain) (as relevant) responsible for all the Partners or sub-contractor's employees (other than the Returning Employees) or any other person engaged by the Partner or any sub-contractor in the provision of the Services before on or after the time of expiry or termination of this Agreement or the date for the implementation of a Transfer Change and shall on demand indemnify the Council and any Future Service Provider against all Losses incurred by the Council or any Future Service Provider in connection with or as a result of any claim or demand whatsoever whether arising before on or after the Return Date by or on behalf of any of the Partner's or any sub-contractor's employees who do not constitute the Returning Employees;

56.9.5.2 in respect of those employees who constitute Returning Employees the Partner shall on demand indemnify the Council and any Future Service Provider against all Losses incurred by the Council or any Future Service Provider in connection with or as a result of any claim or demand whatsoever by or on behalf of any of the Returning Employees in respect of the period after the Relevant Service Transfer Date but on or before the Return Date (whether any such claim, attributable to the period up to

and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the Partner or any sub-contractor to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Council or any Future Service Provider; and

56.9.5.3 on demand indemnify the Council and any Future Service Provider against all Losses incurred by the Council or any Future Service Provider 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 Partner and/or the relevant sub-contractor in respect of all or any of the Partner's or any sub-contractor's employees including the Returning Employees) arising from or connected with any failure by the Partner and/or any sub-contractor to comply with any legal obligation to such trade union, staff associated or other employee representative whether under Regulation 13 of TUPE, under the Directive or otherwise where and whether any such claim arises or has its origin after the Relevant Service Transfer Date and on or before the Return Date, save to the extent that any such failure to comply arises as a result of an act or omission of the Council or any Future Service Provider.

56.9.6 The Council shall be entitled to assign the benefit of the indemnity in **clause 56.9.5** (Termination of Agreement or Transfer Change) to any Future Service Provider.

56.10 **Offer of Employment on a Transfer Change or Expiry or Termination**

56.10.1 If TUPE does not apply on the expiry or earlier termination of this Agreement or on the date of the implementation of a Transfer Change, the Council shall procure that each Future Service Provider (including the Council) shall offer employment to the persons wholly or mainly engaged by the Partner or a sub-contractor in the provision of the Services immediately before the Return Date.

56.10.2 If an offer of employment is made in accordance with **clause 56.10.1** (Offer of Employment on a Transfer Change or Expiry or Termination), the employment shall be on the same terms and conditions (except for entitlement to membership of an occupational pension scheme, which

shall be dealt with in accordance with **clause 23** (Pensions) save that all references to the Partner in that clause shall be read as references to the Future Service Provider) as applied immediately before the expiry or earlier termination of this Agreement including full continuity of employment, except that the Council or Future Service Provider may at its absolute discretion not offer such terms and conditions if there has been any change to the terms and conditions of the persons concerned in breach of **clause 56.8** (TUPE and Staffing on Retendering, Transfer Change and Termination of Agreement).

56.10.3 Where any such offer as referred to in **clause 56.10.1** (Offer of Employment on a Transfer Change or Expiry or Termination) is accepted, the parties shall on demand indemnify and keep indemnified in full each other on the same terms and conditions as those set out in **clause 56.9** (Termination of Agreement or Transfer Change) of this Agreement as if there had been a Relevant Transfer in respect of each and every employee who has accepted any such offer and for the purposes of this **clause 56.10** (Offer of Employment on a Transfer Change or Expiry or Termination) each and every such employee shall be treated as if they were a Returning Employee.

56.10.4 For the avoidance of doubt, where any such offer as referred to in **clause 56.10.1** (Offer of Employment on a Transfer Change or Expiry or Termination) is not accepted and TUPE does not apply, the employee shall remain an employee of the Partner or sub-contractor as appropriate.

56.11 **Not Used**

56.12 **Compensation Payments**

Without prejudice to any accrued rights or remedies on termination or expiry of either party (including any right of the Council to claim damages from the Partner) the Council shall be liable to compensate the Partner in accordance with **Schedule 23** (Compensation on Termination).

56.13 **Payments and Settlement Accounts**

56.13.1 The Partner shall within twenty (20) Business Days of expiry or termination of this Agreement pay to the Council:-

56.13.1.1 such sum as equates (pro rata) to any amount paid in advance by the Council pursuant to **clause 34.3** (Payment

Terms/Procedure) (for the period from the date of expiry or termination of the Agreement to the expiry of the Period or Periods) in respect of which payment has already been made pursuant to **clause 34.3** (Payment Terms/Procedure); and

56.13.1.2 any other sum (not in dispute) which is due and payable by the Partner to the Council pursuant to this Agreement as at that date.

56.13.2 Without prejudice to this **clause 56.13** (Payments and Settlement Accounts), within twenty (20) Business Days of expiry or termination the Partner shall submit to the Council a comprehensive and detailed final settlement account (in writing) setting out any sums which remain due and payable to the Council or the Partner (as the case may be) pursuant to this Agreement as at the date of the account. Within ten (10) Business Days of request from the Council the Partner shall provide such further information or clarification in relation to the account as the Council requires. Within ten (10) Business Days of receipt of written notice from the Council that it approves the settlement account, if the settlement account shows a payment due from the Council the Partner shall submit a VAT invoice to the Council in respect of the sum in question and if the settlement account shows a payment due from the Partner the Council shall submit a VAT invoice to the Partner in respect of the sum in question. The Council and the Partner (as the case may be) shall pay an amount equal to any invoice submitted to them within twenty (20) Business Days of receipt. The provisions of this **clause 56.13** (Payments and Settlement Accounts) are without prejudice to any other rights or remedies the Council or the Partner may have pursuant to this Agreement. For the avoidance of doubt the provisions of **Schedule 23** (Compensation on Termination) shall govern the timing of any payments of any compensation that may be due from the Council to the Partner.

56.14 **Continuation of Services**

56.14.1 The Council may at its option require the Partner for a period of twelve (12) calendar months from such termination or expiry (or such longer period as is reasonably required to allow the Council to procure an alternative) to continue to provide all or any part of the Services to the Council or a Third Party to enable the Council to select a Future Service Provider for the efficient transfer of the Services or to enable the Council to prepare to bring the Services back in-house. In such case this Agreement (including for the avoidance of doubt, Council's rights to access and use the Partnership ICT) shall continue in full force and

effect (and the consequences of termination or expiry shall be so delayed) until such Future Service Provider shall be appointed and the Services have been so transferred or, as the case may be, the Services have been brought back in-house. In the event that termination has arisen due to limb (a) of Council Default occurring then if at any time during the provision of Services under this clause the Partner shall be entitled to forthwith terminate its provision of the Services if the Council fails to pay any sums not in dispute due to the Partner within 4 weeks of when they fell due and payable.

56.15 Termination Warranties

56.15.1 Without prejudice to any warranties or indemnities under this Agreement, at the date of termination or expiry of this Agreement, the Partner shall warrant that:-

- 56.15.1.1 all information which the Partner has given to the Council, pursuant to **clause 56** (Termination and Expiry Consequences) is true, accurate and complete in all material respects;
- 56.15.1.2 there are no disputes outstanding, and the Partner has not received notice that any are pending or contemplated by a taxation authority in relation to the Partner's provision of the Services; and
- 56.15.1.3 there are no litigation, arbitration, mediations, or administrative or criminal proceedings which have been instituted against the Partner which relate to the Services, or in the case of partial termination, the relevant part of the Services, and which relate to the Termination Transfer Employees or the Termination Assets.

To the extent the Partner is unable to warrant the provisions set out in **clauses 56.15.1.1** (Termination Warranties) to **56.15.1.3** (Termination Warranties) then the Partner shall be entitled to provide a disclosure letter fairly disclosing against the warranties above to the Council, a draft of which shall be submitted at least twenty (20) Business Days prior to the date of termination or expiry with a final version being provided at least 5 Business Days prior to termination or expiry.

PART K: IPR, CONFIDENTIALITY AND DATA PROTECTION

57. RECORDS AND DATA

57.1 Service Information

- 57.1.1 The Partner shall create and keep up to date such Service Information as is reasonable and prudent to create, including sufficient and adequate Service Information to provide an audit trail for the Council (for such period as is required or permitted by Law) in order to give details of how the Services are being performed, and the functions, processes and procedures being undertaken by the Partner to provide the Services.
- 57.1.2 In so far as the Partner is acting as a data controller (as defined in the DPA), it shall comply with the DPA in respect of the Service Information to the full extent required for the purposes of this Agreement, and procure compliance by all of its Personnel with this **clause 57.1.2** (Service Information). To the extent the Partner is acting as a data processor (as defined in the DPA) for the Council the Partner shall provide appropriate security measures equivalent to those requirements imposed upon the Council by the seventh principle of the DPA as required by **clause 57.1.5.6** (Service Information), and shall only process Personal Data in accordance with the instructions of the Council.
- 57.1.3 The Service Information (excluding the Partner Rights) shall be and shall remain the property of the Council and the Partner shall not delete or destroy any Service Information or remove any proprietary notices within the Service Information without the prior written consent of the Council save that the Partner shall be entitled to delete or destroy Service Information in accordance with the Council's policy on destruction of records set out in **Schedule 12** (Policies, Plans and Strategies). The Partner shall keep the Service Information free from any distress, execution or other legal process and the Partner shall not have any lien in relation to the Service Information.
- 57.1.4 The Partner shall initially keep the Service Information at the Council Premises (or such other premises where such Service Information is located immediately prior to the Commencement Date).
- 57.1.5 The Partner shall:-
- 57.1.5.1 act as data processor in relation to the Service Information, except in relation to any information in respect of which the Partner acts as a data controller (as envisaged by **clause 57.1.1** (Service Information)) or as owned by the Partner pursuant to this Agreement;

- 57.1.5.2 process the Service Information acting only in accordance with the terms of this Agreement or otherwise in accordance with the Council's instructions (such instructions to be subject to **clause 26.2** (Council's Partnership Director));
- 57.1.5.3 process any Personal Data only to the extent and in such manner as is necessary for the provision of the Services or as is required by Law;
- 57.1.5.4 ensure the security and confidentiality of all Service Information at all times and shall safeguard the Service Information from unauthorised access or disclosure or tampering without prejudice to any other obligations in respect of security imposed on the Partner pursuant to this Agreement;
- 57.1.5.5 comply with its obligations under **clause 59** (Confidentiality) in respect of the Service Information;
- 57.1.5.6 ensure that appropriate technical and organisational measures are taken to prevent any unauthorised or unlawful Processing of Personal Data and against accidental or non-accidental loss or destruction of, or damage to, Personal Data and if requested by the Council, provide a written description of the such measures employed by the Partner. Such measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is being protected;
- 57.1.5.7 provide such advice and information as the Council's Data Protection Officer may from time to time require in order to enable him to carry out his duties;
- 57.1.5.8 within five (5) Business Days of receipt of a written request from the Council, provide to the Council appropriate reports, copies of the Service Information and other information referred to in section 7 of the DPA in response to any request from the Council's Data Protection Officer to see Personal Data held by the Partner, so as to enable the Council to comply with any requests made to the Council under section 7 of the DPA;

- 57.1.5.9 only allow Personnel access to the Service Information (and any other Confidential Information of the Council) where this is reasonably necessary to enable such Personnel to perform their duties under this Agreement;
 - 57.1.5.10 not transfer the Service Information outside of the UK without the prior written consent of the Council and where the Council consents to a transfer, to enter into and comply with a data transfer agreement in the form of the Information Commissioner's model contract clauses prior to such data being transferred and to comply with any other reasonable instructions of the Council;
 - 57.1.5.11 align with BS 150/EC 17799: 2005 and 27001: 2005 and such other nationally/internationally recognised standards that may be agreed between the Parties as being necessary to ensure compliance with this **clause 57** (Records and Data);
 - 57.1.5.12 obtain the written consent of the Council prior to disclosing Service Information to or allowing any Partner Party (other than a direct employee of the Partner), Associated Company of the Partner or any other Third Party to process Service Information on behalf of the Partner and ensure that such other party is bound by a suitable data processing contract containing similar obligations as the Partner is bound by under this **clause 57.1** (Service Information); and
 - 57.1.5.13 permit the Council or its representatives (subject to reasonable and appropriate confidentiality undertakings) to inspect and audit, in accordance with **clause 45** (Audit Rights) the Partner's data Processing activities (and/or those of its Personnel and/or relevant Associated Companies who may have access to Service Information pursuant to **clause 57.1.5.12** (Service Information) and comply with all reasonable requests or directions by the Council to enable the Council to verify and/or procure that the Partner is in full compliance with its obligations under this Agreement.
- 57.1.6 If requested by the Council or the Partner or if necessary in order to comply with any Law, the Council and the Partner shall enter into a separate data protection agreement regarding the Partner's rights and obligations in connection with processing data on behalf of the Council

(and vice versa) such agreement substantially to incorporate the provisions of this **clause 57** (Records and Data).

- 57.1.7 The Partner shall on demand indemnify the Council from and against all Losses awarded against, incurred or paid by the Council as a result of or in connection with any breach by the Partner of its obligations under this **clause 57** (Records and Data).

57.2 **Freedom of Information**

- 57.2.1 The Partner shall, within five (5) Business Days of a written request (including e-mail) from the Council, provide to the Council appropriate reports, copies of Service Information and other assistance and information requested by the Council pursuant to a request received by the Council under the Freedom of Information Legislation, to enable the Council to comply with any such requests.

- 57.2.2 The Council shall consult with the Partner prior to disclosing any information regarding the Partner or the Partnership which may be commercially sensitive, in response to a request for such information pursuant to Freedom of Information Legislation. The Partner shall respond in writing to the Council promptly following a request from the Council pursuant to **clause 57.2.1** (Freedom of Information) (and at most within five (5) Business Days) and the Council shall take into account the Partner's views provided that the decision as to whether to disclose the information shall remain that of the Council. The Partner and the Council initially agree that the provisions referred to in **Schedule 22** (Commercially Sensitive Information) shall be commercially sensitive, except that the Council shall not be bound by this if it is subsequently obliged to disclose such provisions in accordance with the Freedom of Information Legislation.

- 57.2.3 Where the Partner objects to the disclosure of information requested pursuant to this **clause 57.2** (Freedom of Information) and wishes the Council to resist the disclosure under one of the categories of exemption or exception set out in the Freedom of Information Legislation the Partner shall reimburse the Council any costs it incurs in resisting such disclosure on behalf of the Partner.

- 57.2.4 The Partner acknowledges that (notwithstanding the provisions of **clause 57.2**) (Freedom of Information) the Council may, acting in accordance with the FOIA Code, be obliged under the Freedom of Information Act 2000 to disclose information concerning the Partner:

- 57.2.4.1 in certain circumstances without consulting with the Partner; or

57.2.4.2 following consultation with the Partner and having taken their views into account,

provided always that where **clause 57.2.4.1** (Freedom of Information) above applies the Council shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Partner prior to any disclosure.

57.2.5 The Council shall notify the Partner of any disclosure that it makes pursuant to this **clause 57.2** (Freedom of Information) within five (5) Business Days of the same and shall provide the Partner with a copy of the information disclosed where it relates to the Partner, the Services and/or this Agreement.

58. **INTELLECTUAL PROPERTY RIGHTS**

58.1 The Partner agrees and acknowledges that all Council Rights vest in the Council.

58.2 The Partner agrees and acknowledges that:

58.2.1 all Intellectual Property Rights created during the Term by:

58.2.1.1 the Council (excluding Council Rights and any improvements made to Council Rights);

58.2.1.2 the Partner (excluding, for the avoidance of doubt, Partner Rights, Partner Modifications and any improvements made to Partner Rights);

58.2.1.3 any sub-contractor or agent of either the Council or the Partner; and/or

58.2.1.4 jointly by the parties,

in each case directly in connection with the performance of the Services or Projects (as described in **clause 19** (Projects) and **Schedule 16** (Projects) (including Project Materials and software developments (other than to Partnership ICT) and Know-How) but save where alternative provisions have been agreed in respect of IPR ownership under a Project pursuant to paragraphs 3.1.15 of Part A and 3.1.22 of Part B in **Schedule 16** (Projects)), shall vest in the Council ("Generated IPR").

58.2.2 it irrevocably assigns (and shall procure that its sub-contractors and agents assign) Generated IPR and any Council Rights which may vest in it notwithstanding the provisions of **clauses 58.1** and **58.2.1** throughout the world for the full duration of such Intellectual Property Rights and any renewals or extensions thereof, immediately on their

coming into existence, together with the right to sue for damages for past infringement (and waives or agrees to procure the waiver of any moral rights) to the Council (including, where appropriate, by way of present assignment of future rights) as legal and beneficial owner and with full title guarantee, free from all Encumbrances and agrees to execute and do (and shall procure that its sub-contractors and agents execute and do) on request all further deeds, documents and things as may be necessary to confirm the vesting of such rights in the Council absolutely;

58.2.3 it shall promptly notify the Council of any claim or demand which is made or action brought against the Partner for infringement or alleged infringement of any Intellectual Property Rights which may adversely affect the Services or the Council; and

58.2.4 all Intellectual Property Rights in Council Materials belong to the Council or to a Third Party who has licensed the Council to use such Intellectual Property Rights and shall be returned to the Council immediately on request.

58.3 The Council grants to the Partner a fully paid up, irrevocable (subject to the termination rights in this Agreement), non-exclusive, non-transferable licence for the duration of this Agreement to use the Council Rights and any Intellectual Property Rights in the Council Materials, Partnership Information and Service Information, such licence to be strictly limited to use of such Intellectual Property Rights to provide the Services in accordance with this Agreement save that the Council agrees that the Partner shall be entitled to grant a sub licence to subcontractors and Inherited Contractors (as is appropriate to provide the Services).

58.4 Not used.

58.5 Without prejudice to the provisions of **clause 58.7** (Intellectual Property Rights), the Partner shall inform the Council in writing of those parts of any deliverables, materials, works or documentation provided by the Partner in the course of providing the Services which contain Partner Rights or are Partner Modifications.

58.6 The Council agrees that all and any Partner Rights (including any improvements to Partner Rights and Partner Modifications) shall vest in the Partner. The Council hereby irrevocably assigns (and shall procure that its sub-contractors and agents assign) such rights which may vest in it notwithstanding this **clause 58.6** (Intellectual Property Rights throughout the world for the full duration of such Intellectual Property Rights and any renewals or extensions thereof, immediately on their coming into existence, together with the right to sue for damages for past infringement (and waives or agrees to procure the waiver of

any moral rights) to the Partner (including, where appropriate, by way of present assignment of future rights) as legal and beneficial owner and with full title guarantee, free from all Encumbrances and agrees to execute and do (and shall procure that its sub-contractors and agents execute and do) on request all further deeds, documents and things as may be necessary to confirm the vesting of such rights in the Partner absolutely.

58.7 Licences of Partner Rights and Partner Modifications

58.7.1 The Intellectual Property Rights in the Partner Rights and Partner Modifications will remain vested in the Partner (or the Partner's licensor) in accordance with **clause 58.6** (Intellectual Property Rights).

58.7.2 To the extent that Partner Rights form part of any deliverables, materials, works or documentation provided to the Council in the provision of the Services, are necessary for the Council to make full use of such deliverables, materials, works or documentation (both during the Term and in any run off period pursuant to **clause 56.14** (Continuation of Services)) and are necessary for the Council to receive the benefit of or perform the Services, the Partner hereby grants to the Council:

58.7.2.1 a non exclusive, irrevocable (subject to termination rights in this Agreement), worldwide, paid-up licence to use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based on, any deliverables, materials, works or documentation which incorporate Partner Rights; and

58.7.2.2 the right to authorise Council Parties who share the Services with the Council to use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based on, any deliverables, materials, works or documentation which incorporate Partner Rights for the purposes of sharing such Services with the Council,

58.7.3 To the extent that Partner Modifications form part of any deliverables, materials, works or documentation provided to the Council in the provision of the Services, are necessary for the Council to make full use of such deliverables, materials, works or documentation (both during and following expiry of the Term) and are necessary for the Council to receive the benefit of or perform the Services, or services similar to the Services, or use and adapt the deliverable in the future

pursuant to or to deliver a Project, the Partner hereby grants to the Council:

- 58.7.3.1 a non exclusive, perpetual, irrevocable, worldwide, paid-up licence to use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based on, any deliverables, materials, works or documentation which incorporate Partner Modifications; and
- 58.7.3.2 the right to authorise Third Parties who provide services to (or Council Parties who share the Services (or services similar to the Services) with) the Council to use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based on, any deliverables, materials, works or documentation which incorporate Partner Modifications for the purposes of providing services to the Council or sharing the Services (or services to similar to the Services) (as the case may be),

provided always that the licences set out in this **clause 58.7** (Intellectual Property Rights) shall not apply to Partnership ICT or to any Intellectual Property Rights in the Partner Rights which are Software, the licence of which is set out at **clause 14** (ICT), and provided that the licence in **clause 58.7.3** (Intellectual Property Rights) sets out the default licensing regime for this Agreement save where the Partner notifies the Council in relation to a Project that a different licensing regime should apply in which case the parties will discuss the useage rights that are acceptable to both parties and to the extent that such useage rights cannot be agreed, such rights shall by default only extend to the Council pursuant to **clause 58.7.3.1** (Intellectual Property Rights) and not Third Parties as set out in **clause 58.7.3.2** (Intellectual Property Rights).

58.8 The Partner shall on demand indemnify keep indemnified and hold harmless the Council against all Losses incurred or suffered by the Council in respect of:

- 58.8.1 any breach by the Partner, its employees, agents or sub-contractors of this **clause 58** (Intellectual Property Rights), including in respect of any claim by any Third Party that the possession, exploitation and/or use of any or all of the Partner Rights and Partner Modifications or their performance of the Services (save where using materials, IPR and/or methodologies utilised by the Council prior to the Service Commencement Date and/or Council Rights) infringes any Intellectual Property Rights of a Third Party;

- 58.8.2 use by the Council of the Partner Name or Partner Logo, in accordance with **clause 30.6** (The Partner's Name and the Partner's Logo), which infringes any Intellectual Property Rights of a Third Party;
 - 58.8.3 any situation in which any or all of the Intellectual Property Rights intended to be assigned to the Council pursuant to this **clause 58** (Intellectual Property Rights) are not or cannot be assigned to the Council in accordance with the provisions of this **clause 58** (Intellectual Property Rights); and/or
 - 58.8.4 any breach by the Partner, its employees, agents or subcontractors of **clauses 14.1.5** and **14.9.3** (ICT) and any claim by any Third Party that the Council's exercise of the rights granted thereunder infringed a Third Party's Intellectual Property Rights.
- 58.9 The Council shall on demand indemnify keep indemnified and hold harmless the Partner against all Losses incurred or suffered by the Partner in respect of:
- 58.9.1 any breach by the Council, its employees, agents or sub-contractors of this **clause 58** (Intellectual Property Rights), including in respect of any claim by any Third Party that the possession, exploitation and/or use of any or all of the Services, the aspects of which use materials, IPR and/or methodologies utilised by the Council prior to the Service Commencement Date and/or Council Rights, infringes any Intellectual Property Rights of a Third Party;
 - 58.9.2 use by the Partner of the Council Name or Council Logo, in accordance with **clause 30.5** (The Council's Name and the Council's Logo), which infringes any Intellectual Property Rights of a Third Party;
 - 58.9.3 any situation in which any or all of the Intellectual Property Rights intended to be assigned to the Partner pursuant to this **clause 58** (Intellectual Property Rights) are not or cannot be assigned to the Partner in accordance with the provisions of this **clause 58** (Intellectual Property Rights); and/or
 - 58.9.4 any breach by the Council, its employees, agents or subcontractors of **clause 14** (ICT) and any claim by any Third Party that the Partner's exercise of the rights granted thereunder infringed a Third Party's Intellectual Property Rights.
- 58.10 The Partner shall deliver to the Council on an annual basis:
- 58.10.1 the Generated IPR; and

58.10.2 all materials necessary to enable the Council (and its sub-licensees) to exercise the rights granted to it pursuant to **clause 58.1** (Intellectual Property Rights) and **58.7** (Intellectual Property Rights),

in each case, on media that is reasonably acceptable to the Council.

58.11 Each party shall provide to the other all reasonable assistance which the other party may require in order that the other party fully understands, and receives the full benefit of, the rights granted to it pursuant to **clause 58.1** (Intellectual Property Rights) and **58.7** (Intellectual Property Rights) (in the case of the Council) and clause **58.3** (Intellectual Property Rights), **58.6** (Intellectual Property Rights) and **58.12** (Intellectual Property Rights) (in the case of the Partner).

58.12 The Council hereby grants to the Partner a non exclusive, perpetual, irrevocable, worldwide, paid up licence to use the Generated IPR during and following the end of the Term in connection with the provision of the Services or services similar to the Services. The Council shall promptly notify the Partner of any claim or demand which is made or action brought against the Council for infringement or alleged infringement of the Generated IPR which may adversely affect the Services or the Partner. The Council agrees that the Partner shall be entitled to

grant a sub-licence of the Generated IPR to any subcontractor and Inherited Contractors, during the Term only, as is appropriate to provide the Services.

59. **CONFIDENTIALITY**

59.1 The Partner will appraise itself of and observe and obey the Council's rules and regulations relating to confidentiality and the disclosure, handling, disposal, destruction, and the erasing of data (or any other such reasonable rules and regulations of the Council relating to the same) in each case as notified to the Partner by the Council from time to time.

59.2 Without prejudice to the other provisions of this **clause 59** (Confidentiality):-

59.2.1 where any Personnel (other than employees of the Partner), and any employees of such Personnel, commence work in connection with the provision of the Services and have access to any Confidential Information regarding the Council or the Services, the Partner will procure that each member of Personnel (other than employees of the Partner), and each employee of such Personnel, is bound by obligations of confidentiality (such obligations to be no less onerous and no narrower in scope than the obligations of confidentiality imposed by this **clause 59** (Confidentiality)); and

- 59.2.2 where any employees of the Partner commence work in connection with the provision of the Services or have access to any Confidential Information (as defined in **clause 59.4** (Confidentiality)), whichever is the earlier the Partner will procure that each such employee is bound by obligations of confidentiality in respect of such access, such obligations to be no less onerous and no narrower in scope than the obligations of confidentiality imposed by this **clause 59** (Confidentiality). The Partner shall take such steps as are reasonably prudent to ensure that its employees are aware of the importance of such obligations and that the information being disclosed to them is confidential. Forthwith upon discovery by the Partner of any breach by an employee of its obligations of confidentiality in respect of the Confidential Information the Partner shall take such steps as are reasonably required in order to secure the Confidential Information and to discipline the employee and shall provide to the Council forthwith full written details of the steps so taken. If, in the Council's reasonable opinion, the Partner has failed to take prompt and appropriate disciplinary steps in such regard, the Council shall be entitled to require that Confidential Information is not disclosed to the employee in question in the future and the Partner will comply with any such requirement.
- 59.3 Neither party will disclose any Confidential Information in connection with this Agreement or any of the Services without the prior written consent of the other party.
- 59.4 In this **clause 59** (Confidentiality) "Confidential Information" shall mean all information in whatever form which is of a confidential nature. For the purposes of this definition, information shall be deemed to be of a confidential nature if it is secret, not public and disclosed in a confidential environment, not generally known and/or not easily accessible by others, if it is of a commercially and/or politically sensitive nature, if it constitutes or could be deemed to constitute Personal Data for the purposes of the DPA 1988, if the Council could refuse access to information held by it under any Law, if it is marked private, sensitive, secret and/or confidential (or with any other indicator restricting its disclosure) or if either party has indicated in making the disclosure to the other that the information is private, sensitive, secret and/or confidential.
- 59.5 Subject to **clause 59.11** (Confidentiality) each party shall treat as strictly confidential all Confidential Information received or obtained as a result of negotiating, entering into or performing this Agreement or otherwise which relates to the subject matter of this Agreement, and shall not use, disclose, publish or otherwise make available to any Third Party any Confidential Information save as necessary for the proper performance of its respective obligations under this Agreement and then only subject to the prior written

consent of the other party and subject to like obligations of confidentiality as those contained in this **clause 59** (Confidentiality) having been accepted by a Third Party to whom it is disclosed but not so as to permit such Third Party to reveal the information to another Third Party.

- 59.6 Each party shall use the Confidential Information only for the purposes which are necessary for the proper performance of their obligations in connection with this Agreement and without prejudice to the foregoing, for any purpose specifically communicated by either party to the other in writing (together "the Permitted Purposes") and neither party shall use the Confidential Information or any part thereof for any other purpose whatsoever.
- 59.7 The Partner shall take account of the commercial sensitivity, and the risks in wider disclosure of any Confidential Information which is held by the Personnel within the economic development and inward investment team and not other Personnel and ensure that any such Confidential Information held by them is only disclosed to Personnel and Council Staff outside of that team on a need to know basis to enable the Partner's delivery of the Services and discharge of its obligations in accordance with this Agreement.
- 59.8 Neither party shall make any copies of the Confidential Information or any part thereof in any form whatsoever except as is necessary for the Permitted Purposes.
- 59.9 Each party shall keep all physical records and data containing the Confidential Information in safe custody and not add to, subtract from or alter the same except as is necessary for the Permitted Purposes.
- 59.10 Neither party shall use, transform or share any of the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means whatsoever outside the premises of the Council or the Partner save to the extent that such use, transformation or storage is necessary for the performance by the Partner of its obligations under the Agreement.
- 59.11 Either party may disclose information which would otherwise be confidential if and to the extent:-
- 59.11.1 required by Law or by any Regulatory Body;
 - 59.11.2 that such information is disclosed to the professional advisers, auditors and bankers of each party under terms of confidentiality;
 - 59.11.3 that the information has come into the public domain through no fault of that party at the time the disclosure is made;

- 59.11.4 that the other party has given prior written consent to the disclosure;
- 59.11.5 that the party has developed independently the information in a closed-room environment; or
- 59.11.6 that the party can show from its written records that it already knew the relevant information before the disclosure was made.
- 59.12 The restrictions contained in this **clause 59** (Confidentiality) shall continue to apply after the termination or expiry of this Agreement (howsoever arising) without limit in time.
- 59.13 Each party shall maintain all Intellectual Property Rights of the other party in strict confidence and secrecy and shall not use, disclose, publish or otherwise make available to any Third Party the Intellectual Property Rights save as is necessary for the proper performance of its respective obligations under this Agreement and then only subject to like obligations of confidentiality as those contained in this **clause 59** (Confidentiality) having been accepted by such Third Party but not so as to permit such Third Party to reveal the information to another party and subject always to the licences granted in respect of the Council's and the Partner's Intellectual Property Rights respectively pursuant to this Agreement.
- 59.14 The provisions of **clause 59.13** (Confidentiality) shall not apply to Intellectual Property Rights that are or become public knowledge, otherwise than through the default of the party concerned or is already in the possession of the party concerned or is legally acquired by such party from a third party or is required to be disclosed to other parties by Law or by any UK Government authority.
- 59.15 The Partner shall ensure that the Partner Parties shall, and the Council shall ensure that its employees, agents and sub-contractors shall, maintain any Intellectual Property Rights of the other party in strict confidence and shall not use the same at any time for any purpose except in performance of their respective duties under this Agreement.
- 59.16 Where in this **clause 59** (Confidentiality) reference is made to disclosures required by Law, this shall include disclosures in pursuance of the Council's duty of Best Value further to the Local Government Act 1999 (and related regulations, guidance and best practice) and the Local Government and Public Involvement in Health Regulations 2007 (and related regulations, guidance and best practice), disclosures necessary under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 or disclosures relating to the outcome of the Council's procurement process which has led to the award to the Partner of this Agreement as may be required to be published in the Official Journal of the European Union or elsewhere in accordance with European Union or United Kingdom legislation or policy on the disclosure of information in

relation to UK Government contracts and disclosures to those who have a lawful right to make enquiries of the Council, including auditors, ombudsmen, Members of Parliament and Members of the European Parliament or any disclosures required under the rules of the London Stock Exchange.

- 59.17 Without prejudice to the foregoing provisions of this **clause 59** (Confidentiality), the Partner will keep confidential the Service Information and the provisions of **clauses 59.1** (Confidentiality), **59.2** (Confidentiality) and **clause 59.5** (Confidentiality) to **59.16** (Confidentiality) inclusive shall apply to such Service Information accordingly.

PART L: MISCELLANEOUS PROVISIONS

60. NOVATION OF AGREEMENTS

- 60.1 Subject to the following provisions of this **clause 60.1** (Novation of Agreements) (and to the Council obtaining the appropriate consents) the Council shall prior to but with effect from the Service Commencement Date, or in respect of a Project or Change, the Transfer Date (and accordingly references in this **clause 60** (Novation of Agreements) to the "Transfer Date" shall mean either the Service Commencement Date or the Transfer Date where the context permits in relation to additional services provided pursuant to a Change or Project) novate to the Partner, and the Partner will take a novation of those Transferring Agreements listed in tab 1 part 2 of **Schedule 19** (Transferring Agreements) on the terms set out in the pro forma deed of novation contained in part 1 of **Schedule 19** (Transferring Agreements). For the avoidance of doubt:-

60.1.1 subject to **clause 60.5** (Review of Transferring Agreements), the Partner will with effect from the Transfer Date be responsible for and will perform all obligations under the Transferring Agreements (including novation costs and/or penalties, lease or maintenance payments);

60.1.2 the Council and the Partner will execute such documents at their own cost and take such action as may reasonably be required in connection with such novation; and

60.1.3 the Partner shall be entitled to terminate the Transferring Agreements and replace them or otherwise self-deliver what was provided under such Transferring Agreements as it shall in its discretion determine.

- 60.2 The Transferring Agreements listed in tab 2 part 2 of **Schedule 19** (Transferring Agreements) shall (subject to **clauses 60.3** (Novation of Agreements) and **60.5** (Review of Transferring Agreements)) be transferred to the Partner by way of novation on the terms set out in the pro forma deed of

novation contained in part 1 of **Schedule 19** (Transferring Agreements). For the avoidance of doubt:-

60.2.1 the Partner will be responsible for any costs payable to the Third Party in respect of securing their consent to the novation; and

60.2.2 each party will execute such documents and at their own cost take such action as may reasonably be required in connection with such novation.

60.3 For so long as the Council remains party to the Transferring Agreements which have not been novated to the Partner pursuant to the foregoing provisions of this **clause 60** (Novation of Agreements) and which the Partner agrees are to be novated in accordance with **clause 60.5** (Review of Transferring Agreements), the Council will hold the benefit of the same as trustee for the Partner and the Partner will (to the extent not prohibited by such contracts), as the Council's agent, perform all the obligations of the Council thereunder insofar as the same relate to a period on or after the Transfer Date save that the Council shall, where necessary to give effect to this clause, continue to make payment to the relevant Third Parties under such agreements (and shall set off such amounts against the Contract Price).

60.4 Without prejudice to **clause 60.5** (Review of Transferring Agreements), to the extent that the Partner is unable to act as the Council's agent as described in this **clause 60** (Novation of Agreements) in respect of the Transferring Agreements, then the Transferring Agreement shall be treated as a Managed Contract and **clause 13** (Managed Contracts) shall apply.

60.5 **Review of Transferring Agreements**

60.5.1 Within fifteen (15) Business Days from the Commencement Date ("**Transferring Agreement Supply Deadline**"), the Council shall supply full copies of all Transferring Agreements referred to in Part 2 tab 1 of **Schedule 19** (Transferring Agreements) ("**Copy Transferring Agreements**").

60.5.2 The Partner shall review the Copy Transferring Agreements and report to the Council within twenty (20) Business Days following the Transferring Agreement Supply Deadline as follows in respect of each such Transferring Agreement supplied by the Council:-

60.5.2.1 whether the Partner is able to discharge the obligations of the Council as set out in the Copy Transferring Agreement or not and where it is not able, the Partner shall provide reasonably detailed reasons as to why it cannot and to the

extent it is practicable, provide alternative suggestions that could be accepted by the Council (acting reasonably) and the Third Party to the Transferring Agreement so as to enable the Partner to assume responsibility for such Transferring Agreement. The Partner shall only be entitled to raise issues in this **clause 60.5.2.1** (Review of Transferring Agreements) where the Partner would not be able to comply with the terms of the Transferring Agreements; and

60.5.2.2 whether the cost of assuming responsibility for the Transferring Agreement has been provided for in the Financial Model and if it has been provided for fully in accordance with the terms set out in the Copy Transferring Agreement supplied. If it has not been provided for or has been provided for but not in full then the Partner shall identify the shortfall and include any relevant alternative proposals presenting such information on an Open Book basis. For the avoidance of doubt, where the Services which are the subject of the Transferring Agreement have previously been provided by the Council out of the budget which is transferred in full to the Partner pursuant to this Agreement, the Partner shall subject to **clause 60.5.2.1** (Review of Transferring Agreements) perform such Transferring Agreement services in accordance with this **clause 60** (Novation of Agreements).

(" Transferring Agreements Report")

60.5.3 The Council shall review the Transferring Agreements Report and confirm to the Partner within ten (10) Business Days of receipt of the Transferring Agreements Report whether it (acting reasonably) accepts or disputes any of the contents of such report. In the case of a dispute, detailed written reasons and any relevant alternative proposals shall be provided by the Council. If the parties fail to agree within five (5) Business Days on any disputed matters then the matter shall be subject to the Dispute Resolution Process where it shall be determined on the basis of the evidence provided whether (i) the Partner can manage such Transferring Agreement(s) on the basis set out in this **clause 60** (Novation of Agreements); or (ii) the Partner can manage such Transferring Agreement(s) on a Managed Contracts basis (in accordance with **clause 13** (Managed Contracts); or (iii) that the Council shall retain such Transferring Agreement in which case the Partner shall provide advice to the Council in accordance with **clause**

6.7 (Advice) to enable the Council to fulfil its obligations in respect of such Transferring Agreement. During any DRP, under this **clause 60.5.3** (Review of Transferring Agreements) the Council shall retain the budget and responsibility for the Transferring Agreement(s) subject to the DRP and the Partner shall provide advice to the Council in accordance with **clause 6.7** (Advice) to enable the Council to fulfil its obligations in respect of such Transferring Agreements.

60.5.4 Where in respect of a Transferring Agreement the Partner has confirmed that it is able to discharge the obligations of the Council in the Transferring Agreement Report (either with or without amendments pursuant to **clause 60.5.2.1** (Review of Transferring Agreements)) or where it cannot but it has provided an alternative suggestion which is acceptable to the Council (acting reasonably) and the Third Party in accordance with **clause 60.5.2.2** (Review of Transferring Agreements), the Transferring Agreement shall be novated with effect from the Service Commencement Date in accordance with the earlier provisions of this **clause 60** (Novation of Agreements) as adjusted to deal with:

60.5.4.1 any relevant alternative suggestions that are accepted pursuant to **clause 60.5.2.1** (Review of Transferring Agreements); and

60.5.4.2 where applicable pursuant to **clause 60.5.2.2** (Review of Transferring Agreements) the Council shall finance the Transferring Agreement or provide for the shortfall (as applicable) through a Reprioritisation. For the avoidance of doubt, this shall not be dealt with as a Scoped Change.

60.5.5 Where in respect of a Transferring Agreement the Partner has confirmed that it cannot discharge the obligations of the Council as set out in the Transferring Agreement or where it can but it is subject to alternative suggestions made pursuant to **clauses 60.5.2.1** (Review of Transferring Agreements) or **60.5.2.2** (Review of Transferring Agreements) that are not accepted or otherwise agreed pursuant to **clause 60.5.3** (Review of Transferring Agreements), then subject to any dispute resolution pursuant to **clause 60.5.3** (Review of Transferring Agreements) the Council shall retain responsibility for such Transferring Agreement and instead the agreement shall be treated as a Managed Contract and **clause 13** (Managed Contracts) shall apply.

60.6 **Consent**

- 60.6.1 The Transferring Agreements will not be altered in any way by the Partner without the prior written consent of the Council save where any such agreement has been successfully novated to the Partner. Once a Transferring Agreement has been successfully novated to the Partner it shall be free to amend or terminate such Transferring Agreement at its discretion. For the avoidance of doubt, the Council will be under no obligation to renew or extend any of the Transferring Agreements but it shall provide the Partner (at the Partner's cost) with reasonable assistance should the Partner so require in any such negotiations with Third Parties in this regard.
- 60.6.2 Where, during the Term, the Partner wishes to enter an agreement in respect of the provision of the Services (whether it be a Managed Contract or otherwise) it shall ensure that in negotiating such agreement commercially reasonable terms are agreed. The Partner shall notify the Council of any agreements it enters into where the term exceeds twelve (12) months.

60.7 **Indemnities**

- 60.7.1 Until the novation of those Transferring Agreements in accordance with **clause 60.1** (Novation of Agreements) that are to be novated following the process in **clause 60.5** (Review of Transferring Agreements) is complete and following such novation the Council shall on demand indemnify the Partner from and against any Direct Losses suffered or incurred by the Partner as a result of any act or omission or any breach by the Council of any such Transferring Agreement which occurs prior to the Transfer Date.
- 60.7.2 Until the novation of those Transferring Agreements in accordance with **clause 60.1** (Novation of Agreements) that are to be novated following the process in **clause 60.5** (Review of Transferring Agreements) is complete and following such novation, the Partner shall on demand indemnify the Council from and against any Direct Losses suffered or incurred by the Council as a result of any act or omission or any breach by the Partner of any such Transferring Agreement save for any Losses incurred by the Council in relation to any Third Party claims regarding its ability to hold such agreements on trust for the Partner, which Losses shall be borne by the Council.
- 60.7.3 In relation to those Transferring Agreements which are Third Party Services Contracts and which are, for the purposes of identification, highlighted green in **Schedule 19** (Transferring Agreements), the following shall also apply:-

- 60.7.3.1 the Partner shall (subject to **clause 60.5** (Review of Transferring Agreements)) assume all risk, liability and responsibilities under the Third Party Services Contracts from the Transfer Date. The Partner shall be responsible for performing all obligations under the Third Party Services Contracts (to the extent novated, or if not novated, to the extent the Partner is performing such contracts in accordance with **clause 60.3** (Novation of Agreements)) and shall receive any payment due from Third Parties under the Third Party Services Contracts. In the event that any Third Party Services Contract comes to an end (whether through expiry or early termination in whole or in part by either party to the Third Party Services Contract), the Partner shall bear any losses which it incurs arising from this; and
- 60.7.3.2 the Council does not give any warranty that the Third Parties under the Third Party Services Contracts will continue to require the Partner to provide services and the Partner acknowledges that a reduction in the services required by such Third Parties (whether by way of early termination in whole or in part, or change in the volume or nature of the services required or otherwise).
- 60.7.4 Notwithstanding **clause 60.5** (Review of Transferring Agreements), nothing in **clause 21.5** (Use of Agreements), **clause 32** (Agreements) or this **clause 60** (Novation of Agreements) shall require that the Partner take a novation of any Transferring Agreement if the Third Party in question is proposing terms which are commercially unreasonable or if the Third Party is proposing a material variation of the Transferring Agreement as a pre-condition of the novation.

60.8 **Accruals, Prepayments and Apportionments**

- 60.8.1 To the extent that any payment is made to the Council after the Transfer Date in respect of the performance by the Partner of a Transferring Agreement or generally in relation to the performance of the Services by the Partner after the Transfer Date the Council will receive the same as trustee, will record such payment separately in its books and will account to the Partner for the same within twenty (20) Business Days of receipt.
- 60.8.2 Where expenditure and outgoings attributable to the performance of a Transferring Agreement, the use of the Use Assets or the performance of the Services relate to a period both up to and after the Transfer

Date they will be apportioned in accordance with **clause 60.8.4** (Accruals, Prepayments and Apportionments) and discharged accordingly.

- 60.8.3 Where receipts and receivables attributable to the performance of the Transferring Agreements, use of the Use Assets or the performance of the Services relate to a period both up to and after the Transfer Date (but not including any deposit or payments in advance referred to in **clause 32.3** (Transfer Date Accruals, Prepayments and Apportionments)) they will be apportioned in accordance with **clause 60.8.4** (Accruals, Prepayments and Apportionments) and will belong to and be enforceable by each of the Council and the Partner accordingly.
- 60.8.4 Any amount to be apportioned pursuant to **clause 60.8.2** (Accruals, Prepayments and Apportionments) or **clause 60.8.3** (Accruals, Prepayments and Apportionments) will be apportioned rateably over the period to which it relates save that any item of the cost or income which can be related to the particular goods or services received, used or performed by the Council up to the Transfer Date or the Partner from the Transfer Date will, so far as practicable, be apportioned on the basis of the charges actually incurred or revenue received up to and after the Transfer Date. Any such items (or apportioned parts) as are attributable to periods or events up to the Transfer Date will be due to or from (as the case may be) the Council and those attributable to periods or events on or after the Transfer Date will be due to or from (as the case may be) the Partner.
- 60.8.5 Any claim for apportionment and reimbursement will be made by the Council or the Partner, as the case may be, by notice in writing supported by copy documents evidencing the amount of the same and the calculation of apportionment. All sums due will be paid within twenty (20) Business Days.
- 60.8.6 If, within sixty (60) Business Days of the Transfer Date or Termination Date, as applicable, the Council and the Partner have been unable to agree the allocation of payables and receivables under and in accordance with the principles of this **clause 60.8.6** (Accruals, Prepayments and Apportionments), either party may (at both parties' joint cost) appoint an independent accountant or request an independent accountant to be nominated by the President of the Chartered Institute of Public Finance Accountants who shall determine the allocation of the outstanding payables and receivables in accordance with this **clause 60.8.6** (Accruals, Prepayments and Apportionments). Both parties shall co-operate with such independent accountant (including by furnishing such papers as may be material to

this deliberation) who shall act as an expert and not an arbitrator and whose assessment shall be final and binding on the Council and the Partner. Any outstanding payments or receivable shall be paid within twenty (20) Business Days of such expert's deliberation being known.

60.8.7 Transfer Date Accruals, Prepayments and Apportionments shall be dealt with on termination or expiry as follows :-

60.8.7.1 For the purposes of this **clause 60.8.6** (Accruals, Prepayments and Apportionments) the term "Third Party Contracts" shall mean those contracts (for the avoidance of doubt, other than Managed Contracts) with Third Parties which are to transfer to the Council pursuant to **clause 56** (Termination and Expiry Consequences).

60.8.7.2 If and to the extent that the Partner has prior to the date of termination or expiry of this Agreement received any deposit or payment in advance in respect of any Third Party contract the Partner will account to the Council for the same within twenty (20) Business Days after the date of termination or expiry. To the extent that any payment is made to the Partner after the date of termination or expiry in respect of the performance by the Council of a Third Party Contract or generally in relation to the performance of the Services by or on behalf of the Council after the date of termination or expiry the Partner will receive the same as trustee, will record such payment separately in its books and will account to the council for the same as soon as reasonably practicable and in any event within five (5) Business Days of receipt.

60.8.7.3 Where expenditure and outgoings attributable to the performance of Third Party Contracts or the performance of the Services relate to a period both up to and after the date of termination or expiry they will be apportioned in accordance with **clause 60.8.7.5** (Accruals, Prepayments and Apportionments) and discharged accordingly.

60.8.7.4 Where receipts and receivables attributable to the performance of the Third Party Contracts or the performance of the Services relate to a period both up to and after the date of termination or expiry (but not including any deposit or payments in advance referred to in **clause 60.8.7.2** (Accruals, Prepayments and Apportionments)) they will be apportioned in accordance

with **clause 60.8.7.5** (Accruals, Prepayments and Apportionments) and will belong to and be enforceable by each of the Council and the Partner accordingly.

60.8.7.5 Any amount to be apportioned pursuant to **clause 60.8.7.3** (Accruals, Prepayments and Apportionments) will be apportioned rateably over the period to which it relates save that any item the cost of which can be related to the particular contract or a service used will so far as practicable be apportioned on the basis of the charges actually incurred up to and after the date of termination or expiry. Any such items (or apportioned parts) as are attributable to periods or events up to the date of termination or expiry will be due to or from (as the case may be) the Partner and those attributable to periods or events on or after the date of termination or expiry will be due to or from (as the case may be) the Council.

60.8.7.6 Any claim for apportionment and reimbursement will be made by the Council or the Partner, as the case may be, by notice in writing supported by copy documents evidencing the amount of the same and the calculation of the apportionment. All sums due will be paid within twenty (20) Business Days of receipt of a notice of apportionment and supporting documentation as aforesaid.

61. **ADVERTISING/PUBLICITY**

61.1 The Council and the Partner shall work together to agree ways in which the Programme can be branded and publicised. However, in order to enable the Council to maintain the necessary control of the relevant processes, the Partner agrees that it shall not display, publish or otherwise place any advertisement of any description on premises (including the Council Premises), equipment or materials utilised in the performance of the Services without the prior written consent of the Council. Any advertisement which is placed on the Council Premises with consent shall be removed by the Partner prior to the end of the Term (the Partner making good any damage caused in so doing).

61.2 If required by the Council from time to time (but without prejudice to the other provisions of this **clause 61** (Advertising/Publicity)), the Partner shall cause any or all premises (including the Council Premises), equipment or materials utilised in the performance of the Services to bear such advertisements, devices or insignia as the Council may from time to time notify to the Partner in writing.

- 61.3 The Partner shall not advertise the fact that it is providing services to the Council under this Agreement except as authorised by the Council pursuant to **clause 30.4** (Council and Partner Names and Logos) or otherwise with the express written permission of the Council, whose permission shall not be unreasonably withheld or delayed.
- 61.4 Prior to using, displaying or otherwise disclosing any articles or other copy, advertisements, publicity or other materials produced by, or on behalf of the Partner which refer to the Council in any such way, the Partner will obtain the prior written consent of the Council by informing the Council, specifying full details of its intentions in this regard including copies of the materials themselves. The Council reserves the right to refuse (acting reasonably) to give consent to the Partner in relation to the use or publication of the materials and if the Council does so refuse, the Partner will not use or publish the materials in question.
- 61.5 If the Partner receives any requests from the media or other organisation for information in connection with the Partnership, the Council or any aspect of the Services, the Partner shall immediately inform the Council. The Partner and the Council shall then together agree a response in writing (or where appropriate where the response is not related to the Partner, the Council shall be entitled to respond alone). Where an urgent response is required it may be agreed verbally between the parties and subsequently confirmed in writing by the party making the response, to the other party.
- 61.6 The Partner shall not display, publish or otherwise distribute or make available to the public at or from any premises used in the performance of the Services (including the Council Premises) any notice, advertisement, leaflet or other materials which relates to any political party or other political or quasi political body or organisation without the express written permission of the Council.
- 61.7 Notwithstanding that the Council has given its permission pursuant to any part of this **clause 61** (Advertising/Publicity), the Council is entitled subsequently to withdraw its permission and the Partner shall forthwith cease to use the relevant advertisements, publications or materials.
- 61.8 Without prejudice to the foregoing provisions of this **clause 61** (Advertising/Publicity), the Partner shall not in any way interfere, nor permit the interference with the provision of any services by the Council, or the operation of the Council or the Partner's own performance of its obligations under this Agreement by virtue of its activities pursuant to or its enjoyment of any rights granted by this **clause 61** (Advertising/Publicity).

- 61.9 The Partner will not injure or otherwise damage the reputation of the Council (or any institution of the Council), its Members and Officers or other employees of the Council.
- 61.10 Without prejudice to the provisions of **clause 59** (Confidentiality), the Partner will not use any part of the Service Information in advertising or promoting the Services or otherwise in the performance of its obligations or enjoyment of its rights pursuant to this **clause 61** (Advertising/Publicity) without the prior written consent of the Council.
- 61.11 No permission to photograph or film in or upon any property used in relation to the Partnership shall be given unless the Council has given its prior written approval (such approval not to be unreasonably withheld or delayed).

62. **ASSIGNMENT, SUB-CONTRACTING**

62.1 **Assignment by the Council**

62.1.1 The Council may assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement to:

62.1.1.1 any other public body having the legal capacity, power and authority to become a party to and to perform the obligations of the Council under this Agreement and which in the opinion of the Partner (acting reasonably) has sufficient financial standing or financial resources to perform the obligations of the Council under this Agreement;

62.1.1.2 any Third Party whose payment obligations under this Agreement are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Partner) by the Council or a Minister of the Crown having the legal capacity, power and authority to perform the obligations of the Council under this Agreement; or

62.1.1.3 any other body in order to comply with (and in accordance with) any Change in Law provided that such other body has in the opinion of the Partner (acting reasonably):

(a) sufficient financial resources; and

(b) the legal capacity, power and authority

to become a party to and to perform the obligations of the Council under this Agreement.

62.1.2 A change in the legal status of the Council shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Council.

62.2 Assignment by the Partner

The Partner shall have no right or power to assign the benefit or novate the burden of this Agreement without the prior written consent of the Council which it may in its absolute discretion refuse.

62.3 Successors and Assigns

This Agreement will be binding on and will enure to the benefit of the parties and their respective successors and permitted assigns.

62.4 Sub-Contracting

62.4.1 Save for those Inherited Contractors who are sub-contractors (but solely for so long as the relevant sub-contractor is contracted on terms agreed with the Council and not new terms agreed with the Partner), the Partner may not engage any sub-contractor to fulfil or perform all services in a Service Area or any significant element of this Agreement unless and until it has obtained the prior written consent of the Council. Upon obtaining such consent the Partner shall enter into a written agreement with the relevant sub-contractor on terms no less onerous than those contained within this Agreement (which terms shall be made available to the Council on request) and such sub-contractor shall be a permitted sub-contractor (a "Permitted Sub-contractor"). The Partner shall procure that any Permitted Sub-contractor shall not engage any further Sub-contractor to fulfil or perform any of the Permitted Sub-contractor's or Partner's obligations under this Agreement without prior written consent of the Council. The Council may require that the Partner procure collateral warranties from Permitted Sub-contractors in a form acceptable to the Council and at no additional cost to the Council as a condition for giving such consent.

62.4.2 Save for those Inherited Contractors who are sub-contractors (but solely for so long as the relevant sub-contractor is contracted on terms agreed with the Council and not new terms agreed with the Partner), the Partner shall use competent and suitable Sub-contractors. The Partner shall be responsible for the acts, defaults or neglect of the Permitted Sub-contractor (including defaults of their employees, agents and sub-contractors) and any Partner Party in all respects as if they were the acts, defaults or neglect of the Partner, its employees, agents or sub-contractors.

- 62.4.3 It shall be the responsibility of the Partner to maintain full control over and adequate liaison with the Permitted Sub-contractor and any Partner Party in order to ensure performance of the Services fully in accordance with this Agreement. The Partner shall, on request by the Council, submit to the Council a written summary of the system which the Partner proposes to use to maintain such control and liaison, such written summary to be comprehensive and in sufficient detail to enable the Council to assess the adequacy of such system.
- 62.4.4 The Partner will make, keep and maintain such records and documentation (relevant to this Agreement) relating to the Permitted Sub-contractor and any Partner Party as a reasonable and prudent contractor would make, keep and maintain, including all correspondence between any of the Partner, the Permitted sub-contractors and any Partner Parties. The Partner will make such records and documentation available to the Council as part of its audit rights under this Agreement.

63. **COSTS AND EXPENSES**

63.1 Except where otherwise expressly provided in this Agreement to the contrary:-

63.1.1 each party will pay its own costs and expenses in relation to the preparation, execution, completion and implementation of this Agreement; and

63.1.2 the performance by the Partner of each of its obligations and the acceptance by the Partner of all liabilities and responsibilities pursuant to this Agreement shall be deemed to be part of the Services in respect of which the Council pays the Contract Price and so the Partner shall not be entitled to any additional payment or other benefit in respect of such performance or acceptance.

63.2 Without prejudice to **clause 63.1** (Costs and Expenses), the compliance by the Partner with its obligations to make proposals to the Council pursuant to **clauses 19** (Projects) and **28** (Variation and Change Control) shall be deemed to be part of the Services in respect of which the Council pays the Contract Price and so the Partner shall not be entitled to any additional payment or other benefit in respect of such performance (other than as expressly provided for in this Agreement or otherwise agreed between the parties) notwithstanding that the Council may reject or require amendment to such proposals.

63.3 Without prejudice to **clause 63.1** (Costs and Expenses) and subject to **clauses 19.6.1** (Payment for Business Cases) and **19.6.2** (Payment for Business Cases), the Contract Price shall be inclusive of all fees and disbursements (including external fees and disbursements) as relate to the Services and are the same as

or similar to the fees and disbursements which prior to the Commencement Date or in respect of a Project or Change, the Transfer Date were met by the Council out of its budget designated for the services the same as or similar to the Services.

64. **DOCUMENT PRIORITY**

64.1 If there is any conflict between any provision in the Contract and any provision in the Schedules (other than in **Schedule 20** (WIP/In Flight Projects) where paragraph 1.10 shall prevail), the provision in the Contract will prevail. Without prejudice to the foregoing provisions of this **clause 64** (Document Priority), any general provision in the Contract is without prejudice to any more specific provision in relation to the same subject matter contained in the Schedules.

64.2 If and to the extent that there is any conflict between any of the provisions of **clauses 1** (Definitions) to **84** (Counterparts) (including any sub-clauses) the Partner shall draw such conflict to the attention of the Council and shall comply with the Council's decision on the resolution of such conflict provided always and to the extent that such decisions shall not require the Partner to or otherwise put the Partner in breach of any Law.

65. **BUSINESS CONTINUITY**

65.1 Without prejudice to **clause 67** (Insurance), the Partner shall provide or procure the provision of business continuity services as are more particularly described in the Business Continuity Schedule ("Business Continuity Services"). The Partner will comply with its obligations in relation to Business Continuity as set out in the documents contained in **Schedule 4** (Business Continuity) in its provision of the Business Continuity Services. The Partner shall be obliged to provide Business Continuity Services notwithstanding the occurrence of a Force Majeure event save where and to the extent that the provision of the Business Continuity Services are themselves prevented by a Force Majeure Event.

65.2 The Partner shall have a comprehensive business continuity plan in place in accordance with the timescales specified in the Business Continuity Schedule and ensure that all relevant Personnel are familiar with that plan and the Partner shall carry out regular tests of its plan. At the request of the Council the Partner shall provide the Council with a copy of its plan and with full written details of the results of each test. The Partner will ensure that its plan compliments and co-ordinates with the Council's own business continuity plan from time to time and the Partner shall co-operate with the Council in connection with such business continuity plan. The Partner will ensure that any tests of its business continuity plan do not interrupt or otherwise adversely affect the provision of the Services in accordance with this Agreement nor disrupt the Council's operations, its staff or other persons permitted to use the Council's facilities. In the event

that the Council's and/or Partner's business continuity plan is invoked the Partner shall provide all reasonable assistance to the Council if the Council requires to test the operation of its business continuity plan.

66. CIVIL EMERGENCY

- 66.1 The provisions of this clause are without prejudice to the obligations of the Partner to carry out Business Continuity Services pursuant to this Agreement. The Partner will be obliged to carry out its obligations pursuant to this **clause 66** (Civil Emergency) notwithstanding the occurrence of a Force Majeure event in an emergency save where and to the extent that the performance of such obligations are themselves prevented by a Force Majeure Event.
- 66.2 The Partner shall maintain sufficient resources both to meet its obligations to the Council under this Agreement and to deal with any demands required arising from incidents of an emergency nature (including those Emergencies referred to in **clause 66.4** (Civil Emergency) which, it is to be anticipated, may arise during the Term.
- 66.3 Certain likely emergencies which may affect the performance of the Services are to be anticipated during the Term (for example, break-ins, and minor fire damage at the Council Premises or the Partner's premises). The Services must be maintained by the Partner, irrespective of the occurrence of such emergencies, and compliance by the Partner with this Agreement shall be maintained in such an event without additional cost to the Council.
- 66.4 The Council is obliged to perform its duties under the Civil Contingencies Act 2004 where:-
- 66.4.1 an Emergency would seriously obstruct the Council's ability to perform its functions; or
- 66.4.2 the Council considers it necessary or desirable to act to prevent, reduce, control or mitigate the effects of an Emergency or otherwise take action and may be unable to act without changing the deployment of its resources or acquiring additional resources.
- 66.5 Without prejudice to **clauses 66.2** (Civil Emergency) and **66.3** (Civil Emergency), if any of the circumstances set out in **clause 66.4** (Civil Emergency) arise and the Council activates its plan to deal with Emergencies, the Partner shall, immediately on receipt of an instruction from the Council, make all its resources employed within the scope of this Agreement including its employees, plant and equipment (including the Partner Assets), materials and premises (including the Premises)) available to the Council to assist in dealing with the Emergency. All such emergency work to be carried out must be authorised by the Council. During the period that the Partner is engaged in

carrying out such emergency work the whole or part of the work otherwise required to be carried out under this Agreement (including the delivery of the Services) may be suspended if required by the Council by notice in writing to the Partner or if requested by the Partner (acting reasonably) and granted by the Council (acting reasonably) in order to deal with the Emergency by notice in writing to the Council. Payment for emergency work shall be based on the actual additional cost of carrying out such work (including employment costs) with a reasonable addition to cover overheads and profits.

66.6 From time to time the Partner's employees may be required to be involved in emergency planning and emergency training exercises, and other training for this role organised either by the Council, Local or Central Government and the Partner shall make any such employees available to attend such training exercises.

67. **INSURANCE**

67.1 **Asset Base**

67.1.1 As further set out in **clause 67.2** (Minimum Insurances), the Partner shall be required to procure insurance in respect of the Controlled Assets, Transferring Assets and Partner Assets.

67.2 **Minimum Insurances**

67.2.1 Without prejudice to any liability it may incur under the indemnities given by the Partner under this Agreement, the Partner shall maintain (with a reputable insurer) either itself or pursuant to any insurance policy or policies maintained for and on behalf of members of the Balfour Beatty Group the following insurances:

67.2.1.1 public and product liability insurance with a minimum limit of indemnity of [REDACTED]) in respect of any one act or occurrence, or series of connected acts or occurrences in any one year, or, in the case of product liabilities, applying in the aggregate in any single period of insurance. The policy shall provide indemnity to principals, and shall not exclude claims arising as a result of damage to premises occupied, but not owned by the insured;

67.2.1.2 employer's liability insurance to comply with all statutory requirements with a minimum limit of indemnity of [REDACTED] in respect of any one act or occurrence, or series of connected acts or occurrences in

any one year, unlimited in aggregate. The policy shall provide indemnity to principals;

67.2.1.3 professional indemnity insurance with a minimum limit of indemnity of [REDACTED] in respect of each and every claim and in all in respect of each annual period of insurance in respect of the Services, such insurance to be maintained throughout the Term and for a period of twelve (12) years after the Termination Date;

[REDACTED] business interruption insurance to cover (as a minimum) fire, lightning, aircraft, explosions and other perils and the additional cost of working following loss of or damage to the Partner Assets, Controlled Assets or Transferring Assets, with a minimum indemnity of [REDACTED]

67.2.1.5 property contents insurance to a replacement value in respect of Partner Assets, Transferring Assets and Controlled Assets (and whether or not they are located at the Premises, Council Premises, or otherwise at other premises) providing, as a minimum, cover in respect of any losses arising as a result of fire, lightning, aircraft, explosions and other perils. In respect of the Use Assets the Council shall continue to maintain property contents insurance on broadly the same basis as prior to the Commencement Date, provided that if any loss or damage occurs in relation to the Use Assets whilst being used by the Partner the Partner shall be liable to pay an excess under any applicable Council insurance policy and shall be liable to fund replacement assets if the loss or damage in question is not covered by the Council's insurances;

67.2.1.6 fidelity insurance in respect of all directors and employees of the Partner with a minimum limit of indemnity of [REDACTED] in respect of loss; and

67.2.1.7 directors and officers insurance in respect of liability of the Partner in respect of acts or omissions of directors and employees of the Partner, with a minimum indemnity of [REDACTED] in aggregate in any one year.

67.3 Council's Interest

Where required by the Council, the Partner's insurance policy or policies effecting such cover shall have the interest of the Council noted thereon and shall be endorsed by its insurers or underwriters to prevent the exercise of the rights of subrogation against the Council, its other contractors and its or their employees provided that the Council shall (subject to having received a letter from or on behalf of the Partner detailing the terms of such policies) as though they were insured under such insurance policy, observe, fulfil and be subject to the terms, exclusions, conditions and endorsements of such insurances. Any Partner insurance policy or policies shall include an Indemnity to Principal clause.

67.4 Documentary Evidence

At the Commencement Date, and thereafter on request by the Council, the Partner shall produce to the Council a copy of a letter from the Partner's insurance brokers evidencing the types and levels of insurance cover in place. Without prejudice to the foregoing, the Partner shall provide the Council with documentary evidence of any policy renewal within ten (10) Business Days of the relevant renewal date.

67.5 Insufficient Cover

The Council shall be entitled to notify the Partner in writing that in its reasonable opinion any policy or policies of insurance or self-insurance arrangement does not provide sufficient cover to comply with this **clause 67** (Insurance) and to require the Partner to provide such insurance as will so comply at no additional cost to the Council. On receipt of such notice the Partner shall forthwith procure and maintain such insurance as the Council shall reasonably require.

67.6 Default

Should the Partner default in insuring or in continuing to insure as required by this **clause 67** (Insurance) or shall fail to comply with a notice served under **clause 67.5** (Insufficient Cover), the Council may itself provide such insurance either on its own or the Partner's behalf, and may charge to the Partner the cost of such insurance excluding amounts in respect of VAT which are recoverable by the Council ("Insurance Costs") together with the Council's reasonable administrative costs and overheads. The Council may recover any amount so charged either by way of deduction from amounts payable by the Council to the Partner under this Agreement or as a debt due to the Council from the Partner.

67.7 Sub-Contractors

The Partner shall ensure that its sub-contractors maintain appropriate and sufficient insurance cover.

67.8 Level of Cover

The Partner shall ensure that the minimum levels of cover required by this **clause 67** (Insurance) are maintained at all times throughout the Term (and for such period thereafter as specified in this **clause 67** (Insurance)) and shall ensure that the level of cover is reinstated forthwith following any reduction in the level of cover which may occur as a result of any claim.

68. FORCE MAJEURE

68.1 Neither the Council nor the Partner shall be deemed to be in breach of this Agreement or otherwise liable to the other in any manner whatsoever (including as regards the accrual of Performance Points and Liquidated Damages) for any failure or delay in performing its obligations under this Agreement due to Force Majeure. Without prejudice to the provisions of **clause 66** (Civil Emergency), the Council shall be released from its obligation to pay the Contract Price in relation to any Services which are not provided by the Partner as a result of an event of Force Majeure.

68.2 If the performance by the Partner or the Council of its obligations under this Agreement is affected by Force Majeure, then:-

68.2.1 it (the "Affected Party") shall give written notice to the other, (the "Unaffected Party") specifying the nature and extent of the Force Majeure, immediately on becoming aware of the Force Majeure and will at all times use all reasonable endeavours to mitigate the severity of the Force Majeure and keep the Unaffected Party informed of the steps taken to work around or mitigate the effect of the Force Majeure;

68.2.2 subject to the provisions of **clause 68.3** (Force Majeure), the date for performance of such obligation shall be deemed suspended only for a period equal to the delay caused by such event; and

68.2.3 it shall not be entitled to payment from the other in respect of extra costs and expenses incurred by virtue of the Force Majeure event.

68.3 If the Force Majeure in question prevails for a continuous period in excess of sixty (60) Business Days after the date on which the Force Majeure begins, the Unaffected Party is then entitled to give notice in writing to the Affected Party to terminate this Agreement in its entirety (if the Partner is prevented from carrying out all of the Services) or in respect of that part of this Agreement as the Affected Party is unable to perform as a result of the Force Majeure in question. The notice to terminate must specify the termination date, which must not be less than sixty (60) Business Days after the date on which the notice to terminate is given and the Services in respect of which the Affected Party is seeking to terminate this Agreement. Once a notice to terminate has been validly given, this Agreement will terminate in whole or in part (as aforesaid) on the termination date set out in the notice save where the Force Majeure has

ceased during such period. Where the Force Majeure has ceased during this period, the notice to terminate shall be deemed to have been withdrawn and this Agreement shall remain in full force and effect.

68.4 If the Partner wishes to terminate this Agreement in whole or in part (as the case may be) pursuant to **clause 68.3** (Force Majeure), the Council may serve notice in writing to the Partner requiring the Agreement to continue notwithstanding the Force Majeure. Following such notice this Agreement shall continue (notwithstanding the fact that some or all (as the case may be) of the Services are not capable of being provided), provided that the Council shall from the date of such Council notice, be liable to resume payment of the Contract Price to the Partner as if the Force Majeure in question had ceased to apply. The Council shall have the right to terminate the Agreement during this period in accordance with **clause 68.3** (Force Majeure).

68.5 This **clause 68** (Force Majeure) is without prejudice to the Partner's obligations in relation to insurance, business continuity, facilities management and civil emergency, pursuant to this Agreement (including the provisions in **clauses 65** (Business Continuity), **66** (Civil Emergency) and **67** (Insurance)).

68.6 In the event that this Agreement terminates for Force Majeure, the provisions of paragraph 4 of part 3 of **Schedule 23** (Compensation on Termination) shall apply.

69. **CORRUPT GIFTS**

69.1 If the Partner and/or any person or entity falling within limbs (a) and/or (b) of the definition of Partner Party and whether or not such person is acting in the course of his or her office of employment (a "Related Party") commits any Prohibited Act, the Council shall be entitled to act in accordance with **clauses 69.2** (Corrupt Gifts) to **69.5** (Corrupt Gifts) below. For the purposes of this Agreement "Prohibited Act" shall mean:

69.1.1 a Related Party has offered or given or agreed to give any person or entity any gift or consideration of any kind as inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to this Agreement or any other contract with the Council; or

69.1.2 any like act shall have been done by any person employed by the Related Party or acting on their behalf (whether with or without the knowledge of the Related Party as applicable); or

69.1.3 in relation to any contract with the Council, the Related Party or any person employed by it or acting on its behalf shall have:-

- 69.1.3.1 committed any offence under the Prevention of Corruption Acts 1889 to 1916; or
 - 69.1.3.2 given any fee or reward the receipt of which is an offence under Section 117(2) of the Local UK Government Act 1972; or
 - 69.1.4 the Partner is at any time following the Commencement Date found by a final decision of the Office of Fair Trading (which is not subsequently overturned on appeal to the Competition Appeal Tribunal or the Courts) to have been party to a cartel involving or including any commercial or other arrangement between individuals and/or corporations which is intended or organised so as to share markets or prices (whether or not that arrangement is concealed or hidden) where the arrangements in question were found by the Office of Fair Trading to have been made or, if entered into before, to have continued after the Commencement Date and this finding was not subsequently overturned on appeal to the Competition Appeal Tribunal or the Courts.
- 69.2 If a Prohibited Act is committed by the Partner or by a Permitted Subcontractor or by an employee not acting independently of the Partner or such Permitted Subcontractor acting under the authority of or with the knowledge of a director of the Partner or such Permitted Subcontractor then the Council may terminate this Agreement by giving notice to the Partner.
- 69.3 If the Prohibited Act is committed by an employee of the Partner acting independently of the Partner, then the Council may give notice to the Partner of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice the Partner terminates the employee's employment and (if necessary) procures the performance of such part of the Services by another person and the Partner commits to not employ such person for the remainder of the Term.
- 69.4 If the Prohibited Act is committed by a Related Party (save for the Partner) or by an employee of that Related Party (save for the Partner) not acting independently of that Related Party (save for the Partner) then the Council may give notice to the Partner for termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice the Partner terminates the Relevant Party's involvement in the provision of the Services and procures the performance of such part of the Services by another person and the Partner commits to not employ such Relevant Party for the remainder of the Term.
- 69.5 If the Prohibited Act is committed by an employee of a Related Party (save for the Partner) acting independently of that Related Party then the Council may

give notice to the Partner of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice the Related Party terminates such employee's employment and (if necessary) procures the performance of such part of the Services by another person and the Partner commits to not employ such person for the remainder of the Term.

69.6 Any notice of termination under this **clause 69** (Corrupt Gifts) shall specify:

69.6.1 the nature of the Prohibited Act;

69.6.2 the identity of the party whom the Council believes has committed the Prohibited Act; and

69.6.3 the date on which this Agreement will terminate, in accordance with the applicable provision of this clause.

69.7 The Council acknowledges that Inherited Contractors may be a Related Party for the purposes of this **clause 69** (Corrupt Gifts). The Council agrees with the Partner that if during the term of the contract that is inherited by the Partner under this Agreement (not including any extension) an Inherited Contractor acting independently of the Partner or without the authority or knowledge of a director of the Partner commits a Prohibited Act (either following the Commencement Date or prior to the Commencement Date but which is discovered following the Commencement Date) the Council shall not have a right to terminate this Agreement. In such circumstances the Council shall be entitled to require the Partner to terminate the contract with the Inherited Contractor provided always that:

69.7.1 the Council shall on demand indemnify and keep indemnified the Partner in relation to all Direct Losses which the Partner may incur arising from such termination provided always that the Partner shall at all times be subject to a duty to mitigate such losses; and

69.7.2 where the cost to the Partner in providing the Services increases as a result of such termination, a Change shall be made to this Agreement in order to increase the payment made to the Partner.

70. **ENVIRONMENTAL ISSUES**

70.1 The Partner shall have regard in the context of delivering the Services to utilising appropriate working methods, equipment or materials in order to minimise environmental damage, minimise consumption of utilities and non-renewable resources and to reduce and recycle waste.

70.2 The Partner shall provide such information and documentation to the Council as the Council may reasonably require from time to time for the purposes of

assessing the Partner's compliance with its obligations under **clause 70.1** (Environmental Issues).

70.3 Disposal by the Partner of any assets utilised in the provision of the Services will be compliant with the terms of this **clause 70** (Environmental Issues) and with all Laws and Policies from time to time applicable in such regard.

71. **HEALTH AND SAFETY**

71.1 In providing the Services, the Partner shall ensure the adoption of safe systems of work in order to protect the health and safety of its staff, employees of the Council and all other persons, including members of the public.

71.2 The Partner shall ensure that it and its Personnel shall at all times when providing the Services comply with:-

71.2.1 the Health and Safety at Work etc. Act 1974;

71.2.2 the Council's safety policy, particularly when performing the Services on the Council Premises; and

71.2.3 any other Laws, regulations and guidance pertaining to the health and safety of its own employees, the employees of the Council and any others who may be affected by its performance of the Services.

71.3 The Partner confirms that it has provided a copy of its safety policy to the Council and shall provide further copies (following the Commencement Date) on request by the Council. The Partner shall provide the Council with details of any revision to such safety policy not later than ten (10) Business Days after the same shall come into effect.

71.4 The Partner shall ensure that its safety policy and, where appropriate, the Council's safety policy have been drawn to the attention of all of its Personnel and that all of its management and supervisory staff have a detailed knowledge of these policies and that those staff will both themselves observe the policies and require that the Partner's Personnel comply fully with their provisions.

71.5 The provisions of this **clause 71** (Health and Safety) are without prejudice to the obligations of the Partner with regard to health and safety as set out in **Schedule 12** (Policies, Plans and Strategies).

72. **NOT USED**

73. **NOTICES**

73.1 Any demand, notice or other communication given in connection with or required by this Agreement shall subject to **clause 73.3** (Notices) be in writing (entirely

in the English language) and shall be delivered to, or sent by pre-paid first class post or e-mail to, the recipient at its registered office or its address stated in this Agreement (or such other address as may be notified in writing from time to time) marked for the attention of the Council's Partnership Director in the case of Council and the Partner's Partnership Director in the case of the Partner.

73.2 Where a demand, notice or other communication given in connection with or required by this Agreement related to:

73.2.1 breach of this Agreement (save where the breach is addressed pursuant to the PPM);

73.2.2 an extension to the term of the Agreement pursuant to **clause 4** (Option to Extend); or

73.2.3 such other provisions of this Agreement as may be notified by either party to the other from time to time,

the parties agree that such demand, notice or other communication shall not be sent by e-mail.

73.3 Any such demand, notice or communication shall be deemed to have been duly served:-

73.3.1 if delivered by hand, when left at the proper address for service; and

73.3.2 if given or made by pre-paid first class post, 48 hours after being posted

provided in each case that if the time of such deemed service is either after 4pm on a Business Day or on a day other than a Business Day service shall be deemed to occur instead at 10am on the next following Business Day; and

73.3.3 if sent by e-mail within two hours after sending if sent on a Business Day between the hours of 9am and 4pm provided that any notice (other than a routine notice) given by e-mail will be confirmed by letter sent by post or delivered by hand as soon as practicable thereafter but without prejudice to the effectiveness of the original notice given by e-mail if received or deemed to have been received in accordance with this **clause 73.3.3** (Notices).

73.4 Without prejudice to **clauses 73.1** and **73.2** (Notices), notice by e-mail shall be a valid form of notice between the parties for the practical and operational purposes of delivering the Services.

74. **RELATIONSHIP OF THE PARTIES**

74.1 Each of the parties is an independent contractor and nothing contained in this Agreement or any action taken by the parties pursuant to this Agreement, shall be construed to imply that there is any relationship between the parties of partnership (without prejudice to the foregoing, notwithstanding use in this Agreement of the terms "partner" or "partnership") or of principal/agent (except as expressly provided in this Agreement (including in **clause 30** (Acting on behalf of the Council)) or of employer/employee, nor are the parties engaging in a joint venture through participation in this Agreement.

74.2 The Council shall not have any right or authority to act on behalf of the Partner nor to bind the Partner by contract or otherwise, except to the extent expressly permitted by the terms of this Agreement.

75. **WAIVER**

75.1 Failure of any party to exercise any contractual right or remedy shall not constitute a waiver of it. No waiver shall be effective unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of this Agreement. The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by Law but for the avoidance of doubt the limitations and exclusions of liability contained in **clause 48** (Indemnities and Limitation of Liability) shall apply to any such remedies, rights and powers available by Law and which are exercised by the parties.

76. **LAWS, POLICIES AND RELATED MATTERS**

76.1 The Partner agrees that it shall in connection with the provision of Services under this Agreement:

76.1.1 comply with all applicable Laws;

76.1.2 comply with those Policies contained in **Schedule 12** (Policies, Plans and Strategies) to the extent they:

76.1.2.1 are reasonably able to apply to the Partner in view of the fact that the Partner is a private limited company and not a local authority; and

76.1.2.2 do not conflict with the Partner's own policies, procedures and accreditations;

76.1.3 where there is a conflict between a policy of the Partner or a provision of this Agreement and the Policies, the parties shall meet to discuss in

good faith whether it is feasible and necessary for such policies to be aligned and, if it is decided it is, the Partner shall align its own Partnership policies with those Policies contained in **Schedule 12** (Policies, Plans and Strategies) to the extent that they can reasonably do so in view of the fact that the Partner is a private limited company and not a local authority. In the event that it is agreed that the Partner aligns any of its policies with the Policies listed in paragraph 2 of **Schedule 12** (Policies, Plans and Strategies) then where such alignment requires the Partner to incur material additional costs, the Reprioritisation process shall apply to enable the Partner to recover such costs. For the avoidance of doubt, where this **clause 76.1.3** (Laws, Policies and Related Matters) applies, the provisions of this Agreement obliging the Partner to “comply” with designated Policies shall be construed as obliging the Partner to “align” with such Policies; and

- 76.1.4 it is acknowledged that the Partner would seek to contribute to the development of Policies, plans and strategies (where they affect the Services) during the Term and will be afforded such opportunity by the Council.
- 76.2 Where the Council amends any of the Policies, it shall notify the Partner of such change and where the Partner considers such change will have an impact on the Financial Model, the Service Levels or compliance by it of any other provision of this Agreement, it shall be dealt with as a Change to this Agreement.
- 76.3 Nothing in this Agreement will fetter or otherwise influence or affect the ability and discretion of the Council to amend or vary its Policies from time to time or to create new Policies from time to time, which may affect the provision of the Services.
- 76.4 The Partner shall notify the Council immediately if the Partner, its Associated Companies, any Partner Party or any of the Personnel of any of them become aware at any time of any fraudulent or dishonest activities within the Council or that the Council Staff, agents or sub-contractors have committed, or are in the process of committing, any act or omission which could be fraudulent, dishonest, ultra vires, constitute an abuse of process, maladministration, negligence or otherwise be contrary to the general principles of good governance.
- 76.5 In relation to the provision of the Services, the Partner shall comply with the Public Interest Disclosure Act 1998 as though such Act applies to the Partner and shall establish and where necessary update from time to time, a whistle blowing procedure for its Personnel encouraging Personnel to report to the Partner any incidents of malpractice within the Partner or the Council.

- 76.6 As a minimum the whistle blowing procedure shall include the following matters:-
- 76.6.1 in this context "malpractice" shall include any fraud or financial irregularity, corruption, criminal offences, failure to comply with any legal or regulatory obligation, endangering the health or safety of any individual, endangering the environment, serious misconduct or serious financial maladministration;
 - 76.6.2 the procedures which should be followed when a person reports an incident of malpractice (the "discloser"), including details of the person within the Partner to whom malpractice is reported (the "assessor"), the procedure to be followed by the assessor and protections for the discloser; and
 - 76.6.3 a right for the discloser to disclose to the Council malpractice which is related to the Services, in addition to or instead of the Partner.
- 76.7 The Partner shall notify the Council in writing forthwith if any Personnel invoke the whistle blowing procedure and shall provide details of the alleged malpractice. Without prejudice to any other rights and remedies which the Council may have under this Agreement, the Partner shall comply with the Council's reasonable requirements in dealing with the alleged malpractice, where such malpractice affects (or is likely to affect) the Council.
- 76.8 The Partner recognises that the Council is under a duty to act in a manner which is compatible with the Convention rights (as defined by section 1(1) of the Human Rights Act 1998) ("Convention Rights"). This duty includes a positive obligation on the Council to ensure that contractors providing services on the Council's behalf act in a way which is compatible with the Convention Rights. The Partner therefore agrees to provide the Services and comply with its other obligations under this Agreement in a manner which is compatible with the Convention Rights, having regard to the Council's own policies and procedures in relation to compliance with the Convention Rights from time to time.
- 76.9 Without prejudice to **clause 61.8** (Advertising/Publicity) the Partner shall, both in providing the Services and in all other of its business and commercial activities, seek to protect the reputation of the Council (and all institutions of the Council), its Members and Officers and other employees of the Council and will not injure or otherwise damage the reputation of Council (or any institution of the Council), its Members and Officers or other employees of the Council.

77. **CONFLICTS OF INTEREST**

- 77.1 The Partner shall not knowingly permit its commercial or other interests to interfere or conflict with its duty (which the Partner hereby acknowledges) to

provide the Services and comply with its other obligations in accordance with this Agreement and shall not use any information it gains through the operation of this Agreement for its or any member of the Balfour Beatty Group's own benefit. If the Partner becomes aware of any such conflict of interest (or potential conflict of interest) including a conflict of interest involving the Balfour Beatty Group or other situation which has arisen or may arise and which may cause a breach of this **clause 77** (Conflicts of Interest), the Partner shall provide all relevant details to the Council as soon as reasonably possible.

- 77.2 Without prejudice to **clause 77.1** (Conflicts of Interest), the Partner will put in place and maintain in place such internal arrangements (recorded in writing) as it deems necessary (acting reasonably) in order to avoid conflicts (of the type referred to in **clause 77.1** (Conflicts of Interest)) arising, such arrangements to meet, as a minimum, Chartered Institute of Public Finance Accountants (CIPFA) and the Council's policy on conflicts of interest (a copy of which is contained in **Schedule 12** (Policies, Plans and Strategies)). The Partner shall ensure that all of its Partner Parties engaged in the provision of the Services are aware of such internal arrangements (where relevant) and the Partner shall ensure that such persons comply with those arrangements (excluding inherited contractors). The Partner will make available to the Council on request from time to time a copy of its written arrangements as aforesaid.
- 77.3 In providing the Services, the Partner shall conduct its business, operations and activities in a politically neutral fashion.
- 77.4 The Partner shall comply with the Council's policy on gifts and hospitality (a copy of which is contained in **Schedule 12** (Policies, Plans and Strategies)).
- 77.5 If any conflict of interest (or potential conflict of interest), in each case, as referred to in this **clause 77** (Conflicts of Interest), arises or is likely to arise, the Partner will take all reasonable steps to remove or avoid the conflict of interest or to prevent it occurring in each case, to the satisfaction of the Council (acting reasonably). If the Council is not satisfied with the outcome of the Partner having taken such action as aforesaid (the Partner having given the Council a comprehensive and detailed written statement of the actions it has taken), the Partner will on request by the Council, forthwith bring to an end any relationship it may have with any Third Party, where that relationship has given rise to the conflict of interest (or potential conflict of interest). This shall be without prejudice to any other right or remedy which the Council may have as a result of any breach by the Partner of this **clause 77** (Conflicts of Interest).

78. **GOVERNING LAW**

This Agreement and any non contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in

accordance with English Law. The English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

79. INVALIDITY/SEVERABILITY

79.1 If any provision of this Agreement is or becomes illegal or invalid, it shall not affect the legality and validity of the other provisions. The parties shall in good faith amend this Agreement to reflect as nearly as possible the spirit and intention behind the illegal or invalid provision to the extent that such spirit and intention is consistent with the Laws of the jurisdiction and so that the amended clause complies with the Laws of the jurisdiction.

79.2 If the parties cannot agree upon the terms of any amendment within six (6) calendar months of the date upon which a clause is determined to be illegal or invalid then the parties agree to submit the terms of the amendment or novation to an expert for determination. The parties agree that the expert's decision in this respect shall be final and binding.

80. ENTIRE AGREEMENT

80.1 This Agreement and all documents referred to herein, and the deed of warranty and Council Service Level Agreement agreed between the parties on or about the date of this Agreement, set forth the entire agreement between the parties in respect of the subject matter covered by them and supersede and replace all prior communications, representations (other than fraudulent representations), warranties, stipulations, undertakings and agreements whether oral or written between the parties.

80.2 Each of the parties acknowledges that it does not enter into this Agreement in reliance on any warranty, representation or undertaking other than those contained in this Agreement, the Council Service Level Agreement and the deed of warranty, and that its only remedies are for breach of contract provided that this does not exclude any liability which either party would otherwise have to the other party in respect of any statements made fraudulently prior to the date of this Agreement or to any provision of this Agreement which is induced by fraud for which the remedies available shall be all those available under the Law.

81. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

This Agreement is enforceable by the original parties to it and by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded save that Eligible Employees shall have the right to enforce the provisions of **clause 23** (Pensions) to the extent applicable to them

and as required by the Best Value Authorities Staff Transfers (Pensions) Direction 2007.

82. FURTHER ASSURANCE

The parties shall execute all such further deeds and documents and carry out all such further acts as may be necessary to carry the provisions of this Agreement into full force and effect.

83. CONTINUANCE IN FORCE

83.1 Unless expressly stated to the contrary, each obligation of the Partner and the Council under this Agreement shall be deemed to be a continuing obligation throughout the Term.

83.2 The expiry or termination (howsoever arising) of this Agreement shall be without prejudice to the rights and duties of each party accrued prior to such expiry or termination.

83.3 The clauses and provisions of this Agreement which expressly or impliedly have effect following expiry or termination (howsoever arising) of this Agreement shall continue in full force and effect notwithstanding such expiry or termination, including (for the avoidance of doubt) **clauses** 1 (Definitions), 2 (Interpretation), **23** (Pensions), **31** (Council Meetings and Assistance in other Proceedings), **34** (Contract Price and Payment Terms) to **37** (Value Added Tax), **39** (Set-Off), **46** (DRP), **48.5, 48.6, 48.7, 48.8, 48.9** (Liability of the Parties) **56** (Termination And Expiry Consequences), **58** (Intellectual Property Rights), **59** (Confidentiality), **60** (Novation of Agreements), **63.1** (Costs and Expenses), **64** (Document Priority), **68** (Force Majeure), **73** (Notices), **75** (Waiver), **83** (Continuance in Force) and **Schedules 6** (Exit) and **23** (Compensation on Termination). For the avoidance of doubt, the reference to specific clauses in this **clause 83** (Continuance in Force) shall not be interpreted as an exhaustive list or that such clauses are ranked higher in priority to survive over any other clause in this Agreement not so referenced.

84. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which so executed shall be an original, but together shall constitute one and the same instrument.

IN WITNESS WHEREOF the parties have executed this their Deed the day and year first before written

THE COMMON SEAL of)

NORTH EAST LINCOLNSHIRE BOROUGH COUNCIL)

was hereunto)

affixed in the presence of)

EXECUTED as a deed by **BALFOUR BEATTY WORKPLACE**)

LIMITED acting by its duly appointed attorney in the)

presence of a witness:)

Signature

Name

(block capitals)

Witness signature

Witness name

(block capitals)

Witness address

.....