

23 June 2016

Dear

**Re: Freedom of Information Act 2000**

I refer to your recent email correspondence relating to the response to your Freedom of Information request; in particular item 3, 'the NIHE-COMPASS contract relating to housing for asylum seekers'.

I have reviewed the original decision to withhold the requested information, taking into account the views of the other party to this contract, and have concluded that this information can be disclosed to you in redacted form.

The Housing Executive considers that the redacted information contained within Schedule 5 (Service Charges), is exempt from disclosure as the exemption at section 43(2) is engaged (commercial interests).

#### Reasons for decision

The redacted information comprises detailed service charge rates and the Housing Executive considers that disclosure of this information would be likely to prejudice its commercial interests and those of a number of third parties for the following reasons;

- Disclosure of the information would place the Housing Executive at a disadvantage against future competitors in the delivery of the Asylum Seeker contract.
- Disclosure of the information would prejudice Housing Executive's commercial interests with its sub-contractors and landlords in negotiating future contracts.
- Disclosure of the requested information would negatively impact future tenders that may involve the prime contractors with the Home Office, thus compromising our ability to achieve best value for money for the public purse.



### **Public Interest Test**

As the exemption at section 43 is a 'qualified' exemption, I am required carryout a public interest test to consider whether the balance of public interest lies either in withholding the information covered by the exemption or in disclosing it. The Housing Executive considers that the public interest in non-disclosure outweighs the public interest in disclosure for the reasons set out below.

In favour of disclosure is the general presumption of a public interest in disclosure. In addition, there is a public interest in having openness and transparency around a decision making process, accountability in relation to the use of public money.

Against disclosure, the Housing Executive considers that disclosure of the requested information would be likely to damage its commercial interests and those of a range of third party contractors for the following reasons;

- Disclosure of the information would place the Housing Executive at a disadvantage against future competitors in the delivery of the Asylum Seeker contract.
- Disclosure of the information would prejudice Housing Executive's commercial interests with its sub-contractors and landlords in negotiating future contracts.

I will arrange for one of my staff to contact you directly to finalise arrangements to furnish you with a copy of this of this contract. I trust this is satisfactory but if you have any further queries please do not hesitate to contact me.

Yours sincerely



Date: 29 June 2012

**Orchard & Shipman (Glasgow) Limited**  
O&S

**Northern Ireland Housing Executive**  
The Subcontractor

## Contract

for the provision of accommodation and  
related services in Northern Ireland Region

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THIS CONTRACT is made this 29<sup>th</sup> day of June 2012

**BETWEEN:**

- (1) **Orchard & Shipman (Glasgow) Limited** (incorporated and registered in England and Wales under company registration number 07981676), the registered office of which is at c/o Orchard & Shipman House, 1 Progress Business Centre, Whittle Parkway, Slough, Berkshire, United Kingdom, SL1 6DQ (O&S); and
- (2) **Northern Ireland Housing Executive** whose principal office is at The Housing Centre, 2 Adelaide Street, Belfast BT2 8PB (the **Subcontractor**).

**RECITALS:**

- (A) On 21 March 2012, Serco entered into the Prime Contract with the Secretary of State for the Home Department (the **Authority**).
- (B) Under the Prime Contract, the Authority will employ Serco to provide:
  - (i) accommodation and essential living services;
  - (ii) a range of general services; and
  - (iii) a transportation service,to eligible asylum seekers who have entered into the United Kingdom.
- (C) Serco have subcontracted some of its obligations under the Prime Contract to O&S. O&S have entered the O&S Contract with Serco to document its agreement with Serco.
- (D) Upon and subject to the terms and conditions of this Contract, O&S now wishes to appoint the Subcontractor, and the Subcontractor wishes to be appointed, as supplier of dispersal accommodation and temporary move on accommodation in the Northern Ireland Region and related services, to eligible asylum seekers who have entered into the United Kingdom.
- (D) In order to fulfil certain of its obligations under the O&S Contract O&S hereby engages the Subcontractor to carry out certain of its obligations under the O&S Contract.

IT IS AGREED as follows:

**1. Definitions and Interpretation**

- 1.1 In this Contract, the expressions set out in Schedule 1 (*Definitions*) shall have the meanings set out against them in that Schedule unless the context otherwise requires.
- 1.2 Any document expressed to be in the "**approved form**" means a document in the form approved by (and for the purpose of identification signed or initialled by or on behalf of) the parties to this Contract.
- 1.3 References to "**indemnify**" and "**indemnifying**" any person against any circumstances include indemnifying and keeping that person harmless from all actions, claims, demands and proceedings from time to time made against that person and all liabilities, loss, damages and all payments, costs and expenses made or incurred by that person (including legal costs on an indemnity basis as defined in rule 44.4(3) of the Civil Procedure Rules) (or the equivalent under the Northern Ireland legislation) as a consequence of, or which would not have arisen but for, that circumstance.
- 1.4 References to a "**person**" shall be construed as a reference to any person, firm, company, corporation, government, state or agency of state or any association or partnership (whether or not having separate legal personality) of one or more of the foregoing.
- 1.5 References to a "**party**" shall, unless the context otherwise requires, be a reference to a party to this Contract and any permitted successors and assignees of such party.
- 1.6 References to "**writing**" shall include any modes of reproducing words in a ~~legible~~ and non-transitory form but shall (except in the case of notices provided for under Schedule 2 (*Statement of Requirements*) and given via the management reporting systems operated by O&S and the Subcontractor) exclude electronic mail.
- 1.7 The headings to Clauses, to Schedules and to Paragraphs or parts of or Annexes to Schedules shall not affect their interpretation.
- 1.8 References to the singular are deemed to include the plural and vice versa and references to any gender are deemed to include every other gender.

1.9 References to any provision of any legislation are to be construed as a reference to that provision as amended, re-enacted or extended from time to time.

1.10 References to Clauses, Schedules, Annexes and Paragraphs of Schedules and Annexes are to clauses of, schedules and annexes to and paragraphs of schedules and annexes to this Contract.

1.11 Words and phrases defined in the Companies Act 2006 shall bear the same meaning when used in this Contract.

1.12 In the event and to the extent only of any inconsistency or ambiguity;

(a) between any provisions of the Clauses and any provisions of the Schedules, the Clauses shall prevail; or

(b) between Schedule 2 (*Statement of Requirements*) and the other Schedules, the other Schedules shall prevail,

each party agrees to notify the other as soon as reasonably practicable after it becomes aware of any such inconsistency or ambiguity.

1.13 For the avoidance of doubt, the Subcontractor is obliged to comply with the requirements of Schedule 2 (*Statement of Requirements*) at all times and in the event of any inconsistency between the obligations specified in the column of Schedule 2 (*Statement of Requirements*) headed "Requirements" and the corresponding response of the Subcontractor in the column of Schedule 2 (*Statement of Requirements*) headed "Tenderer Proposals", the Subcontractor shall, subject to Clause 1.12(b) be obliged at all times to operate to meet the obligations specified in the column of Schedule 2 (*Statement of Requirements*) headed "Requirements" and any additional costs shall be borne by the Subcontractor without recourse to O&S.

1.14 In the event that the response of the Subcontractor specified in the column of Schedule 2 (*Statement of Requirements*) headed "Tenderer Proposals" exceeds the obligation specified in the column of Schedule 2 (*Statement of Requirements*) headed "Requirements", the Subcontractor shall be obliged to provide to the higher standard at all times.

## 2. Commencement and Duration

- 2.1 This Contract shall commence on the date of this Contract (the "Contract Signature Date").
- 2.2 This Contract shall continue in force until the Expiry Date unless extended or terminated earlier in accordance with the provisions of this Contract.
- 2.3 Where Serco has served notice on O&S to extend the O&S Contract pursuant to Clause 2.3 of the O&S Contract, O&S shall provide notice of such extension to the Subcontractor as soon as reasonably practicable and the Contract Term for this Contract shall be extended by a period of two years. Following any extension, the Expiry Date shall be the last day of the Contract Term as extended. The parties acknowledge that any such extension of this Contract shall only be operable on one occasion.
- 2.4 Any extension of the Contract under Clause 2.3 shall be on the same terms and conditions as contained in this Contract.
- 2.5 This Contract is entered into conditionally upon the satisfaction of the matters specified in this Clause 2.5.
- (a) ~~Valid~~ and binding execution of the Prime Contract by the Authority and Serco
- (b) Valid and binding execution of the O&S Contract by Serco and O&S.

### 2A. General Obligations and Subcontractor Due Diligence

- 2A.1 The Subcontractor acknowledges that it has received and familiarised itself with a copy of the O&S Contract.
- 2A.2 The Subcontractor acknowledges that it is (and the Subcontractor shall be deemed to be) on notice of the terms and conditions of the O&S Contract, including the obligations, risks and potential liabilities of O&S arising under it to the extent these relate to the provision of the Services. The Subcontractor acknowledges that such obligations, risks and liabilities are (and such obligations, risks and liabilities shall be deemed to be) within the contemplation of the Subcontractor. The Subcontractor acknowledges that if it is in breach of this Contract, such breach is likely to result in, amongst other things, a liability of O&S under the O&S Contract.
- 2A.3 The Subcontractor shall not (and shall procure that its sub-contractors and their respective agents and employees shall not) by any act or omission:

- (a) constitute, cause or contribute to any breach by O&S of any of its obligations under the O&S Contract or give rise to any liability of O&S under the O&S Contract and the Subcontractor shall further be liable (subject to the provisions of Clause 19) for and indemnify O&S for any Losses arising in the event of any breach of this Clause 2A.3; and/or
- (b) lead to any diminution or loss of any rights, entitlements or other benefits of O&S under the O&S Contract.

2A.4 Save as expressly provided otherwise in this Contract, where under the O&S Contract or the Prime Contract or under Law any documentation, information or assistance is required in connection with the Services or the business or financial condition of the Subcontractor or the Subcontractor's other obligations under this Contract for approval or review by the Authority or other relevant person or to be submitted to the Authority or other relevant person, the Subcontractor shall provide the same to O&S in the manner prescribed and at least six (6) Business Days or such other period as the Parties (acting reasonably and affording the Subcontractor reasonable time in which to respond to O&S) shall otherwise agree before the time (if any) prescribed therefore in the O&S Contract or the Prime Contract or by Law as appropriate. Where it is not reasonable for the Subcontractor to be aware that it is to provide any documentation, information or assistance without a request from O&S, then O&S shall make the request at a reasonable time to enable the Subcontractor to comply. If the content or nature of the documentation or information or the assistance provided by the Subcontractor in connection with this Clause 2A.4 does not reasonably satisfy O&S's obligations in respect of the documentation, information or assistance required under the O&S Contract and/or the Prime Contract or is otherwise unsuitable for its intended purpose, O&S may notify the Subcontractor and the Subcontractor will make the amendments reasonably requested by O&S.

2A.5 Where in the Prime Contract or the O&S Contract any matter is stated to be required to be submitted to the Authority or Serco, or other relevant person, or subject to the consent or approval of the Authority or Serco, or other relevant person (or any equivalent procedure), and O&S is not entitled to proceed with the matter in respect of which such submission is made or such approval or consent is sought until such submission is made, or such approval or consent is obtained, then to the extent that such matter relates to or impacts upon the obligations of the Subcontractor under this Contract, the Subcontractor shall not proceed with such matter until such submission is made or the relevant consent or approval is obtained in accordance with the provisions of the Prime Contract or the O&S Contract or is deemed to have been given or O&S is otherwise entitled to proceed in accordance with the Prime Contract or the O&S Contract and O&S has given notice of such submission, consent, approval or

entitlement to the Subcontractor or the Subcontractor is otherwise aware of such entitlement.

2A.6 Where pursuant to this Contract, O&S is required to consent or approve any matter or thing or is entitled to veto any matter it shall not unreasonably withhold or delay its consent or approval or issue a veto provided that where the consent or approval of the Authority or Serco is also required pursuant to the Prime Contract or the O&S Contract, it is agreed that O&S will be acting reasonably in withholding its consent or approval in circumstances where the Authority or Serco is withholding its consent or approval under the Prime Contract or the O&S Contract.

2A.7 O&S shall pass on to the Subcontractor without unreasonable delay (having due regard to the nature of the communication) copies of all relevant notices, notifications, responses, certificates, information or other communication, documents or data received or sent by O&S relating to or affecting the Services or the Subcontractor's other obligations under this Contract and shall keep the Subcontractor informed of all matters relating thereto that come to the attention of O&S from time to time, save that O&S shall not be obliged to comply with this Clause 2A.7 where such performance would put O&S in breach of the O&S Contract.

2A.8 Where the Authority imposes an obligation on or issues a direction to the Subcontractor under this Contract such obligation or direction shall have no effect where:

- i) it is unrelated to or in addition to any obligation of O&S under the O&S Contract, or any obligation imposed by the Serco under the O&S Contract; or
- ii) the extent of such obligation or direction will on its own (or when considered cumulatively with other obligations or directions previously or simultaneously requested by O&S) result in a material additional cost to the Subcontractor,

unless the parties have applied the provisions of Clause 15 (Change Control) and have agreed the additional remuneration of the Subcontractor under this Contract for the fulfilment of such obligations or directions.

2A.9 The Subcontractor shall provide O&S with the List of Subcontractor Employees within 30 days of the date of this Contract and shall notify O&S of any amendments to the List of Subcontractor Employees as soon as practicable and shall update the List of Subcontractor Employees accordingly.

## 2B Determination of Entitlements

### 2B.1 Extensions of Time

The Subcontractor shall, in relation to any Contract Relief Event, only be entitled to relief from any consequences of delayed performance in accordance with the terms of this Contract where an agreement has been reached between Serco and O&S, or a determination has otherwise been made under or in connection with the O&S Contract establishing that O&S is awarded an extension of time or relief in relation to such Contract Relief Event and provided that the Subcontractor shall not be entitled to any greater relief than is obtained by O&S pursuant to the terms of the O&S Contract.

### 2B.2 Contract Price Adjustment Amounts

Where there has been a Contract Price Adjustment Event, the amount of any corresponding Price Adjustment to which the Subcontractor is entitled under this Contract shall be determined in accordance with the terms of this Contract but subject to the following provisions:

- (i) the Subcontractor shall endeavour to identify, in a payment application submitted to O&S under this Contract, any Price Adjustment claimed in respect of a Contract Price Adjustment Event (a "**Contract Price Adjustment Amount**") and O&S shall identify all Contract Price Adjustment Amounts included in each interim payment statement;
- (ii) notwithstanding any other provision of this Contract, the date for payment of any Contract Price Adjustment Amount (or any relevant part thereof) shall be the date soon after but no later than 30 (thirty) Business Days after receipt by O&S of any amount due from:
  - (A) Serco to O&S under the O&S Contract;
  - (B) any Related Services Sub-contractor to O&S under a Related Services Sub-contract; or
  - (C) the relevant insurer(s) under any insurance policy in place under either the Prime Contract and/or this Contract (as applicable),

and in each case in respect of the Contract Price Adjustment Event (other than any amount on account of O&S's own Losses or those of its other sub-contractors) (the "**Corresponding Payment**").

- (iii) If, prior to the final date for payment of any Contract Price Adjustment Amount agreed or determined in accordance with this Contract, the Corresponding Payment is agreed or determined in accordance with the O&S Contract, any insurance policy required under the O&S Contract or this Contract (as applicable) or any Related Services Sub-contract, then, where the Subcontractor's proportion of the Corresponding Payment is agreed or determined to be lower than the Contract Price Adjustment Amount, the Contract Price Adjustment Amount shall be adjusted proportionately so that such amount is a figure equal to the Subcontractor's proportion of the Corresponding Payment. For the avoidance of doubt, the Subcontractor shall not be entitled to claim any more than the Contract Price Adjustment Amount where the Subcontractor's proportion of the Corresponding Payment is agreed or determined to be greater than the Contract Price Adjustment Amount.

### 2B.3 Enforcement of Parallel Claims

For the purposes of determining the Subcontractor's entitlement pursuant to Clauses 2B.1 and 2B.2, O&S agrees to pursue in a prompt and diligent manner:

- (i) its rights and remedies under the O&S Contract as such may relate to the Services and/or the Subcontractor's rights, remedies and obligations under this Contract;
- (ii) its rights and remedies under any Related Services Sub-contract as such may relate to the Services and/or the Subcontractor's rights, remedies and obligations under this Contract; and
- (iii) the recovery of any proceeds under the Required Insurances under the O&S Contract, notwithstanding that the Subcontractor and others may be jointly or co-insured,

provided that:

- (A) the Subcontractor shall bear any reasonable external cost of O&S in pursuing the rights and remedies referred to in this Clause 2B.3 on its behalf and pay any such amounts to O&S within 30 Business Days of receipt of an invoice in relation to such sums;
- (B) the Subcontractor shall (subject to the provisions of Clause 19) indemnify and keep indemnified O&S against all losses or claims

(including costs for which O&S may be held liable to the Authority) which may arise out of or in connection with O&S pursuing such rights and remedies on the Subcontractor's behalf; and

- (C) the Subcontractor shall, in a timely manner, afford to O&S such co-operation as may reasonably be requested by O&S to assist in pursuing any entitlement referred to in this Clause 2B.3, such co-operation to include the provision of documents and the making available of witnesses.

Where a Contract Relief Event relates to or affects the Subcontractor O&S shall seek the consent of the Subcontractor (such consent not to be unreasonably withheld or delayed) to agree, compromise or waive any entitlement under the Prime Contract which corresponds to a Contract Relief Event under this Contract. O&S may agree, compromise or waive any such entitlement under the Prime Contract notwithstanding that the Subcontractor has withheld or delayed its consent, provided always that to the extent that the Subcontractor has acted reasonably in withholding or delaying consent under this clause 2B.3A, the provisions of clause 2B.1 shall not apply to such Contract Relief Event.

Notwithstanding the provisions of this Clause 2B.3, O&S shall not have any liability to the Subcontractor hereunder if and to the extent that O&S's failure to pursue any of the rights and remedies referred to above is caused or contributed to by any act, omission or default of the Subcontractor in breach of this Contract and O&S shall not be obliged to pursue any such rights and remedies if O&S reasonably concludes (having given the Subcontractor the opportunity to provide such further information and/or justification as may be necessary) that such a claim would be vexatious or would have no reasonable prospect of success (and if O&S so concludes, it shall promptly notify the Subcontractor of such conclusion).

#### 2B.4 O&S to keep the Subcontractor informed

O&S shall keep the Subcontractor informed as to the progress of any claims pursued pursuant to Clauses 2B.1 and 2B.2, shall provide copies of all documents relating thereto which may be requested from time to time by the Subcontractor and shall keep the Subcontractor informed, at reasonable intervals, of the costs being incurred (and shall, each time it incurs costs in excess of £20,000, not incur further costs without first obtaining the consent of the Subcontractor to the same).

#### 2B.5 Priority and Enforcement of Provisions

- (i) To the extent there is any inconsistency between the provisions of Clause 2B and any other provisions of this Contract, the provisions of this Clause 2B shall take priority. For the avoidance of doubt, the provisions of this Contract are exclusive and exhaustive in relation to any claims by the Subcontractor for an extension of time or for any Price Adjustment.
- (ii) If any term, condition or provision contained in this Clause 2B shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Contract.

## 2C Interface Arrangements

- 2C.1 The Subcontractor shall, in providing the Services, use all reasonable endeavours to co-operate with all other Related Services Sub-contractors.
- 2C.2 O&S shall use all reasonable endeavours to procure that any other Related Services Sub-contractor shall co-operate with the Subcontractor, provided that any such co-operation between the Subcontractor and the relevant Related Services Sub-contractor does not detrimentally affect the performance of O&S's obligations under the O&S Contract.
- 2C.3 The Subcontractor shall carry out the Services in a manner that does not impede any other Related Services Sub-contractor in the performance of the relevant Related Services Sub-contractor's obligations to O&S under the relevant Related Services Sub-contract.
- 2C.4 O&S shall procure that any other Related Services Sub-contractor does not impede the Subcontractor in the performance of the Services, except where any such impediment by any other Related Services Sub-contractor would prevent a failure in performance of O&S's obligations under the O&S Contract.

## 3

### *General Requirement*

- 3.1 The Subcontractor shall provide the Services to O&S in accordance with the terms and conditions of this Contract (including, without limitation, the provisions of Schedules 2 (*Statement of Requirements*) and 13 (*Performance Regime*)).

3.2 In providing the Services, the Subcontractor shall:

- (a) not, and shall procure that none of its subcontractors shall, take any action that may adversely affect O&S, Serco or the Authority;
- (b) do so in the light of the responsibilities and priorities of O&S under the O&S Contract and shall not misrepresent the Authority, Serco or O&S to any person, including, without limitation, Asylum Seekers, Stakeholders and other providers to Serco, O&S or the Authority of services similar to the Services;
- (c) exercise the level of professional skill, care, planning, pro-activity, supervision, control and diligence which may be expected of a professional organisation experienced in providing services of the type and complexity required by O&S under this Contract;
- (d) ensure that the Services are provided by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
- (e) comply with all applicable statutes, enactments, orders, regulations or similar instruments as enacted from time to time, including without limitation the Immigration and Asylum Act 1999, the Nationality, Immigration and Asylum Act 2002, the Asylum and Immigration (Treatment of Claimants etc) Act 2004, the Immigration, Asylum and Nationality Act 2006 and all other applicable UK legislation relating to immigration and asylum in force in Northern Ireland from time to time and any regulations issued under such Acts applicable in Northern Ireland;
- (f) follow all reasonable directions which O&S may give to the Subcontractor from time to time and which relate (whether directly or indirectly) to the provision of the Services.

#### *Service Commencement*

3.3 The Subcontractor shall commence provision of the Services described in Schedule 2 (*Statement of Requirements*) on 1 July 2012 on and from which date O&S shall be entitled to issue Accommodation Requests, which are issued to the Subcontractor in respect of Service Users. O&S shall ensure that where it issues Accommodation Requests such Accommodation Requests are issued in a timely manner following such issue on Serco's SIP.

#### *Incidental Services*

3.4 In addition to the Services and provided that the Authority or Serco has properly requested such incidental services and/or responsibility of O&S pursuant to the O&S Contract, the Subcontractor shall, at no additional cost to O&S, provide

any incidental services and assume any incidental responsibilities which are not specifically set out in Schedule 2 (*Statement of Requirements*), provided that they:

- (a) are within the overall scope of the Services as set out in Schedule 2 (*Statement of Requirements*); and
- (b) are consistent with the allocation of responsibilities between O&S and the Subcontractor under the terms of this Contract; and
- (c) are services or responsibilities which are inherent to the proper performance and delivery of the Services,

and for the avoidance of doubt, nothing in this Clause 3.4 shall permit O&S to require the Subcontractor to provide services under this Contract where the nature and extent of such services are clearly outside the scope and intention of this Contract or the Prime Contract.

#### *Additional Services*

- 3.5 If so requested by O&S, the Subcontractor shall provide the Additional Services and O&S shall pay for the same at the rates set out in Schedule 5 (*Service Charges*) (where such rates are provided or otherwise as agreed between the parties pursuant to the provisions of this Contract.).

#### *No Assurances*

- 3.6 The Subcontractor acknowledges that under the Prime Contract the Authority intends to follow the Dispersal and Referral Rules in respect of IA Service Users and neither the Authority nor O&S make any representation as to the number or type of Service Users which will be allocated to the Subcontractor and the Subcontractor confirms that it has no expectation of, and shall have no claim against either the Authority or O&S in respect of, a minimum number of Service Users (or a particular type of Service User) to be allocated to it by O&S. The Subcontractor hereby acknowledges that the number of Service Users may increase and decrease from time to time.

- 3.6A O&S agrees that subject to the provisions of Clause 17 all Service Users allocated to O&S under the O&S Contract for the Region that are applicable to the Services provided by the Subcontractor pursuant to this Contract will be allocated to the Subcontractor under this Contract.

### *Continuous Improvement*

- 3.7 The Subcontractor shall continually seek Continuous Improvement opportunities in accordance with Schedule 6 (*Continuous Improvement*).

### *Environmental Requirements*

- 3.8 The Subcontractor shall perform its obligations under the Contract and in particular Schedule 26 (*Sustainability*) in accordance with the Authority's environmental policy (such policy to be provided to the Subcontractor by O&S), which includes requirements to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 3.9 Where the Subcontractor has not been provided with details of the Authority's environmental policy by O&S, the Subcontractor should request a copy of the same within 5 Business Days after the Contract Signature Date.

### *Safeguarding Children*

- 3.10 In providing the Services, the Subcontractor shall at all times comply with the provisions of Schedule 25 (*Safeguarding Children*).

### *Government Priority Policy Areas*

- 3.11 The Subcontractor acknowledges that the Authority is committed to the pursuit of wider policy objectives through procurement and that Serco is under an obligation under the Prime Contract to use its reasonable endeavours to subscribe to and comply with any voluntary charter established by OGC in support of these objectives outside the formal procurement process. The Subcontractor shall use its reasonable endeavours to assist O&S with its obligations under Clause 3.11 of the O&S Contract.
- 3.12 Without limiting Clause 3.10, the Subcontractor acknowledges that the Authority is committed to the key policy area of supporting apprenticeships and skills.
- 3.13 The Subcontractor is required to take all reasonable steps to employ apprentices, and report to O&S the numbers of apprentices employed and wider skills training provided, during the delivery of this Contract.

- 3.14 The Subcontractor shall take all reasonable steps to ensure up to 5% of the staff, or that a similar specified proportion of hours worked in delivering the Services, (which may include support staff and sub-contractors) are to be delivered by an employee on a formal apprenticeship programme.
- 3.15 The Subcontractor shall make available to its employees working on the Contract information about the Government's apprenticeship programme and wider skills opportunities.
- 3.16 The Subcontractor shall provide any appropriate further skills training opportunities for employees delivering the Services.
- 3.17 The Subcontractor shall provide a written report detailing the following measures in the regular contract management reports to be submitted in accordance with Schedule 14 (*Monitoring and Management Information*), and be prepared to discuss apprenticeships at contract management meetings:
- (a) the number of people during the reporting period employed on the Contract, including support staff and Subcontractors;
  - (b) the number of apprentices and number of new starts on apprenticeships directly initiated through the procurement process;
  - (c) the percentage of all employees taking part in an apprenticeship programme;
  - (d) if applicable, an explanation from the Subcontractor as to why it is not managing to meet the specified percentage target;
  - (e) actions being taken to improve the take-up of apprenticeships; and
  - (f) other training/skills development being undertaken by staff in relation to this Contract, including:
    - (i) work experience placements for 14 to 16 year olds;
    - (ii) work experience /work trial placements for other ages;
    - (iii) student sandwich/gap year placements;
    - (iv) graduate placements;
    - (v) vocational training;

- (vi) basic skills training; and
- (vii) on site training provision/facilities.

#### **4. Mobilisation and Transition Arrangements**

- 4.1 The Subcontractor shall provide all reasonable assistance to O&S during (and if relevant, after) the Mobilisation Period and the Transition Period to allow O&S to comply with its obligations under the O&S Contract in respect of transition arrangements, including (without limitation) assistance in demonstrating to the Authority that the Services (as defined under the Prime Contract) can be provided in accordance with the requirements of the Prime Contract.
- 4.2 Not used.
- 4.3 Not used.
- 4.4 Timely supply of those Services as set out within the Mobilisation Plan and Transition Plan during the Mobilisation Period and the Transition Period shall be of the essence.
- 4.5 The Subcontractor acknowledges the terms of Clause 4 (Mobilisation and Transition Arrangements) and Schedule 3 (Mobilisation and Transition) of the O&S Contract and shall provide all reasonable assistance to O&S to enable it to secure the Serco Bridging Permit to Operate and the Full Permit to Operate pursuant to the O&S Contract.

#### *Full Operation Period*

- 4.6 The Full Operation Period shall commence on the same date that the Full Operation Period commences under the O&S Contract.

#### **5. Service Charges**

- 5.1 In consideration of the provision of the Services by the Subcontractor on the terms of this Contract, O&S shall pay the Service Charges in accordance with the charging arrangements set out in Schedule 5 (*Service Charges*). The Service Charges shall be subject to adjustment as set out in such Schedule.
- 5.2 The Subcontractor shall invoice O&S in accordance with the procedure set out Schedule 5 (*Service Charges*).

- 5.3 The Service Charges are expressed exclusive of any VAT which is chargeable. For the avoidance of doubt, the Subcontractor shall ensure that all invoices are submitted with the amount of VAT payable shown as a separate item.
- 5.4 An obligation to pay any amount, other than the Service Charges, under this Contract shall include an obligation to pay VAT on such amount. Where there is an obligation to reimburse any costs incurred by the Subcontractor and these costs include VAT which is recoverable by the Subcontractor as input tax then there shall be no obligation to reimburse the relevant recoverable VAT.
- 5.5 Notwithstanding Clause 5.3, if, following the Contract Signature Date, there is a change in legislation which alters the VAT treatment of the Services in respect of which the Service Charges are levied, then:
- (a) the Service Charges shall be adjusted up or down to the extent necessary to reflect any increase or as the case may be decrease in the VAT which is chargeable on the Services (in respect of which the Service Charges are payable) as a consequence of the relevant change;
  - (b) if the effect of such change is that there is an increase in the net expenditure (after taking into account the recoverability of any VAT paid by the Subcontractor) incurred by the Subcontractor in relation to the provision of the Services, then the parties shall discuss an increase in the Service Charges or other appropriate adjustment in the payments to be made to the Subcontractor under this Contract (and O&S shall not unreasonably withhold its consent to any such increase to the extent that (i) it compensates the Subcontractor for any such increased net expenditure and (ii) O&S is similarly compensated in respect of such change in legislation pursuant to Clause 5.5 of the O&S Contract and O&S shall where applicable, expeditiously pursue such compensation from Serco); and
  - (c) if the effect of such change is that there is a decrease in the net expenditure (after taking into account the recoverability of any VAT paid by the Subcontractor) incurred by the Subcontractor in relation to the provision of the Services, then the parties shall discuss a decrease in the Service Charges or other appropriate adjustment in the payments to be made to the Subcontractor under this Contract (and the Subcontractor shall not unreasonably withhold its consent to any such decrease to the extent that (i) it enables O&S to benefit from such decreased expenditure or (ii) the payment made by Serco to O&S under the O&S Contract is reduced as a consequence of such change in legislation pursuant to Clause 5.5 of the O&S Contract).

5.6 Save as expressly provided for in this Contract, the Subcontractor shall not be entitled to levy any charge or receive any payment in respect of:

- (a) its performance of this Contract, compliance with its terms and/or costs of engaging any suppliers and/or subcontractors (including without limitation those referred to in Schedule 24 (*Material Sub-contractors*) in connection with such performance/compliance; or
- (b) its costs in connection with the eviction of, or removal of possessions of, or taking any other action in connection with removing any Service User from premises provided by the Subcontractor as part of the Services, or in connection with repairing any such premises.

5.7 Save as expressly provided in this Contract or as agreed by the Authority under the Prime Contract and O&S under this Contract from time to time, the Subcontractor shall not be entitled to levy any charge or receive any payment, gratuity, tip or other form of consideration or reward from or in respect of a Service User.

5.8 The Service Charges include a sum in respect of any liability for any tax (including council tax under the Local Government Act 1992 (or the equivalent under Northern Ireland legislation)), maintenance and other costs charges and expenses which are payable so as to enable the Subcontractor to lawfully and properly provide the Services and the Subcontractor shall be responsible for satisfying such liabilities.

## 6. Key Representatives

6.1 Each party shall appoint Key Representatives as set out in Schedule 12 (*Key Representatives*).

## 7. Contract Managers and Senior Representatives

7.1 O&S and the Subcontractor shall each appoint a representative (a "Contract Manager") who shall:

- (a) act as the principal liaison between his appointor and the other party;
- (b) manage, on behalf of his appointor, the relationship between O&S and the Subcontractor in accordance with the provisions of this Contract; and

(c) be deemed to have full authority from his appointor to act in the name of, and on behalf of, his appointor for all purposes of and connected with this Contract.

7.2 Each party may remove any Contract Manager appointed by that party by notice in writing to the other party. The Authority, Serco or O&S (acting reasonably) shall be entitled to require the Subcontractor to remove any person appointed from time to time as the Subcontractor Contract Manager. For the avoidance of doubt, this Clause 7.2 does not require the Subcontractor to dismiss any person removed from the position of Contract Manager at the request of the Authority, Serco or O&S and it shall be for the Subcontractor to decide whether any such person shall be dismissed or redeployed within the Subcontractor's business.

7.3 If at any time, a party shall cease to have a Contract Manager appointed pursuant to Clause 7.1, then that party shall, within 7 days of such cessation, appoint an alternative Contract Manager and notify such appointment to the other party.

7.4 The Subcontractor shall comply with all reasonable requests made by the O&S Contract Manager in respect of this Contract.

7.5 The parties shall procure that their respective Contract Managers shall comply with the provisions of Schedule 7 (*Contract Management*).

7.6 O&S and the Subcontractor shall each appoint a senior representative (a "Senior Representative") who shall meet:

(a) no less than four times in each Service Year to discuss:

(i) the overall performance of the Subcontractor's provision of the Services in the relevant Service Year and any changes of approach or improvements in performance which should be adopted by the Subcontractor; and

(ii) any other issues relevant to the Subcontractor's provision of the Services;

(b) at such other times as either of the parties may require, to discuss any matter which either of the parties considers to be of sufficient importance that it should be referred to the Senior Representatives in advance of the next regular meeting under sub clause (a) above.

7.7 Unless O&S agrees otherwise, the Subcontractor Senior Representative shall at all times be the Director of Housing & Regeneration of the Subcontractor or if

the Subcontractor does not have a chief executive a director of the Subcontractor having the responsibilities and seniority normally attributable to the office of chief executive of a company.

- 7.8 Subject to Clause 7.7, each party may remove any Senior Representative appointed by that party by notice in writing to the other party.
- 7.9 If at any time, a party shall cease to have a Senior Representative appointed pursuant to Clause 7.6, then that party shall, within 7 days of such cessation, appoint an alternative Senior Representative and notify such appointment to the other party.

## **8. Records, Rights of Inspection and Provision of Information**

### *Contract Monitoring*

- 8.1 The Subcontractor shall co-operate and comply and shall procure that its Material Sub-contractors co-operate and comply (in each case at no additional charge to O&S) with the monitoring arrangements set out in Schedule 14 (*Monitoring and Management Information*) including, but not limited to, providing such data and information as O&S may require the Subcontractor to provide to allow O&S to comply with its obligations under Clause 8.1 of the O&S Contract to produce data and information to the Authority and the OGC.
- 8.2 The Subcontractor shall be responsible for the accuracy of all documentation (including any drawings) and other information supplied by it to O&S in connection with the supply of the Services and shall pay O&S any reasonable costs incurred by O&S, Serco or the Authority in identifying and correcting any discrepancies, errors or omissions in such documentation.
- 8.3 O&S and the Authority shall monitor the performance of the Services by the Subcontractor using the structure set out within Schedule 7 (*Contract Management*) and Schedule 13 (*Performance Regime*).
- 8.4 The Subcontractor shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Subcontractor's performance of the Services against the applicable Performance Standard at a level of detail sufficient to verify compliance with the Key Performance Indicators.
- 8.5 O&S, Serco and/or the Authority may increase the extent to which this monitoring is conducted if the quality of the Services is degraded in any way.

O&S shall give the Subcontractor prior notification of its intention (or Serco or the Authority's intention) to increase the level of monitoring.

- 8.6 If the Subcontractor believes that O&S's, Serco's or the Authority's monitoring of the Services is unreasonable, the Subcontractor may escalate the issue with O&S using the Escalation Process.

#### *Audits*

8.7 The Subcontractor shall, and shall procure that all its sub-contractors shall, maintain:

- (a) a complete and accurate set of records relating to the Services and all activities relating to their performance of this Contract;
- (b) a complete and accurate set of records relating to all costs, liabilities and expenses incurred by, and all income, receipts and benefits received or earned by, the Subcontractor and its sub-contractors in connection with the performance of the Subcontractor's obligations under this Contract; and
- (c) reasonably adequate and appropriate security arrangements with a view to ensuring that there is no unauthorised access to and/or destruction of any such records.

8.8 Serco, O&S and the Authority and Serco's, O&S's and the Authority's staff, contractors, agents, auditors, advisers and other nominees (including the National Audit Office) may, not more than twice in any calendar year and for a period of six years following the Expiry Date, conduct audits for the following purposes:

- (a) to verify the accuracy of the Service Charges (and proposed or actual variations to them in accordance with this Contract), any cost reduction and income generation initiatives carried out in order to provide continuous improvement pursuant to this Contract, and/or the costs of all subcontractors of the Services at the level of detail agreed in Schedule 5 (*Service Charges*);
- (b) to review the integrity, confidentiality and security of the Project Data;
- (c) to review the Subcontractor's compliance with the Data Protection Act 1998, the Freedom of Information Act 2000 in accordance with Clause 12 (*Data Protection and Freedom of Information*) and any other legislation applicable to the Services;

- (d) to review the Subcontractor's compliance with its obligations under Clause 3 (*The Services*);
- (e) to review the Subcontractor's compliance with its obligations with regard to the provision of Value for Money;
- (f) to review any books of account kept by the Subcontractor in connection with the provision of the Services;
- (g) to carry out the audit and certification of the Authority's, O&S's and/or Serco's accounts;
- (h) to carry out an examination, pursuant to Section 6(1) of the National Audit Act 1983, of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (i) to verify the accuracy and completeness of any management information delivered or required by this Contract;
- (j) to inspect any assets of the Authority, Serco or O&S used in the provision of the Services, including the Authority's, Serco's or O&S's IPRs, equipment, facilities and maintenance, for the purposes of ensuring that the Authority's assets, Serco's assets and O&S's assets (if applicable) are secure and that any register of assets is up to date;
- (k) to ensure that the Subcontractor is complying with the Standards; and/or
- (l) any other audit that may be required by any Regulatory Body.

8.9 Where an audit is carried out under Clause 8.8, O&S shall and shall procure that Serco and the Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Subcontractor or delay the provision of the Services.

8.10 Subject to the Authority's, Serco's and O&S's respective obligations of confidentiality, the Subcontractor shall on demand provide the Authority, O&S and/or Serco (and/or their respective agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

- (a) all information requested by the Authority, Serco and/or O&S within the permitted scope of the audit;

- (b) reasonable access to the records maintained pursuant to Clause 8.1 and/or copies of any such records;
- (c) reasonable access to any premises and vehicles controlled by the Subcontractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
- (d) access to the Subcontractor's and its sub-contractors' staff; and
- (e) all reasonable assistance as may be necessary in order to enable the Authority, Serco and/or O&S to fully and promptly carry out any inspection, audit, check and/or monitoring of the Subcontractor's compliance with this Contract (including, without limitation, the Subcontractor's maintenance of the records to support measurement described in Schedule 13 (*Performance Regime*)) or O&S's compliance with the O&S Contract.

8.11 The Subcontractor shall promptly provide the Authority, Serco and/or O&S with such other information, relating to this Contract and the provision of the Services, as the Authority, Serco and/or O&S may from time to time reasonably request. Such information shall be provided in such form as the Authority, Serco or O&S (as applicable) may reasonably request .

8.12 O&S shall endeavour to (but is not obliged to) provide at least 12 Business Days notice of its intention to conduct an audit. Where O&S receives notice of the Authority's intention to conduct an audit under the Prime Contract or Serco's intention to conduct on audit under the O&S Contract, O&S shall (upon receipt of the same from Serco) provide a copy of such notice to the Subcontractor in a timely manner. The requirements under this Clause 8.12 shall be without prejudice to the Authority's, Serco's and/or O&S's ability to carry out spot-checks on the accommodation provided to Service Users, where it deems it appropriate.

8.13 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 8, unless the audit identifies a material Default by the Subcontractor, in which case the Subcontractor shall reimburse the Authority, Serco and/or O&S (as applicable) for all of their reasonable costs incurred in the course of the audit.

8.14 If an audit identifies that:

- (a) the Subcontractor has failed to perform its obligations under this Contract in any material manner, the Parties shall agree and the Subcontractor shall implement at its

own cost a remedial plan. If the Subcontractor's failure relates to a failure to provide any information to the Authority, Serco or O&S about the Service Charges, proposed Service Charges or the Subcontractor's costs, then the remedial plan shall include a requirement for the provision of all such information;

- (b) O&S has overpaid any Service Charges, the Subcontractor shall pay to O&S the amount overpaid within 10 Business Days. O&S may deduct the relevant amount from the Service Charges if the Subcontractor fails to make this payment; and
- (c) O&S has underpaid any of the Service Charges, O&S shall (subject to Clause 2B) pay to the Subcontractor the amount of the under-payment less the cost of audit incurred by the Authority, Serco or O&S (as applicable) if the under-payment was due to a Default by the Subcontractor in relation to invoicing within 30 Business Days.

#### *Transparency Agency*

8.15 Notwithstanding any provision in this Contract regarding confidentiality, the Subcontractor acknowledges that the Authority may be obliged to publish this Contract in accordance with the Government's transparency agenda.

8.16 Nothing in Clause 8.15 above shall oblige the Authority or O&S to publish any section of the Contract where such publication would be in breach of the Data Protection Act 1998, or where that section is exempted from disclosure under the Freedom of Information Act 2000.

#### *Open Book Accounting*

8.17 The Subcontractor shall, with respect to all sums paid to it by O&S pursuant to the Contract, manage its accounts on an open book basis.

### **9. Personnel and Employment Arrangements**

#### *Authority approval and consultation*

9.1 During the term of this Contract, save with O&S's prior written consent, no person may (on behalf of the Subcontractor or any of its sub-contractors) be engaged in providing any of the Services if:

- (a) such person has a Relevant Conviction; or

- (b) the Subcontractor has not requested from the Criminal Records Bureau (or the applicable Northern Ireland equivalent) a disclosure of the appropriate level in respect of such person; or
- (c) the Criminal Records Bureau (or the applicable Northern Ireland equivalent) discloses that it would be inappropriate for such person to be engaged in providing any of the Services; or
- (d) such person is entitled to more than three months notice of the termination of his/her employment or contract for services; or
- (e) save for any rights under a retirement benefits scheme, such person's remuneration includes benefits (including share options) where some aspect of the benefit is not immediately available to the relevant individual.

9.2 If the Subcontractor discovers (whether as a result of a police check or through the Criminal Records Bureau procedures or otherwise (or the applicable Northern Ireland equivalent)) that any person as referred to in Clause 9.1(a) to (c) inclusive is engaged in providing the Services, the Subcontractor shall immediately remove or procure the removal of such person from all involvement with the Services.

9.3 The Subcontractor acknowledges that the Authority shall have absolute discretion to require and that Serco or O&S may, where they have serious concerns, reasonably require;

- (a) the removal of any person from his/her engagement in the provision of the Services; or
- (b) the alteration to the responsibilities of any person engaged in the provision of the Services,

in each case of his/her conduct and/or him or her not having the appropriate skills or qualifications for his or her role and (where appropriate) such right may be exercised more than once in respect of the same person. For the avoidance of doubt, this Clause 9.3 does not require the Subcontractor to dismiss any person removed from their engagement in the provision of the Services pursuant to Clause 9.3(a) and it shall be for the Subcontractor to decide whether any such person shall be dismissed or re-deployed within the Subcontractor's business.

9.4 Where (in accordance with this Contract) Serco, O&S or the Authority requires the removal of any person from his/her position or engagement, the

Subcontractor shall ensure that the replacement for such person will be a suitably experienced, qualified and effective individual.

#### *Staff Vetting Procedures*

- 9.5 The Subcontractor shall comply with the Staff Vetting Procedures in respect of all staff employed or engaged in the provision of the Services. The Subcontractor confirms that all Subcontractor staff employed or engaged by the Subcontractor in the provision of the Services at 1 July 2012 were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 9.6 The Subcontractor shall provide training on a continuing basis for all staff employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan.

#### *Key Representatives*

- 9.7 The Subcontractor shall take reasonable steps to ensure there are no changes to the Key Representatives while this Contract is in force. In the event that any change is made to a member of the Key Representatives, the Subcontractor shall inform O&S at once and shall ensure that the replacement is a suitably qualified person who is approved by O&S.

#### *Indemnity for employee claims*

- 9.8 Save for any claims falling under Paragraph 5.10(a) of Part B of Schedule 4 (*Exit Management and Handover*), the Subcontractor shall be liable for, and shall indemnify the Authority, Serco and O&S against, all costs and liabilities arising out of or in connection with any claim by any person arising out of their employment or engagement with or by the Subcontractor or any sub-contractor, or the termination thereof prior to or upon the termination or expiry of this Contract, including any claim for breach of contract, unfair dismissal, sex, race or disability discrimination, save where such claim arises wholly from any material negligent act or omission of Serco, O&S or the Authority.

### **10. Authority Tangible Property and Interim Support Tokens**

- 10.1 The Parties acknowledge that title to all Authority Tangible Property shall at all times remain with the Authority.

- 10.2 The Subcontractor shall ensure that all Authority Tangible Property is received, stored, handled and recorded in accordance with O&S's reasonable directions from time to time.
- 10.3 The Subcontractor shall ensure that all Interim Support Tokens are received, stored, handled and recorded in accordance with any instructions which O&S may give to the Subcontractor from time to time.
- 10.4 The costs to the Subcontractor of procuring the Interim Support Tokens shall be passed to O&S without any mark-up or adjustment.
- 10.5 The Parties acknowledge that title to Interim Support Tokens shall remain with the Authority until delivered to the relevant Service User in accordance with the instructions referred to in Clause 10.3.

## **11. Intellectual Property and Information Exchange**

### *Existing Intellectual Property Rights and new Intellectual Property Rights created by the Authority*

- 11.1 Any Intellectual Property Rights owned by the Authority, Serco, O&S or the Subcontractor as at the Contract Signature Date shall continue to be owned by the Authority, Serco, O&S or (as the case may be) the Subcontractor. Any Intellectual Property Rights created howsoever by the Authority, Serco or O&S after the date of this Contract, shall be owned absolutely by the Authority or Serco or O&S.

### *Transfer of Intellectual Property Rights to the Authority*

- 11.2 All Transferring Intellectual Property Rights shall vest in the Authority absolutely upon the creation of such Transferring Intellectual Property Rights (and regardless of whether the subject of the relevant Transferring Intellectual Property Rights has been completed).
- 11.3 The Subcontractor agrees that any Transferring Intellectual Property Rights that come into existence after the date of this Contract, shall vest absolutely in the Authority immediately upon such rights coming into existence and, to that end, the Subcontractor hereby assigns by way of assignment of future copyright, or otherwise as appropriate, all such Transferring Intellectual Property Rights to the Authority absolutely with full title guarantee. The Subcontractor shall procure assignments, in accordance with the above provisions, in favour of the

Subcontractor from all Subcontractor Related Parties in respect of all Transferring Intellectual Property Rights.

11.3A To the extent permitted by the O&S Contract, O&S hereby grants to the Subcontractor a non-exclusive, non-transferable licence to use the Transferring Intellectual Property Rights, to the extent necessary for, and solely for the purposes of, fulfilling its obligations under this Contract. Such licence shall automatically terminate on termination of Serco's provision of the Services under the Prime Contract or on termination of the Subcontractor's provision of the Services under this Contract.

11.4 For the avoidance of doubt nothing in this Clause 11 shall restrict the Subcontractor from using for its own benefit, or for the fulfilment of its wider objectives, any experience and skills gained through its operation of this Contract (save to the extent that this would involve the use of any Transferring Intellectual Property Rights).

#### *Waiver of Moral Rights*

11.5 To the extent that any works, products, databases, materials or other deliverables created or supplied by the Subcontractor or any Subcontractor Related Parties under or in connection with this Contract include Transferring Intellectual Property Rights, the Subcontractor unconditionally and irrevocably waives in relation to the same all moral rights conferred by Chapter IV of Part I of the Copyright, Designs and Patents Act 1988 and all author's rights of a similar kind conferred by the law of any jurisdiction and shall procure such a waiver from all Subcontractor Related Parties.

#### *Licence of Intellectual Property Rights to the Subcontractor*

11.6 To the extent that the Authority or O&S provide any computer software to the Subcontractor for use in the provision of the Services and to the extent permitted by the O&S Contract, O&S hereby grants and shall procure that the Authority shall grant to the Subcontractor a non-exclusive, non-transferable licence to use and copy such software, to the extent necessary for, and solely for the purposes of, fulfilling its obligations under this Contract. If sub-contractors require access to such software to enable the Subcontractor to fulfil its obligations under this Contract, such licence shall include the right to sub-license such software to such sub-contractors but only to the extent necessary for, and solely for such purpose and on the basis that such sub-licences shall

automatically terminate on termination of the Subcontractor's provision of the Services.

*Licence of Intellectual Property Rights to the Authority and O&S*

- 11.7 To the extent that any Intellectual Property Rights in any works, products, databases, materials or other deliverables created or supplied by the Subcontractor or any Subcontractor Related Parties under or in connection with this Contract are not already owned by the Authority, Serco or O&S or assigned to the Authority, Serco or O&S in accordance with Clause 11.2 and/or 11.3, the Subcontractor hereby grants to the Authority, Serco and O&S an irrevocable, non-exclusive perpetual, transferable, worldwide, royalty-free licence (with power to sub-license) to use, reproduce, modify, adapt or enhance the same, in all or any types of media, but only to the extent reasonably necessary for the purposes of enabling the Authority, Serco and/or O&S to properly utilise the benefits of the Subcontractor providing the Services and/or transfer the role of providing the Services (or their equivalent or any part thereof) to Serco, O&S or the Authority and/or a Successor Contractor.

*Intellectual Property Rights Indemnity*

- 11.8 The Subcontractor shall not infringe the Intellectual Property Rights of any third party in supplying the Services and shall ensure that the receipt of the Services by O&S and others, as contemplated by this Contract, does not infringe the Intellectual Property of any third party.
- 11.9 The Subcontractor shall, during and after the Contract Term, indemnify and keep indemnified and hold O&S, Serco, the Authority and the Crown harmless from and against all actions, suits, claims, demands, damages, expenses, legal costs (on a solicitor and client basis) and other liabilities arising from or incurred as a result of or in connection with any breach of Clause 11.8, except where any such claim arises from items or materials supplied by Serco, O&S or the Authority or which Serco, O&S or the Authority has specified for use by the Subcontractor.
- 11.10 O&S shall notify the Subcontractor in writing of any IP Infringement Claim brought against O&S or (to the extent it is aware of such a claim) against the Authority or Serco in materials supplied or licensed by the Subcontractor.

11.11 The Subcontractor shall at its own expense conduct all negotiations and any litigation arising in connection with any IP Infringement Claim provided always that the Subcontractor:

- (a) shall consult O&S on all substantive issues which arise during the conduct of such litigation and negotiations;
- (b) shall take due and proper account of the interests of Serco, O&S and the Authority; and
- (c) shall not settle or compromise any claim without the prior written approval of O&S.

11.12 O&S shall at the request of the Subcontractor afford to the Subcontractor all reasonable assistance for the purpose of contesting any IP Infringement Claim and procure the reasonable assistance of the Authority pursuant to the Prime Contract and Serco pursuant to the O&S Contract where applicable. The Subcontractor shall indemnify the Authority, Serco and O&S for all costs and expenses (including legal costs and disbursements) incurred in doing so. The Subcontractor shall not, however, be required to indemnify the Authority, Serco or O&S in relation to any costs and expenses incurred in relation to or arising out of an IP Infringement Claim which relates to a claim arising from items or materials supplied by the Authority, Serco or O&S or which Serco, O&S or the Authority has specified for use by the Subcontractor.

11.13 O&S shall not and shall procure that Serco and the Authority shall not pay or agree to pay any IP Infringement Claim nor make an admission which may be prejudicial to the defence or settlement of any IP Infringement Claim.

11.14 If an IP Infringement Claim is made or is, in the reasonable opinion of the Subcontractor, likely to be made, the Subcontractor shall notify O&S and, at its own expense and subject to the consent of O&S, use its best endeavours to:

- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the relevant provisions of this Contract shall apply to such modified or substitute Services; or
- (b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to O&S.

11.15 If a modification or substitution is not possible so as to avoid the infringement or the Subcontractor is not able to procure a licence in accordance with Clause 11.14 (b) within such time as O&S may reasonably specify:

- (a) O&S may, at its option, terminate this Contract in accordance with Clause 21.2(a); and
- (b) the Subcontractor shall be liable for the value of replacement Services and any additional costs incurred by O&S in implementing and maintaining such replacements.

*Management Information*

11.16A The Subcontractor acknowledges that under the O&S Contract, O&S is required to provide certain information to Serco via the Serco Information Portal (SIP). The Subcontractor shall provide to O&S all information required to be inputted into the SIP by submitting such information to the O&S in accordance with this Contract. Except where the Subcontractor has prior written consent from O&S to do so, the Subcontractor shall not access or input any information directly into the SIP. O&S shall expeditiously input all relevant information provided by the Subcontractor to O&S to be inputted into the SIP.

11.16 In addition to the requirements of Schedule 14 (Monitoring and Management Information) the Subcontractor shall on a daily, weekly and quarterly basis, or as requested by O&S, submit electronic reports to O&S containing, as a minimum, the information set out in Schedule 3 (Reporting Requirements) for the appropriate report. Daily reports should be submitted by 4 p.m. daily, weekly reports by 4 p.m. on the last Working Day of the week and quarterly reports on the last Working Day of a quarter. The Subcontractor acknowledges that O&S may update the information that is required to be provided pursuant to this clause.

11.17 Not used.

11.18 Not used.

11.19 Not used.

11.20 Not used.

11.21 The Subcontractor shall:

- (a) notify O&S immediately if it becomes aware of any unauthorised access to, and/or any breach or attempted breach of the security of the SIP; and

- (b) use its best endeavours to prevent unauthorised person(s) from accessing and/or using the SIP.

11.22 Not used.

11.23 Not used.

11.24 Not used.

11.25 Subject to Clause 11.6, the Subcontractor shall not:

- (a) sub-license, rent or lease the SIP, give third parties access to the SIP and/or enable third parties to give such access;
- (b) copy, download, disseminate, reproduce, publish, transmit, use or modify the SIP and/or any data contained on the SIP (or any part of it) except in connection with the proper performance of the Services under this Contract;
- (c) remove, alter or obscure any product or service identification, trade marks, copyright or other notices contained in data in the SIP;
- (d) attempt to interfere with the operation of the SIP including, without limitation, by means of overloading, flooding and/or crashing the SIP.

11.26 The Subcontractor shall remain solely responsible for the accuracy of any information or data passed to O&S for entry on the SIP. The Subcontractor hereby agrees to (subject to the provisions of clause 19) indemnify and hold harmless O&S from all claims, liabilities, costs and expenses (including legal expenses) arising out of any claim based upon the submission of the information and/or data.

11.27 The Subcontractor acknowledges the provisions of Schedule 19 (IT Schedule) to the O&S Contract and shall assist O&S in meeting its obligations pursuant to that Schedule to the extent relevant to the delivery of the Services pursuant to this Contract.

11.28 The Subcontractor acknowledges that it will not acquire any rights or interest in the SIP or any data or information within it.

11.29 Not used.

11.30 The Subcontractor shall, as an enduring obligation throughout the Contract 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 ICT Environment.

11.31 Notwithstanding Clause 11.30, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Project Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

11.32 Any cost arising out of the actions of the parties taken in compliance with the provisions of Clause 11.30 shall be borne by the parties as follows:

- (a) by the Subcontractor where the Malicious Software originates from the Subcontractor Software, the Third Party Software or the Project Data (whilst the Project Data was under the control of the Subcontractor); and
- (b) (subject to Clause 2B) by O&S if the Malicious Software originates from the O&S Software or the Project Data (whilst the Project Data was under the control of O&S or the Authority).

11.33 Subject to Clause 11.32, O&S shall not be liable to the Subcontractor for any loss or damage which the Subcontractor may suffer as a result of using SIP, except where such loss or damage was caused by negligence, wilful default or fraud by O&S or its personnel.

#### *Project Data*

11.34 The Subcontractor shall not delete or remove any proprietary notices contained within or relating to the Project Data.

11.35 The Subcontractor shall not store, copy, disclose, or use the Project Data except as necessary for the performance by the Subcontractor of its obligations under this Contract or as otherwise expressly authorised in writing by O&S.

11.36 To the extent that Project Data is held and/or processed by the Subcontractor, the Subcontractor shall supply that Project Data to O&S as requested by O&S in the format specified in Schedule 2 (*Statement of Requirements*) and/or in Schedule 4 (*Exit Management and Handover*).

- 11.37 Upon receipt or creation by the Subcontractor of any Project Data and during any collection, processing, storage and transmission by the Subcontractor of any Project Data, the Subcontractor shall take all precautions necessary to preserve the integrity of the Project Data and to prevent any corruption or loss of the Project Data.
- 11.38 The Subcontractor shall perform secure back-ups of all Project Data and shall ensure that back-ups are performed weekly and stored off-site in accordance with Schedule 20 (*Business Continuity and Disaster Recovery*). The Subcontractor shall ensure that such back-ups are available to O&S at all times upon request.
- 11.39 The Subcontractor shall ensure that any system on which the Subcontractor holds any Project Data, including back-up data, is a secure system that complies with the Security Policy.
- 11.40 If the Project Data is corrupted, lost or sufficiently degraded as a result of the Subcontractor's Default so as to be unusable, O&S may:
- (a) require the Subcontractor (at the Subcontractor's expense) to restore or procure the restoration of the Project Data and the Subcontractor shall do so within the timescales advised by O&S (acting reasonably) or the Authority pursuant to clause 11.40(a) of the Prime Contract or Serco pursuant to Clause 11.40(a) of the O&S Contract; and/or
  - (b) itself restore or procure the restoration of the Project Data, and shall be repaid by the Subcontractor any reasonable expenses incurred in doing so.
- 11.41 If at any time the Subcontractor suspects or has reason to believe that Project Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Subcontractor shall notify O&S immediately and inform O&S of the remedial action that the Subcontractor proposes to take.

## 12. Data Protection and Freedom of Information

### *Restrictions on Use of Personal Data*

- 12.1 For the purposes of this Clause 12, the terms "Data Controller", "Data Processor", "Data Subject", "Process" and "Processing" shall have the meaning prescribed under the Data Protection Act 1998.
- 12.2 The Subcontractor shall (and shall ensure that its staff) comply with any applicable registration requirements and notification requirements under the

Data Protection Legislation and duly observe all obligations under the Data Protection Legislation which arise in connection with the Contract. The Subcontractor shall perform its obligations under this Contract in such a way as does not cause O&S to breach any of the Authority's obligations under the Data Protection Legislation or O&S's obligations under the O&S Contract.

12.3 Notwithstanding the general obligation in Clause 12.2, where the Subcontractor and/or any of its staff Process Personal Data as a Data Processor for O&S, the Subcontractor shall:

- (a) ensure that a nominated Key Representative responsible for handling data and with overall responsibility in relation to data shall be listed within Schedule 12 (*Key Representatives*);
- (b) process the Personal Data only in accordance with instructions from O&S (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by O&S;
- (c) without limiting Clause 12.1 or Clause 12.2, comply with the Law;
- (d) process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Subcontractor's obligations under this Contract, or as is required by Law or any Regulatory Body;
- (e) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- (f) take reasonable steps to ensure the reliability of staff who may have access to the Personal Data;
  - (i) obtain prior written consent from O&S prior to any transfer of Personal Data to any sub-contractor for the provision of the Services;

- (ii) not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior written approval of O&S, and, where O&S so Approves such a transfer, comply with:
    - (A) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - (B) any reasonable instructions notified to it by O&S;
- (g) ensure that all staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 12;
- (h) ensure that none of the staff publish, disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by O&S;
- (i) not disclose Personal Data to any third parties in any circumstances other than with the prior written approval of O&S or in compliance with a legal obligation imposed upon the Authority, O&S, Serco or the Subcontractor;
- (j) notify O&S (within two Business Days) if it receives:
  - (i) a request from a Data Subject to have access to that person's Personal Data; or
  - (ii) a complaint or request relating to the Authority's, Serco's or O&S's obligations under the Data Protection Legislation;
- (k) provide the Authority, Serco and O&S with full co-operation and assistance in relation to any complaint or request made, including by:
  - (i) providing O&S with full details of the complaint or request;
  - (ii) complying with a subject access request within the relevant timescales set out in the Data Protection Legislation and in accordance with O&S's instructions;
  - (iii) providing Serco, O&S and/or the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by O&S); and

- (iv) providing O&S with any other information reasonably requested by O&S.
- (l) permit O&S Contract Manager or his/her nominee (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with Clause 8, the Subcontractor's Processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by O&S to enable O&S to verify and/or procure that the Subcontractor is in full compliance with its obligations under this Contract; and
- (m) provide a written description of the technical and organisational methods employed by the Subcontractor for processing Personal Data (within the timescales required by O&S).

12.4 Where the Subcontractor or any of its sub-contractors, as part of the Services, Processes Personal Data as a Data Controller, such Personal Data shall have been obtained fairly and lawfully. The Subcontractor shall ensure that it is able to disclose such Personal Data to O&S, Serco and the Authority and that the Services are designed in such a way as to ensure that use by O&S of any such Personal Data obtained in connection with the Services does not breach the provisions of the Data Protection Legislation.

12.5 In the event that the Subcontractor or any of its staff fail to comply with this Clause 12, O&S may terminate the Contract by giving notice in writing to the Subcontractor pursuant to Clause 21.

#### *Compliance with O&S's Requirements*

12.6 The Subcontractor will take all steps, required and communicated in writing to the Subcontractor by O&S, that O&S reasonably considers are necessary in order to comply with O&S's, Serco's or the Authority's own obligations under the Data Protection Legislation.

12.7 The Subcontractor, for the purposes of facilitating O&S's, Serco's and/or the Authority's compliance with the Data Protection Legislation, shall furnish to O&S copies of such security, audit and control reports generated by the Subcontractor's auditors as are directly relevant to such compliance. In the event that either O&S or the Subcontractor becomes aware of any unauthorised, unlawful or dishonest conduct or activities, or any breach of the terms of this Contract relating to Protected Data, such party shall notify the other party thereof.

*Freedom of Information Act*

12.8 The Subcontractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority, Serco and O&S (as the case may be) to enable the Authority, Serco and O&S to comply with their Information disclosure obligations in accordance with Clauses 12.8 to 12.16. O&S acknowledges that the Subcontractor is also subject to the requirements of FOIA and O&S shall use reasonable endeavours to assist and co-operate with the Subcontractor to meet its obligations under the FOIA insofar as they relate to the subject matter of this Contract.

12.9 The Subcontractor shall and shall procure that any of its sub-contractors shall transfer to O&S all requests for information in relation to the Services that are subject to FOIA that it or they receive as soon as practicable and in any event within one Working Day of receiving a Request for Information. In addition, the Subcontractor shall and shall procure that any of its relevant sub-contractors:

- (a) provides O&S with a copy of all Information in its possession, or power in the form that O&S requires within three Business Days (or such other period as O&S may specify) of O&S's request; and
- (b) provides all necessary assistance as reasonably requested by the Authority and/or Serco and/or O&S to enable the Authority, Serco and/or O&S to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

12.10 O&S shall be responsible for determining, notwithstanding any other provision in this Contract (or any other agreement), whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

12.11 In no event shall the Subcontractor respond directly to a Request for Information unless expressly authorised to do so by O&S.

12.12 The Subcontractor acknowledges that (notwithstanding the provisions of Clause 29 (Confidentiality)) the Authority, Serco and/or O&S (acting under instruction from the Authority) may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("Code"),

be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Subcontractor or the Services in certain circumstances:

- (a) without consulting the Subcontractor; or
  - (b) following consultation with the Subcontractor and having taken its views into account,
- 12.13 provided always that where Clause 12.12(a) applies, O&S shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Subcontractor advanced notice, or failing that, to draw the disclosure to the Subcontractor's attention after any such disclosure.
- 12.14 The Subcontractor shall ensure that all information is retained for disclosure and shall permit O&S, Serco and/or the Authority to inspect such records as requested from time to time.
- 12.15 The Subcontractor acknowledges that the Commercially Sensitive Information listed in the Schedule 10 (*Commercially Sensitive Information*) is of indicative value only and that the Authority, Serco and/or O&S may be obliged to disclose it in accordance with this Clause 12.
- 12.16 The Subcontractor shall ensure that any sub-contract it enters into in relation to this Contract contains a condition in similar terms to this Clause 12 whereby the subcontractor acknowledges the Authority's responsibilities under the FOIA and the Environmental Information Regulations and O&S's responsibilities under the O&S Contract and agrees to co-operate with the Authority, Serco and/or O&S (as applicable) so that these responsibilities can be discharged.

### **13. Exit Management Plan and Handover**

- 13.1 The Subcontractor acknowledges the terms of clause 13 of the Prime Contract and Clause 13 of the O&S Contract. The Subcontractor shall, in accordance with Schedule 3 (*Mobilisation and Transition*) of the O&S Contract and in any event within 12 weeks before the Contract Effective Date, prepare the draft Exit Management Plan (which shall be consistent with the principles set out in Schedule 4 (*Exit Management and Handover*)), and deliver it to O&S for review and approval
- 13.2 Following receipt of the draft Exit Management Plan, O&S shall consider its provisions in conjunction with Serco and notify the Subcontractor in writing of

any relevant comments that O&S, Serco or the Authority may have in relation to the Exit Management Plan.

- 13.3 If O&S and the Subcontractor (in conjunction with Serco and the Authority) fail to agree the provisions of the draft Exit Management Plan within 10 days of O&S providing comments to the Subcontractor in accordance with Clause 13.2 above, then any dispute in relation to the Exit Management Plan of this Contract shall be resolved in accordance with Clause 36 (Dispute Resolution).
- 13.4 On the agreement of the draft Exit Management Plan in accordance with this Clause 13, the draft plan shall be adopted as the Exit Management Plan and the Subcontractor agrees to comply with the requirements of the Exit Management Plan.
- 13.5 Should the Subcontractor fail to comply with its obligations under the Exit Management Plan in a reasonable and timely fashion, O&S reserves the right to recover from the Subcontractor its (and/or Serco's and the Authority's) reasonable additional costs and expenses incurred as a direct result of such failure.

#### **14. Business Continuity Plan**

- 14.1 The Subcontractor shall take reasonable care to ensure that in the performance of the Services and its other obligations under the Contract it does not disrupt the operations of the Authority, Serco and/or O&S, the Authority's, Serco's or O&S's personnel or any other Subcontractor employed by the Authority, Serco or O&S.
- 14.2 If any event shall occur which has an impact on the Subcontractor's ability to provide the Services in accordance with this Contract, the Subcontractor agrees to implement, and comply with, the Business Continuity Plan.
- 14.3 As and when reasonably required by O&S, the Subcontractor shall review and test the Business Continuity Plan to identify the extent to which it is appropriate and to identify any changes which should be made to the plan. The result of such review shall be discussed by the Subcontractor's and O&S's relevant Contract Managers at the next meeting of the Contract Managers following O&S notifying the Subcontractor that it must carry out such review so that O&S's Contract Management may discuss the same at the next meeting with the Serco's Contract Manager. O&S shall discuss with the Subcontractor any changes that it requires to be made to the Business Continuity Plan prior to

agreeing any such changes with Serco. If, within 14 days of the relevant Contract Managers' meeting, the parties fail to agree any revision to the Business Continuity Plan, any dispute or disagreement in relation to the Business Continuity Plan shall be resolved in accordance with Clause 36 (Dispute Resolution).

- 14.4 The Subcontractor shall ensure that it is able to implement the Business Continuity Plan at any time in accordance with its terms.
- 14.5 The Subcontractor shall undertake regular risk assessments in relation to the provision of the Services and no less than once every six months and shall provide the results of, and any recommendations in relation to, those risk assessments to O&S promptly in writing following each review.
- 14.6 The Subcontractor shall establish, maintain, and review its own internal processes and procedures with respect to the identification of any threats or risks to the provision of the Services, how such threats and risks may be mitigated and how the provision of the Services may be maintained in the event of any such identified threats or risks materialising.
- 14.7 If the Subcontractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Authority, Serco and/or O&S, the Subcontractor may (subject to Clause 2B) request a reasonable allowance of time and in addition, O&S will (subject to Clause 2B) reimburse any additional expense reasonably incurred by the Subcontractor, which has been approved in advance, in writing by an authorised representative of O&S, as a direct result of such disruption.

## **15. Change Control**

- 15.1 Each party acknowledges that the nature of the Services covered by this Contract requires timely, active and positive co-operation between the parties to resolve issues not foreseen by the parties upon its commencement and each party shall co-operate in good faith with the other to resolve such issues in a timely and reasonable manner.
- 15.2 Notwithstanding any other provision of this Contract, this Contract may only be varied or amended with the written agreement of both parties. The terms of any such agreement shall be established in accordance with the provisions of Schedule 16 (Contract Change Control) which shall apply for the purposes of:

- (a) regulating the procedure for the making of changes to this Contract and/or the Services which are provided under this Contract; and
- (b) establishing the terms and scope of any such change.

15.3 The Subcontractor shall provide assistance, information and documentation to enable O&S to discharge O&S's obligations in relation to responding to and pricing an Authority Proposed Change Paper pursuant to the Prime Contract (where such Authority Proposed Change Paper is relevant to the Services) or a change under the O&S Contract.

15.4 To the extent that O&S is required to implement an Authority change under the Prime Contract or implement a change pursuant to the O&S Contract which will cause the Subcontractor to incur additional costs or lose revenue, such costs or loss of revenue will be paid in accordance with a payment profile agreed as part of the response to the Authority Proposed Change Paper or response to a change pursuant to the O&S Contract submitted by O&S in consultation with the Subcontractor. Any payment due from O&S to the Subcontractor is expressly subject to Clause 2B.

15.5 Where O&S or the Subcontractor initiates a change to this Contract that does not derive from an Authority Proposed Change Paper issued under the Prime Contract or a change to the O&S Contract, the provisions of Schedule 16 (Contract Change Control) shall apply.

## **16. Remedial Action**

16.1 If at any time the Subcontractor is in Default (including, without limitation, a failure to meet the Key Performance Indicators) and such Default of the Subcontractor has not arisen directly from a Default of O&S or (subject to Clause 2B) a Default of the Authority or Serco or from a Force Majeure Event or from a breach by another O&S subcontractor, then notwithstanding any other provision in this Contract, the Subcontractor shall, at no additional cost to O&S and without prejudice to O&S's other rights and remedies, arrange all such additional resources as are necessary, and shall take all necessary remedial action to correct, such Default as soon as practicable thereafter.

## **17. Default Notice**

17.1 Where O&S (acting reasonably) considers that the Subcontractor is in Default (other than a Default (i) arising directly from a breach of this Contract by O&S, (ii) arising directly from a breach by the Authority of its obligations under the

Prime Contract, (iii) arising directly from a breach by Serco of its obligations under the O&S Contract or (iv) arising directly from a breach by another O&S sub-contractor) O&S may issue a Default Notice which shall set out details of the Default and the action which O&S requires the Subcontractor to take so as to remedy the circumstances giving rise to the service of the relevant notice.

17.2 At the Contract Managers' meeting next following the service of a Default Notice (or earlier if O&S so requires in the relevant Default Notice), the Contract Managers shall agree (in conjunction with the Authority and Serco (where the Default is also a Default under the Prime Contract and/or the O&S Contract)) a Remedial Plan (such plan to be prepared by the Subcontractor) which shall set out the corrective action (if any) which is to be taken by the Subcontractor (and to the extent appropriate, the Authority and/or Serco and/or O&S) so as to remedy the circumstances giving rise to the service of the relevant notice. Where the Remedial Plan is required pursuant to the Prime Contract, to the extent that the Contract Managers are unable to agree on such Remedial Plan, the decision of the Authority Contract Manager (acting reasonably) shall be final and binding on the parties otherwise the decision of O&S's Contract Manager (acting reasonably) shall be final and binding.

17.3 Without prejudice to any other rights or remedies which either party may have under this Contract, the parties each agree to undertake any action which they are required to take as part of any Remedial Plan which is agreed or determined pursuant to Clause 17.2.

#### *Step-in rights*

17.4 O&S may take action under this clause (and the Subcontractor acknowledges that the Authority may take action under Clause 17 of the Prime Contract and Serco may take action under Clause 17 of the O&S Contract) in the following circumstances:

- (a) there is a Default entitling O&S to terminate for cause in accordance with Clause 21;
- (b) there is a Default by the Subcontractor that is materially preventing or materially delaying the performance of the Services or any part of the Services;
- (c) O&S reasonably considers that it needs to step-in to maintain the Services and/or to prevent a step-in arising pursuant to the Prime Contract or the O&S Contract or to prevent Service Credits arising or increasing pursuant to the O&S Contract;

- (d) because a serious risk exists to the health or safety of persons, property or the environment;
- (e) where O&S reasonably believes that the acts or omissions of the Subcontractor have or will result in loss, suspension or termination of services to the extent that may put Serco in material breach of the Prime Contract and/or O&S in material breach of the O&S Contract; or
- (f) where the Subcontractor fails to prepare a Remedial Plan pursuant to Clause 17.2 or implement a Remedial Plan in accordance with Clause 17.3.

*Action To Be Taken Prior To Exercise Of The Right Of Step-in*

17.5 Before O&S exercises its right of step-in under this Clause 17, it shall permit the Subcontractor the opportunity to demonstrate to O&S's reasonable satisfaction within 3 Business Days that the Subcontractor is still able to provide the Services in accordance with the terms of this Contract and/or remedy the circumstances giving rise to the right to step-in without the requirement for O&S to take action.

17.6 If O&S is not satisfied with the Subcontractor's demonstration pursuant to Clause 17.5, O&S may:

- (a) where it considers it expedient to do so, require the Subcontractor by notice in writing to take those steps that O&S considers reasonably necessary or expedient (or as required by the Authority pursuant to Clause 17.6 of the Prime Contract or Serco pursuant to Clause 17.6 of the O&S Contract) to mitigate or rectify the state of affairs giving rise to O&S's right to step-in;
- (b) appoint any person or company to work with or alongside the Subcontractor in performing that part of the Services (including those provided by any of the Subcontractor's sub-contractors) that O&S reasonably considers is not being delivered correctly for such time as is necessary to restore the delivery of the relevant part of the Service to the required level; or
- (c) take the steps that O&S reasonably considers appropriate (or as required by the Authority pursuant to Clause 17.6 of the Prime Contract or Serco pursuant to Clause 17.6 of the O&S Contract) to ensure the performance of all or part of the Services (including those provided by any of the Subcontractor's sub-contractors).

17.7 The Subcontractor shall co-operate fully and in good faith with O&S, or any other person appointed in respect of Clause 17.6(b), and shall adopt any

reasonable methodology in providing the Services connected to the step-in being considered pursuant to Clause 17.5 recommended by O&S or that person.

*Exercise of the Right of Step-in*

17.8 If the Subcontractor:

- (a) fails to confirm within 6 Business Days of a notice served pursuant to Clause 17.6(a) that it is willing to comply with that notice; or
- (b) fails to work with a person appointed in accordance with Clause 17.6 (b); or
- (c) fails to take the steps notified to it by O&S pursuant to clause 17.6(c),

then O&S (or the Authority pursuant to the Prime Contract or Serco pursuant to the O&S Contract) may take action under this clause either through itself or with the assistance of third party contractors, provided that the Subcontractor may require any third parties to comply with a confidentiality undertaking equivalent to Clause 29 (Confidentiality).

17.9 If O&S (or the Authority pursuant to the Prime Contract or Serco pursuant to the O&S Contract) takes action pursuant to Clause 17.8, O&S shall serve notice (a "Step-in Notice") on the Subcontractor or shall pass on any such notice provided by the Authority pursuant to the Prime Contract. The Step-in Notice shall set out the following:

- (a) the action O&S (or the Authority or Serco) wishes to take and in particular the Services it wishes to control;
- (b) the reason for and the objective of taking the action and whether O&S (or the Authority or Serco) reasonably believes that the primary cause of the action is due to the Subcontractor's Default;
- (c) the date it wishes to commence the action;
- (d) where clause 17.9 of the Prime Contract has been exercised by the Authority (or clause 17.9 of the O&S Contract has been exercised by Serco), a reasonable time period to complete the action such period being determined having regard to the time period stipulated under clause 17.9 of the Prime Contract (or clause 17.9 of the O&S Contract) and the Parties acknowledge and agree that the period granted to the Contractor under this clause 17.9 must enable O&S to deliver under the O&S Contract

and shall be shorter than any period granted to O&S under clause 17.9 of the O&S Contract; or where clause 17.9 of the Prime Contract (or clause 17.9 of the O&S Contract) has not been exercised by the Authority, a reasonable time period to complete the action;

- (e) whether O&S (or the Authority or Serco) will require access to the Subcontractor's premises and/or the Accommodation; and
- (f) to the extent practicable, the effect on the Subcontractor and its obligations to provide the Services during the period the action is being taken.

17.10 Following service of a Step-in Notice, O&S shall (or shall procure that the Authority or Serco shall):

- (a) take the action set out in the Step-in Notice and any consequential additional action as it reasonably believes is necessary to achieve (together, the "Required Action");
- (b) keep records of the Required Action taken and provide information about the Required Action to the Subcontractor;
- (c) co-operate wherever reasonable with the Subcontractor in order to enable the Subcontractor to continue to provide any Services in relation to which O&S (or the Authority or Serco) is not assuming control; and
- (d) act reasonably in mitigating the cost that the Subcontractor will incur as a result of the exercise of O&S's rights under this clause or the Authority's rights pursuant to Clause 17.10 of the Prime Contract (or Serco's rights pursuant to Clause 17.10 of the O&S Contract).

17.11 For so long as and to the extent that the Required Action is continuing, then (subject to Clause 2B in the case of Required Action taken by the Authority pursuant to the Prime Contract and Required Action taken by Serco pursuant to the O&S Contract):

- (a) the Subcontractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action; and
- (b) subject to Clause 17.12, O&S shall pay to the Subcontractor the Service Charges after the deduction of O&S's proper and reasonable costs (or the Authority's costs taken into account pursuant to clause 17.11(b) of the Prime Contract or Serco's costs taken into account pursuant to Clause 17.11(b) of the O&S Contract) of taking the Required Action.

17.12 If the Required Action results in the degradation of any Services not subject to the Required Action beyond that which would have been the case had O&S (or the Authority or Serco) not taken the Required Action, then the Subcontractor shall (subject to Clause 2B in the case of action taken by or at the direction of the Authority or Serco) be entitled to an adjustment of the Service Charges representing the Subcontractor's directly incurred and properly mitigated additional costs as a result of the degradation of the Services (to be discussed and agreed between O&S and the Subcontractor, and in default of agreement as determined pursuant to Clause 36), provided that the Subcontractor can demonstrate to the reasonable satisfaction of O&S that the Required Action has led to the degradation or non-Achievement of such Services.

17.13 Before ceasing to exercise its step in rights under this clause, O&S shall deliver (or pass on such notice from the Authority or Serco) a written notice to the Subcontractor (a "**Step-Out Notice**"), specifying:

- (a) the Required Action that has actually been taken; and
- (b) the date on which O&S (or the Authority or Serco) plans to end the Required Action (the "**Step-Out Date**") subject to O&S (or the Authority or Serco) being satisfied with the Subcontractor's ability to resume the provision of the Services and the Subcontractor's plan developed in accordance with Clause 17.14

17.14 The Subcontractor shall, following receipt of a Step-Out Notice and not less than 20 Business Days prior to the Step-Out Date, develop for O&S's approval a draft plan (a "**Step-Out Plan**") relating to the resumption by the Subcontractor of the Services, including any action the Subcontractor proposes to take to ensure that the affected Services satisfy the requirements of this Contract.

17.15 If O&S does not approve the draft Step-Out Plan (which O&S shall consider with the Authority or Serco where relevant), O&S shall inform the Subcontractor of its reasons for not approving such plan. The Subcontractor shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to O&S for approval. O&S shall not withhold or delay approval of the draft Step-Out Plan unnecessarily.

17.16 The Subcontractor shall bear its own costs in connection with any step-in and step-out by O&S under this Clause 17.

17.17 Where O&S exercises any step-in pursuant to this Clause 17 that is independent of any step-in by the Authority or Serco pursuant to the Prime

Contract or O&S Contract, O&S shall, subject to clause 17.13 (b), ensure that the length of such step-in is kept to a reasonable period.

17.18 For the avoidance of doubt, if

- (a) during the period that the Required Action is being taken pursuant to this clause 17:
  - (A) the Required Action continues for a period longer than 25 (twenty five) days over and above the time period determined pursuant to Clause 17.9 (d); or
  - (B) O&S and/or the Authority and/or Serco exercise their rights of step-in under this Clause 17 in respect of an alternative aspect of the Services; or
- (b) Serco, O&S and/or the Authority exercise their rights of step-in under this Clause 17 in respect of the same aspect of the Services on more than two (2) occasions within any 9 month period;

then (without prejudice to any other rights it may have under or pursuant to this Contract) the Subcontractor shall lose any right that it may have to exclusively provide such Services for the remainder of the Contract Term and O&S shall have the right to terminate the Services in respect of which the rights of step-in have been exercised.

## 18. Performance Regime

18.1 The provisions of Schedule 13 (*Performance Regime*) shall apply with effect from the Contract Effective Date.

## 19. Indemnity

19.1 The Subcontractor shall be responsible for, and shall indemnify O&S, its employees, agents and sub-contractors against:

- (a) all losses incurred by Serco for which O&S is liable pursuant to Clause 19.1(a) to (e) of the O&S Contract;
- (b) all costs, losses and liabilities incurred by O&S in relation to the termination of the Prime Contract excluding all loss of future profit to O&S under the O&S Contract;
- (c) the death of or injury to any person including without limitation any Service User;

- (d) the loss of or damage to property (including without limitation property belonging to a Service User, and property belonging to O&S or in respect of which O&S bears the risk); and
- (e) (subject to Clause 19.4) any other losses, claims, liabilities or expenses,

which in each case may arise out of, or in the course of, or by reason of, any breach of contract, tort (including negligence), breach of statutory duty, misrepresentation, misstatement, act, omission or Default of the Subcontractor, its employees, sub-contractors or agents in the Subcontractor's performance, non-performance or part-performance of this Contract.

19.2 The Subcontractor shall not be responsible for, and shall not be liable under the indemnity in Clause 19.1 for, losses to the extent that such losses are caused by any breach of contract, tort, breach of statutory duty, misrepresentation, misstatement, or default of the Authority or Serco or O&S or their employees, agents or sub-contractors (other than the Subcontractor or its employees, agents or sub-contractors).

19.3 Save where the claim relates:

- (a) to the provisions of Clause 9.8;
- (b) to intellectual property rights infringement;
- (c) to breaches of the Data Protection Act 1998;
- (d) to the death or personal injury of any person;
- (e) or arises as a result of any fraud, fraudulent representation or wilful concealment or the wilful default or abandonment of this Contract by the Subcontractor or any Subcontractor Related Party;
- (f) to any insured liabilities of the Subcontractor (together with excesses/deductibles), whether insured by the Subcontractor or another party, and liabilities for which the Subcontractor is required to insure pursuant to the terms of this Contract, subject to agreed indemnity limits in the relevant policies;
- (g) any uninsured liabilities of the Subcontractor where such liabilities arise due to a failure by the Subcontractor to take out or maintain any of the insurances required pursuant to

the terms of this Contract or as a result of the Subcontractor breaching any of the terms of such policies, subject to agreed indemnity limits in the relevant policies,

the maximum liability of the Subcontractor in respect of any claim (whether caused by negligence or otherwise) under the indemnities contained in this Contract, for any breach of this Contract or for any tort, breach of statutory duty, misrepresentation, misstatement in connection with this Contract shall in no event exceed the sum of ten million pounds (£10,000,000) per claim. For the avoidance of doubt, the liability of the Subcontractor in connection with any claim(s) relating to any of the matters contained in sub-clauses 19.3 (a) to 19.3 (g) (inclusive) is unlimited.

19.4 Subject to Clauses 11.31, 11.32, and 19.5 and the Service Charges provisions and notwithstanding Clause 19.3, neither party will be liable to the other party for:

- (a) any indirect special or consequential loss or damage;
- (b) any loss of profits, turnover, business opportunities, damage to goodwill (whether direct or indirect) or anticipated savings.

For the avoidance of doubt the costs, expenses and liabilities referred to in Clause 19.5 shall not be considered to be indirect or consequential losses or damage for the purposes of this Clause.

19.5 O&S may, in the event of a default by the Subcontractor, recover as a direct loss:

- (a) any additional operational and/or administrative costs and expenses arising from the Subcontractor's Default;
- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by O&S arising from the Subcontractor's Default; and
- (c) the additional cost of procuring alternative services similar to the Services arising from the Subcontractor's Default;

provided that such losses in the case of O&S shall be limited to those properly and reasonably incurred by O&S and that such losses in the case of the Authority or Serco shall be limited to those properly recoverable pursuant to Clause 19.5 of the Prime Contract or Clause 19.5 of the O&S Contract.

- 19.6 The parties expressly agree that if any limitation or provision contained or expressly referred to in Clauses 19.4 and/or 19.5 is held to be invalid under any law, it will be deemed omitted to that extent, and if any party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in Clauses 19.4 and/or 19.5.
- 19.7 O&S shall at all times take all reasonable steps to minimise and mitigate any loss for which O&S is entitled to bring a claim against the Subcontractor under this Contract.
- 19.8 O&S will use reasonable endeavours to consult with the Subcontractor regarding any third party claim giving rise to losses exceeding ten thousand pounds (£10,000) for which the Subcontractor is liable to indemnify O&S.

## 20. Insurance

- 20.1 Without prejudice to its liability to indemnify O&S under this Contract, the Subcontractor shall for the periods specified in Schedule 9 (*Insurance*) take out and maintain or procure the taking out and maintenance of the insurances specified in Schedule 9 (*Insurance*) and any other insurances as may be required by Law (together the "**Required Insurances**"). The Subcontractor shall ensure that the Required Insurances are effective in each case not later than the date on which the relevant risk commences.
- 20.2 The Required Insurances shall be taken out and maintained with insurers who are (in the reasonable opinion of O&S) of good financial standing, sound security and of good repute in the international insurance market.
- 20.3 The Subcontractor shall procure in respect of each of the public and products liability, employers' liability insurance and third party motor liability insurance that:
- (a) the policies of insurance shall contain an indemnity to principals clause under which the Authority, Serco and O&S shall be indemnified in respect of claims made against the Authority, Serco and O&S arising from death or bodily injury or third party property damage and for which the Subcontractor is legally liable in the provision of the Services under this Contract;
  - (b) other than in respect of third party motor liability insurance, the policies of insurance contain a clause waiving all rights of subrogation or action that Insurers may acquire against the Authority, Serco and O&S and their employees, servants and agents. The

provisions of this Clause 20.3 shall not apply against any Authority, Serco and/or O&S employee, servant or agent who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate non disclosure or deliberate breach of policy condition.

20.4 Without limiting the other provisions of this Contract, the Subcontractor shall:

- (a) take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a Subcontractor acting in accordance with best industry practices in relation to risk management including but not limited to the investigation and reports of insurance claims to insurers;
- (b) use reasonable endeavours to provide that any insurance brokers through whom any insurances to be effected by the Subcontractor are effected and maintained shall maintain intact their files (including all documents disclosed and correspondence in connection with the placement of those insurances and the payment of premiums and claims under such insurances) until the date specified in Schedule 9 (*Insurance*)

20.5 The Subcontractor shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any Insurer to refuse to pay any claim under any of the Required Insurances.

20.6 The Authority, Serco or O&S may elect (but shall not be obliged) after written notice has been provided to the Subcontractor to purchase any Required Insurance which the Subcontractor is required to maintain pursuant to this Contract but has failed to purchase and maintain in full force and effect, and O&S shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Subcontractor.

20.7 On request from O&S, the Subcontractor shall, not more than ten (10) Business Days after the Contract Signature Date and within ten (10) Business Days after the renewal of the Required Insurances, provide evidence, in a form satisfactory to O&S, that the Required Insurances are in force and effect and meet the requirements of this Clause 20 (*Insurance*) and Schedule 9 (*Insurance*). Neither inspection, nor receipt of such evidence shall constitute acceptance by O&S of the terms thereof, nor be a waiver of the Subcontractor's liability under this Contract. For the avoidance of doubt, the Subcontractor shall not be required to provide to O&S sight of the Subcontractor's insurance policies or information that is confidential to customers of the Subcontractor.

20.8 Where the insurers purport to cancel, suspend or terminate the Required Insurances, the Subcontractor shall as soon as is reasonably practicable notify O&S in writing.

20.9 The Subcontractor shall promptly notify to its insurers any matter arising from or in relation to the Services and/or this Contract for which it may be entitled to claim under any of the Required Insurances. In the event that the Authority, Serco and/or O&S receives a claim relating to the Services or this Contract, the Subcontractor shall co-operate with the Authority, Serco and/or O&S (as applicable) and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

20.10 (Except where O&S is the claimant party) the Subcontractor shall give O&S notification within fifteen (15) Business Days after any claim in excess of fifty thousand pounds (£50,000) relating to the provision of the Services or this Contract on any of the Required Insurances or which, but for the application of the applicable excess or deductible, would be made under any of the Required Insurances and (if covered by O&S) for the details of the incident given to the Authority.

Where the Subcontractor is required to pay a premium, the Subcontractor shall be liable for such premium.

20.12 Where the Subcontractor is required to pay an excess or deductible below the sum insured, the Subcontractor shall be liable for such excess or deductible and shall indemnify O&S against any loss or claims which would otherwise be insured but for the excess or deductible. The Subcontractor shall not be entitled to recover from O&S any sum paid by way of excess or deductible under the Required Insurances whether under the terms of this Contract.

## 21. Termination

### *Early Termination*

21.1 Where the Authority exercises its right to terminate the Prime Contract pursuant to Clause 21.1 of the Prime Contract O&S shall give to the Subcontractor not less than sixty (60) days written notice of such termination.

21.2 O&S may at any time, by giving to the Subcontractor such notice (if any) as O&S may determine, terminate this Contract in any of the following circumstances:

- (a) the Subcontractor is in Material Default and either such Material Default is not capable of remedy or the Subcontractor has failed to comply with its obligations under Clauses 16 (Remedial Action) and 17 (Default Notices);
- (b) the Subcontractor incurs more than 6000 points in accordance with Schedule 13 (Performance Regime) in any Payment Period;
- (c) in any period of 2 consecutive Payment Periods, there shall be more than 2 Default Notices in existence and in respect of which, the events giving rise to the service of the relevant notices shall not have been remedied to the reasonable satisfaction of the O&S Contract Manager in accordance with the relevant Remedial Plan;
- (d) not used.
- (e) any of the following occur in relation to the Subcontractor:
  - (i) it passes a resolution, or a court makes an order, that it be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation previously approved by O&S;
  - (ii) a receiver, manager or administrator on behalf of a creditor is appointed in respect of its business or any part of it;
  - (iii) circumstances arise which entitle a court or a creditor to appoint a receiver, manager or administrator or which entitle a court otherwise than for the purpose of a bona fide reconstruction or amalgamation previously approved in writing by O&S to make a winding-up order;

- (iv) it is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (or the equivalent under Northern Ireland legislation);  
or
  - (v) any similar event occurs under the law of any other jurisdiction;
- (f) (unless O&S has consented in writing in advance to any Change of Control taking place) a Change of Control in the Subcontractor has taken place which the Authority, Serco and/or O&S has reasonable grounds for believing will adversely affect either:
- (i) the Subcontractor's suitability to continue providing the Services and/or its ability to perform its obligations, and/or meet its liabilities, under this Contract; or
  - (ii) not used;
  - (iii) the public regard in which the Authority, Serco, O&S and/or the Services are held,
- provided that where any right to terminate arises under this sub-clause (f), such right shall only be capable of being exercised within 6 months after the occurrence of the relevant Change of Control and after O&S has undertaken reasonable consultations with the Subcontractor over whether or not to exercise such right;
- (g) the circumstances set out in Clause 17.18 (Exercise of the Right of Step In);
  - (h) the Subcontractor makes any public announcement, or informs O&S, that the Subcontractor is no longer going to continue to provide services similar to the Services;
  - (i) the circumstances set out in Clause 31.4 or if the Subcontractor is in breach of Clauses 31 to 32 inclusive (Conduct of the Subcontractor);
  - (j) there is any material breach by the Subcontractor of the Warranties, or any further warranties given at the time that the Subcontractor enters into any Change Control Note (as defined in paragraph 1.2 of Schedule 16 (*Contract Change Control*));
  - (k) a Force Majeure Event in respect of the Subcontractor has been in existence for more than 12 weeks; and/or

- (l) the Subcontractor does anything or omits to do anything, whether in performance of its obligations under this Contract or otherwise, which in the reasonable opinion of the Authority, Serco or O&S may materially adversely affect the reputation of the Authority, Serco or O&S or cause material embarrassment to the Authority, Serco or O&S.

21.3 O&S shall not be entitled to terminate this Contract under Clause 21.2 if and to the extent that, the grounds for such termination arise directly from a Default of O&S or a default of Serco pursuant to the O&S Contract or a default of the Authority pursuant to the Prime Contract.

*Termination by the Subcontractor*

21.4 The Subcontractor may at any time terminate this Contract, by giving to O&S such notice (if any) as the Subcontractor may determine, if:

- (a) O&S has failed to make payment of any Service Charges and such payment is at least 120 days overdue, provided that:
  - (i) such payment is not subject to a bona fide dispute;
  - (ii) at least 120 days before exercising such termination right, the Subcontractor has given notice (which may be given at any time after the relevant payment becomes overdue) to O&S that it proposes to exercise such termination right; and
  - (iii) O&S has not remedied such failure within the 95 days notice period; or
- (b) a Force Majeure Event in respect of O&S has been in existence for more than 8 weeks and the Subcontractor has given O&S at least 90 days notice of its intention to exercise such right and such Force Majeure Event has not ceased within such 90 day period.
- (c) O&S has committed a material breach of its obligations under this Contract which:
  - (i) does not arise as a result of an act or omission by the Authority or Serco; and
  - (ii) substantially frustrates the provision by the Subcontractor of the Services under this Contract; and

- (iii) has not been rectified within 60 days of notification of the same from the Subcontractor to O&S.

#### *Duty to Notify*

- 21.5 As soon as reasonably practicable after becoming aware of the same, the Subcontractor shall notify O&S of the occurrence of any event which may give O&S the right to terminate this Contract under Clause 21.2.

#### *Termination of the Prime Contract*

- 21.6 In the event of termination of the O&S Contract, this Contract shall automatically terminate.

#### *Payment on Early Termination*

- 21.7 If there is an Authority Termination Event or a Serco Termination Event or a O&S Termination Event, provided the Subcontractor has complied fully with its obligations in Clause 22 (Handover) and Schedule 4 (*Exit Management and Handover*), O&S shall (subject to Clause 2B where the Authority Termination Event arises as a result of an Authority Termination Event as defined in the Prime Contract or a Serco Termination Event) reimburse to the Subcontractor the Unavoidable Breakage Costs and the Termination Redundancy Costs as set out in Schedule 18 (*Payments on Termination*), provided that the Subcontractor has used all reasonable endeavours to mitigate such costs and the amount payable under this Clause 21.7 shall in no circumstances be more than what would otherwise be due to the Subcontractor for the remainder of the Contract Term.
- 21.8 Save as set out in Clause 21.7, the Subcontractor shall have no right to receive any payment in respect of any termination of this Contract by O&S and/or any loss of profit suffered by or costs incurred by the Subcontractor and/or any Subcontractor Related Parties as a result of or in respect of such termination.
- 21.9 The provisions of Schedule 18 (*Payments on Termination*) shall apply in respect of, any payments made or to be made by O&S under Clause 21.7.
- 21.10 For the avoidance of doubt, the payment by O&S of any Unavoidable Breakage Costs and/or Termination Redundancy Costs shall not affect any liability of any party which may have arisen or accrued prior to the relevant termination.

21.11 In the event of this Contract terminating pursuant to Clause 21.2, the Subcontractor shall be liable to O&S for the reasonable costs incurred by O&S of procuring a Successor Subcontractor, the reasonable costs of providing the Services by the Successor Subcontractor to the extent such costs exceed the costs of the Subcontractor's costs of providing the Services and for any reasonable costs that O&S may incur under the Prime Contract as a result of the termination of this Contract.

*Cap on liability*

21.12 Without prejudice to Clause 2B, where this Contract is terminated pursuant to Clause 21.6 the maximum aggregate liability of O&S to the Subcontractor under this Contract in respect of the payment of any Unavoidable Breakage Costs and/or Termination Redundancy Costs (pursuant to Clause 21.7) shall not exceed an amount equal to the amount of Unavoidable Breakage Costs and Termination Redundancy Costs (as defined in the Prime Contract) apportioned to this Contract that O&S receives from Serco under the O&S Contract as a result of the termination of the Prime Contract.

**22. Handover**

O&S and the Subcontractor shall comply with their respective obligations set out in Schedule 4 (*Exit Management and Hand Over*).

**23. Force Majeure**

*Effect of Force Majeure*

23.1 To the extent that a party can demonstrate, to the reasonable satisfaction of the other party, that the circumstances which give rise to (or which would but for this Clause 23.1 give rise to) a Default by the first mentioned party are attributable to a Force Majeure Event, then that party's obligations under this Contract shall, during the continuation of the Force Majeure Event, be read and construed, for the purpose of assessing whether a Default has occurred, as an obligation to comply with such obligations to the extent reasonably achievable in the circumstances of the Force Majeure Event.

23.2 Where there is a Force Majeure Event occurring in respect of the Subcontractor, the Service Charges in respect of any Services affected shall be reduced in order to reflect the extent and standard to which such Services are being provided. The Subcontractor shall allow to O&S an appropriate rebate on the

Service Charges in respect of the period during which the Force Majeure Event continues.

- 23.3 For the avoidance of doubt, each party shall be wholly responsible for the costs and expenses of reinstating the provision of all the Services following the ending of the suspension of the Services, or any of them, arising as a result of a Force Majeure Event in relation to that party.

#### *General Provisions*

23.4 Neither party shall be entitled to invoke the provisions of this Clause 23 unless it fully performs the following obligations, namely:

- (a) as soon as reasonably practicable after becoming aware of any Force Majeure Event which gives rise, or which is likely to give rise, to a Default, the relevant party notifies the other of the occurrence, or likely occurrence, of the Force Majeure Event, giving:
- (i) details of the Force Majeure Event;
  - (ii) a reasonable estimate of the period for which such Default is, or may be, anticipated to continue; and
  - (iii) an outline of the remedial actions which the relevant party intends to undertake to deal with the Force Majeure Event;
- (b) where practicable, given the nature and severity of the Force Majeure Event, the relevant party arranges a meeting with the other party for the purpose of demonstrating that the circumstances giving rise to the relevant Default are attributable to a Force Majeure Event; and
- (c) it takes all reasonable steps to prevent, avoid, overcome and mitigate the effects of such Force Majeure Event.

23.5 Nothing in this Clause 23 shall affect either party's ability to terminate this Contract in accordance with the provisions of this Contract.

#### **24. Authority/Serco Collateral Warranty**

- 24.1 If required by O&S the Subcontractor shall enter into and deliver to O&S the Authority Collateral Warranty in the form appended to the O&S Contract with such amendments as O&S may require.

24.2 If applicable, O&S shall not be obliged to make any payments under this Contract until the Subcontractor has complied with Clause 24.1.

24.3 If required by O&S, the Subcontractor shall enter into a Sub-contractor's Agreement with Serco in respect of this Contract and/or provide a collateral warranty in favour of Serco in such form as O&S may require.

## 25. Property and Premises

25.1 Where the Subcontractor needs to operate on any premises of the Authority, O&S or Serco, it shall occupy such premises as a licensee.

25.2 While on any land or premises of the Authority, Serco or O&S, the Subcontractor shall:

- (a) comply with Schedule 21 (*Security Requirements and Plan*) and all of the Authority's, Serco's and O&S's policies, including those relating to safety, security, business ethics, work place harassment, drugs and alcohol and any other on-site regulations specified by the Authority, Serco and/or O&S for personnel working at the Authority's, Serco's and/or O&S's premises; and
- (b) procure that all of its employees, agents and sub-contractors shall likewise comply with such requirements.

25.3 Upon request, O&S shall provide the Subcontractor with (or obtain from the Authority or Serco) copies of any rules and procedures referred to in Clause 25.2.

25.4 O&S reserves the right to refuse to admit to any premises occupied by or on behalf of the Authority, Serco and/or O&S any person employed or engaged by the Subcontractor or by a sub-contractor of the Subcontractor whose admission would be, in the opinion of the Authority in respect of the Authority premises or Serco in respect of Serco premises or O&S in respect of O&S premises, undesirable.

25.5 All equipment and materials which are on any premises of the Authority, Serco or O&S, and which are provided by or on behalf of the Subcontractor, shall stand at the risk and be in the sole charge of the Subcontractor.

25.6 The Subcontractor shall provide all the Subcontractor Equipment necessary for the supply of the Services and shall maintain in good and working condition all such Subcontractor Equipment throughout the Contract Term. In order to keep

the Subcontractor Equipment in good working condition, where reasonably deemed to be necessary by Serco, O&S or the Authority, the Subcontractor shall, as soon as reasonably practicable repair or replace (if such item is beyond repair) any item of Subcontractor Equipment that is no longer in a good and working condition.

## 26. Security Provisions

- 26.1 The Subcontractor shall comply with the requirements of Schedule 21 (*Security Requirements and Plan*).
- 26.2 The Subcontractor shall comply, and shall procure the compliance of its staff, with the Security Policy and the Security Plan and the Subcontractor shall ensure that the Security Plan produced by the Subcontractor fully complies with the Security Policy.
- 26.3 O&S shall notify the Subcontractor of any changes or proposed changes to the Security Policy.
- 26.4 If the Subcontractor believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services, it may submit a request for a change to the Contract in accordance with Clause 15 (*Change Control*). In doing so, the Subcontractor must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. O&S shall (where applicable) pursue such change to the Security Policy with Serco and the Authority. Any change to the Contract Price shall then be agreed between O&S and Serco and the Authority (where applicable) and then between O&S and the Subcontractor in accordance with the change control procedure set out in Schedule 16 (*Contract Change Control Procedures*) of the respective contracts.
- 26.5 Until and/or unless a change to the Service Charges is agreed by O&S pursuant to Clause 26.4, the Subcontractor shall continue to perform the Services in accordance with its existing obligations.

## 27. Warranties and Representations

### *General*

27.1 The Subcontractor warrants to O&S:

- (a) as of the Contract Signature Date, the terms set out in Part A of Schedule 11 (*Warranties*); and
- (b) as of each Termination Warranty Date, the terms set out in Part B of Schedule 11 (*Warranties*).

27.2 Each of the *Warranties* shall be construed as a separate and independent warranty, representation or undertaking (as the case may be) to the intent that a separate claim and right of action shall arise in respect of each breach of any *Warranty*. Save as expressly provided in this Contract, none of the *Warranties* shall be limited by any other *Warranty* or anything in this Contract.

27.3 The Subcontractor acknowledges that O&S:

- (a) is, in entering into this Contract, relying on the *Warranties* set out in Part A of Schedule 11 (*Warranties*); and
- (b) will be relying on the *Warranties* set out in Part B of Schedule 11 (*Warranties*) when entering into a contract with a Successor Subcontractor and/or deciding not to enter into such a contract with a Successor Subcontractor.

### *Determination of Termination Warranty Date*

27.4 In respect of any proposed Termination Transfer, O&S shall (as soon as reasonably practicable after becoming aware of the likely occurrence of the same), notify the Subcontractor of the nature of the proposed Termination Transfer and the date on which it is likely to require the Subcontractor to give the *Warranties* set out in Part B of Schedule 11 (*Warranties*) in respect of that Termination Transfer. O&S shall further:

- (a) notify the Subcontractor of any change to such nature or date as soon as reasonably practicable after becoming aware of any such change; and
- (b) shall confirm the relevant date on which such *Warranties* are to be given by the Subcontractor in advance of the relevant date occurring (and at the same date confirm to the Subcontractor the proposed date of the relevant Termination Transfer).

*Disclosure*

- 27.5 The Warranties set out in Part B of Schedule 11 (*Warranties*), which are given by the Subcontractor on the relevant Termination Warranty Date, are given subject to and are qualified by the matters fairly disclosed in the relevant Termination Disclosure Letter. The Subcontractor is required to give the Termination Disclosure Letter to O&S on the relevant Termination Warranty Date.
- 27.6 At least five weeks in advance of any proposed Termination Warranty Date, the Subcontractor shall provide O&S with a draft of the Termination Disclosure Letter which the Subcontractor proposes to deliver to O&S in accordance with Clause 27.5. When reasonably required by O&S to do so, the Subcontractor shall update such draft to include all such matters which it would want to disclose if the Termination Warranty Date was the date on which the relevant update is provided.
- 27.7 Each Termination Disclosure Letter shall be substantially in the form of the draft set out in Schedule 17 (*Draft Termination Disclosure Letter*) but amended to include further matters which the Subcontractor wishes to disclose against the relevant warranties (but only to the extent that such further matters are reasonably specific and the implications of them are reasonably capable of being properly understood by O&S).
- 27.8 Other than any information contained in the relevant Termination Disclosure Letter delivered to O&S on the relevant Termination Warranty Date, no information of which O&S has knowledge (actual or constructive) shall prejudice any claim which O&S may have in respect of the Warranties given on that Termination Warranty Date or operate to reduce any amount recoverable.
- 27.9 Nothing contained in any Termination Disclosure Letter shall in any way limit or reduce the liability of any party under any other provisions of this Contract.

*Proceeds of Warranty Claims*

- 27.10 Without restricting the rights of or the ability of O&S to claim damages on any basis in the event that any of the Warranties is broken and/or proves to be untrue or misleading, the Subcontractor shall pay to O&S:
- (a) the amount necessary to put O&S into the position which would have existed if the Warranties had not been broken and had been true and not misleading; and

- (b) an amount equal to all reasonable costs and expenses incurred by O&S directly or indirectly as a result of such breach.

27.11 Between each Termination Warranty Date and the relevant Termination Transfer, the Subcontractor shall not and shall procure that each of its Associates and its sub-contractors shall not (unless otherwise agreed in advance by O&S) do or omit to do anything which would give rise to a breach of the relevant Warranties in Part B of Schedule 11 (*Warranties*) if they were given on the date of Termination Transfer but:

- (a) without any update or amendment being made to the relevant Termination Disclosure Letter; and
- (b) on the basis that any express or implied reference to the relevant Termination Warranty Date is replaced by a reference to the date of the relevant Termination Transfer.

## **28. Assignment, Sub-Contracting**

28.1 The Subcontractor shall not, without the prior written consent of O&S, assign any or all of the benefit of this Contract.

28.2 Subject to Clause 28.4, the Subcontractor shall be entitled to appoint sub-contractors in the ordinary course of business, provided that:

- (a) any such sub-contract does not relate to a material part of the Services; and
- (b) the Subcontractor has first undertaken an investigation into, and satisfied itself (acting reasonably) as to, the appropriateness and suitability of the relevant sub-contractor.

28.3 For the purposes of Clause 28.2, the entering into of a contract, lease or licence, or a series of related contracts, leases and/or licences, for the provision of accommodation to the Subcontractor, which either:

- (a) is worth more than five hundred thousand pounds (£500,000) over its term;
- (b) is reasonably capable of being used for the accommodation, in accordance with this Contract, of IA Service Users; or
- (c) in the reasonable opinion of O&S relates to a key element of the Services,

shall be deemed to constitute a sub-contract that relates to a material part of the Services.

28.4 Where the Subcontractor wishes to enter into a sub-contract (or series of related sub-contracts) which relates to a material part of the Services (as defined in Clause 28.3), it shall not do so unless:

- (a) the Subcontractor has, no less than 25 Business Days before the proposed entering into of the relevant proposed sub-contract(s), given O&S written notice of the identity of the proposed sub-contractor and all such information (including a complete copy of the relevant proposed sub-contract) and assurances as O&S shall require (acting reasonably) as to the relationship between the Subcontractor and the proposed sub-contractor;
- (b) the Subcontractor has obtained O&S's prior written consent to the sub-contracting arrangement; and
- (c) (if so required by O&S) the Subcontractor and the relevant sub-contractor shall have entered into a Sub-contractor's Agreement with O&S and/or Serco and/or the Authority in respect of the relevant sub-contract(s) and (if required by O&S) the relevant sub-contractor shall have entered into a collateral warranty in favour of Serco, O&S and/or the Authority.

28.5 For the avoidance of doubt, the performance or proposed performance of any of the Subcontractor's obligations under this Contract by an Associate of the Subcontractor shall constitute the appointment or proposed appointment (as the case may be) of a sub-contractor.

28.6 The Subcontractor shall be deemed to have satisfied the requirements of Clause 28.4(a) and (b) in respect of the sub-contractors listed in Schedule 24 (*Material Sub-contractors*) but only for those purposes also set out in such Schedule.

28.7 O&S shall not unreasonably withhold or delay any consent, required by this Clause 28, and, if granted, any such consent may be subject to such conditions as O&S in its reasonable opinion may consider necessary or desirable.

28.8 O&S (acting reasonably) may withdraw its consent to the appointment of any sub-contractor on giving reasonable notice to the Subcontractor.

28.9 The appointment of any sub-contractor will not relieve the Subcontractor from any liability under this Contract and, notwithstanding any other provision of this Contract:

- (a) the Subcontractor will remain solely responsible and liable to O&S for obligations, services and functions performed by any sub-contractors to the same extent as if those obligations, services and functions were performed by the Subcontractor; and
- (b) O&S shall bear no responsibility for the assessment of the appropriateness or suitability of any sub-contractor.

28.10 The Subcontractor shall procure that the terms of the appointment of any sub-contractor shall be such that the sub-contractor shall be subject to, and O&S shall have the benefit of and be capable of enforcing, the rights of O&S, applied *mutatis mutandis*, set out in:

- (a) Clause 8 (Records, Rights of Inspection and Provision of Information);
- (b) this Clause 28; and
- (c) Clause 31 (Conduct of the Subcontractor).

28.11 If a sub-contractor of the Subcontractor is not, at the date of entering into the relevant contract, a Material Sub-contractor but subsequently becomes a Material Sub-contractor, the Subcontractor shall (if so required by O&S) procure that, at the relevant time, the relevant sub-contractor and the Subcontractor shall enter into a Sub-contractor's Agreement with O&S and/or Serco in respect of the relevant sub-contract and (if so required by O&S) an Authority Collateral Warranty with the Authority with such amendments as O&S may require.

28.12 The Subcontractor undertakes to O&S that it shall pay all amounts owing by the Subcontractor to any sub-contractor within 30 days of such amount becoming due.

## 29. Confidentiality

29.1 The Subcontractor's attention is drawn to the provisions of the Official Secrets Acts 1911 to 1989. The Subcontractor shall take all reasonable steps to ensure that all individuals engaged on any work in connection with this Contract have notice that these statutory provisions apply to them and shall continue to apply after the expiry or termination of this Contract.

29.2 Except to the extent set out in this Clause 29 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

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

29.3 Clause 29.2 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the party making the disclosure or the Authority, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to the provisions of regarding Freedom of Information;
- (b) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- (e) it is independently developed without access to the other party's Confidential Information.

29.4 O&S shall be entitled to disclose the terms of any provision of this Contract (together with associated definitions and rules of interpretation) to any person that shall be entitled to enforce such provision under the Contracts (Rights of Third Parties) Act 1999.

29.5 The Subcontractor acknowledges that any Confidential Information relating to O&S or O&S's respective servants or Subcontractors or customers which was or is obtained by the Subcontractor:

- (a) in the course of tendering or preparing for; and/or
- (b) in connection with the establishment or performance of,

this Contract is and shall remain the property of O&S.

29.6 The Subcontractor may only disclose O&S's Confidential Information to its staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such staff are aware of and shall comply with these obligations as to confidentiality.

29.7 The Subcontractor shall not, and shall procure that its staff do not, use any of O&S's Confidential Information received otherwise than for the purposes of this Contract.

29.8 Nothing in this Contract shall prevent O&S from disclosing the Subcontractor's Confidential Information (where required to do so pursuant to the Prime Contract or the O&S Contract):

- (a) to the Authority or Serco;
- (b) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
- (c) to any consultant, contractor or other person engaged by the Authority or Serco or O&S or any person conducting an Office of Government Commerce gateway review;
- (d) for the purpose of the examination and certification of the Authority's and/or Serco's and/or O&S's accounts; or
- (e) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (f) in response to a question in Parliament;
- (g) where it is reasonably necessary to disclose such information to any Successor Contractor or any potential Successor Contractor.

29.9 O&S shall procure that Serco and the Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Subcontractor's Confidential Information is disclosed pursuant to Clause 29.7 is made aware of the Authority's obligations of confidentiality.

29.10 Nothing in this Clause 29 shall prevent either party from using any techniques, ideas or Know-How gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

### **30. Publicity**

30.1 Save to the extent required to enable the Subcontractor to provide the Services in accordance with this Contract, the Subcontractor shall not make any press announcements or publicise this Contract in any way, except with the prior written consent of O&S.

30.2 The Subcontractor shall take all reasonable steps to ensure the observance of the provisions of this Clause 30 by all its servants, employees, agents, consultants and sub-contractors, as if they were bound by the provisions of this Clause 30.

30.3 The Subcontractor acknowledges that nothing in this Contract either expressly or by implication constitutes an endorsement by the Authority, Serco or O&S of any services provided by the Subcontractor, and the Subcontractor agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

## **CONDUCT OF THE SUBCONTRACTOR**

### **31. Conflict of Interest and Reputation of the Authority and O&S**

31.1 In providing the Services, the Subcontractor shall not, and shall take all reasonable steps to ensure that its officers, employees, agents, consultants and sub-contractors shall not, do any act or thing nor permit any situation to arise whereby:

- (a) a conflict or a potential conflict arises or may arise between the interests of the Authority, Serco and/or O&S and the interests of the Subcontractor;
- (b) the Authority is brought into disrepute and/or O&S or Serco are brought into material disrepute; and/or
- (c) the Subcontractor's reputation would be damaged in such a way as to make it unsuitable to provide the Services under this Contract,

and shall, and shall take all reasonable steps to ensure that its officers, employees, agents, consultants and subcontractors shall, otherwise ensure that it serves the Authority's, Serco's and O&S's interests in accordance with best commercial practice. For the avoidance of doubt, the Subcontractor shall not be in breach of the provisions of Clause 31.1(a) by undertaking ordinary and usual lobbying of the Authority and/or any other government department for any change in law and/or policy in respect of Asylum Seekers (provided that this does not involve criticism of or requests to change the Prime Contract, the O&S Contract, this Contract and/or O&S's management of this Contract).

31.2 The Subcontractor shall not, and shall take all reasonable steps to ensure that its officers, employees, agents, consultants and subcontractors shall not, solicit nor accept bribes, commissions or other financial inducements from any person in relation to the Services.

31.3 If O&S has grounds for believing that the Subcontractor is in breach of the provisions of this Clause 31, O&S shall:

- (a) give notice to the Subcontractor of its belief and give details of the breach it believes to have occurred; and
- (b) permit the Subcontractor a reasonable amount of time in which to make representations as to the position.

31.4 If O&S, having received such representations and acting in a reasonable and proportionate manner having regard to the gravity of the situation, and the Authority's and Serco's assessment (where said breach relates to the Authority and where such breach relates to Serco respectively), still considers it has such reasonable grounds for such belief then, where O&S reasonably believes that the only way to preserve its or the Authority's reputation and to prevent material damage to its brand or Serco's brand or to prevent damage to the Authority's reputation is to terminate this Contract, O&S may terminate this Contract pursuant to Clause 21.

## **32. Corrupt Gifts and Payments of Commission to the Authority**

32.1 The Subcontractor shall not offer or give, or agree to give, to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Prime Contract or any other contract with the Authority or any other public body, or for showing or

refraining from showing favour or disfavour to any person in relation to the Prime Contract or any such contract.

32.2 The Subcontractor warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body in connection with the Prime Contract.

32.3 The Subcontractor shall:

- (a) comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 (the "**Relevant Requirements**");
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
- (c) have and shall maintain in place throughout the Contract Term its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 32.3(b), and shall enforce them where appropriate;
- (d) promptly report to O&S any request or demand for any undue financial or other advantage of any kind received by the Subcontractor in connection with the performance of this Contract;
- (e) within two weeks of the Contract Signature Date, and annually thereafter, certify to O&S in writing signed by an officer of the Subcontractor, compliance with this Clause 32.3 by the Subcontractor and all persons associated with it under Clause 32.4. The Subcontractor shall provide such supporting evidence of compliance as the Authority, Serco or O&S may reasonably request.

32.4 The Subcontractor shall ensure that any person associated with the Subcontractor who is performing services or providing goods in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Subcontractor in this Clause 32 (the "**Relevant Terms**"). The Subcontractor shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Authority for any breach by such persons of any of the Relevant Terms.

32.5 If the Subcontractor, its staff or anyone acting on the Subcontractor's behalf, engages in conduct prohibited by Clauses 32.1 and/or 32.2 or commits any offence under the Bribery Act 2010, O&S may:

- (a) terminate the Contract and recover from the Subcontractor the amount of any loss suffered by O&S and/or Serco resulting from the termination, including the cost reasonably incurred by O&S and/or Serco of making other arrangements for the supply of the Services and any additional expenditure incurred by O&S or Serco throughout the remainder of the Contract Term; or
- (b) recover in full from the Subcontractor any other loss sustained by Serco or O&S in consequence of any breach of those conditions

32.6 For the purpose of this Clause 32:

- (a) the meaning of "adequate procedures" and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively; and
- (b) the purpose of this Clause 32, a person associated with the Subcontractor includes but is not limited to any sub-contractor of the Subcontractor.

### 33. No Discrimination

33.1 The Subcontractor shall not throughout the duration of this Contract unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (together "**Discrimination Legislation**") (whether in race, gender, religion, disability, sexual orientation or otherwise) including without limitation the Equality Act 2010, the Sex Discrimination (Northern Ireland) Order 1976, the Race Relations (Northern Ireland) Order 1997, the Disability Discrimination Act 1995, the Fair Employment and Treatment (Northern Ireland) Order 1976 and 1988, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations (NI) 2000, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (NI) 2002, the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) Order 2003 and the Employment Equality (Age) Regulations (Northern Ireland) Order 2003).

33.2 The Subcontractor shall take all reasonable steps to ensure the observance of Clause 33.1 by all officers, employees, agents, consultants and sub-contractors of the Subcontractor.

- 33.3 The Subcontractor shall comply with the provisions of the Equality Act 2010 as if it were listed as a public authority under Schedule 19 of that Act
- 33.3A The Subcontractor shall use its best endeavours to ensure that in its employment policies and practices and in the delivery of the Services it has due regard to the need to promote equality of treatment and opportunity between: persons of different religious beliefs and political opinions; men and women or married and unmarried persons; persons with and without dependants (including women who are pregnant or on maternity leave and men on paternity leave); persons of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997; persons with and without disability (within the meaning of the Disability Discrimination Act 1995); persons of different ages; and persons of different sexual orientation.
- 33.4 The Subcontractor shall put in place and maintain adequate practices and procedures throughout the duration of this Contract to ensure and to monitor compliance with Clauses 33.1 to 33.4 (inclusive). Each quarter, the Subcontractor shall submit to the O&S Contract Manager evidence of such compliance, including without limitation information by reference to the racial groups to which they belong and information relating to the numbers of its employees who receive training, benefit or suffer detriment as a result of performance assessment procedures, are involved in grievance procedures, are the subject of disciplinary procedures or cease employment and such information as the Authority and/or O&S and/or Serco may reasonably require in relation to policy and service provision so as to enable the Authority, Serco and/or O&S to comply with its duties under the Race Relations Act 1976 (Statutory Duties) Order 2001.
- 33.5 The Subcontractor shall put in place and maintain adequate practices and procedures throughout the duration of this Contract to ensure and to monitor compliance with any other duties introduced under Discrimination Legislation. The Subcontractor agrees to promote (and shall encourage its officers, employees, agents, consultants and sub-contractors to promote) the principle of equal treatment at all times and shall co-operate fully with the Authority, Serco and O&S to exchange experiences and good practices.
- 33.6 If, in the reasonable opinion of Serco, O&S or the Authority, the Subcontractor fails to comply with any Discrimination Legislation, and such non-compliance adversely affects (or is likely to adversely affect) the performance of this Contract or the reputation of the Subcontractor, Serco, O&S or the Authority, the Subcontractor shall co-operate fully with O&S to remedy such non-compliance,

provided that O&S reserves the right to report any non-compliance that it considers serious to the relevant commission, body or person established under such legislation.

- 33.7 In the event of a finding of any unlawful discrimination being made against the Subcontractor by any court or employment tribunal or an adverse finding following any formal investigation by any commission established under any Discrimination Legislation, the Subcontractor shall take all appropriate remedial steps to eliminate such unlawful discrimination in the future (including complying with any recommendations issued by the relevant commission). The Subcontractor shall on request provide O&S with details of such recommendations and any remedial steps taken.

#### **34. Treatment of Asylum Seekers**

34.1 If the Human Rights Act 1998 applies to the Subcontractor, the Subcontractor shall comply with such Act. If the Human Rights Act 1998 applies to any agent, consultant or sub-contractor of the Subcontractor, the Subcontractor shall procure that such agent, consultant or sub-contractor complies with such Act.

34.2 The Subcontractor shall not and shall procure that its employees, agents, consultants and sub-contractors do not discriminate against Asylum Seekers and their dependants on the basis of age, ethnic origin, nationality, race, religion, culture, gender, sexual orientation, physical and mental ability, family size or family composition.

34.3 The Subcontractor shall and shall procure that its employees, agents, consultants and sub-contractors shall treat all Asylum Seekers and their dependants in a polite and courteous manner which recognises their rights as individuals.

34.4 The Subcontractor shall ensure that at all times the terms of all agreements, acknowledgements and other documents to be signed by Service Users:

- (a) are reasonable; and
- (b) do not conflict with the terms of this Contract, the O&S Contract or the Prime Contract.

### **35. Health and Safety and Minimum Wage Act**

- 35.1 The Subcontractor shall promptly notify O&S of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.
- 35.2 While on Authority, O&S or Serco premises, the Subcontractor shall comply with any health and safety measures implemented by the Authority, Serco and/or O&S in respect of staff and other persons working there. The Subcontractor shall inform all staff engaged in the provision of the Services of all known health and safety hazards and shall instruct those staff in connection with any necessary safety measures.
- 35.3 The Subcontractor shall notify O&S immediately in the event of any incident occurring in the performance of its obligations under the Contract where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 35.4 The Subcontractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 (as implemented and applicable in Northern Ireland and the Northern Ireland equivalent legislation) and any other acts, orders, regulations and codes of practice relating to health and safety which may apply to staff and other persons working on Authority, O&S or Serco premises in the performance of its obligations under the Contract.
- 35.5 The Subcontractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974 (as implemented and applicable in Northern Ireland and the Northern Ireland equivalent legislation)) is made available to the Authority and/or Serco and/or O&S on request.
- 35.6 The Subcontractor shall ensure that any risk assessments or similar documentation are made available to O&S on request.
- 35.7 The Subcontractor shall ensure that, where appropriate, staff are paid at least the national minimum wage in accordance with the National Minimum Wage Act 1998.

### **36. Dispute Resolution**

- 36.1 All disputes between the parties arising out of, or relating to, this Contract shall be referred, by either party, in the first instance to the Contract Managers for resolution.

- 36.2 If any dispute cannot be resolved by the Contract Managers within a maximum of seven (7) days after it has been referred under Clause 36.1, that dispute shall be referred to the Senior Representatives for resolution. The parties shall procure that the Senior Representatives, or O&S's Senior Representative's nominee and the Subcontractor's Senior Representative's nominee, meet to consider the dispute within seven (7) days of it being referred to them.
- 36.3 If the dispute is not resolved pursuant to Clause 36.2, either party may (at the relevant meeting or within seven (7) days of its conclusion) propose to the other in writing that structured negotiations be entered into with the assistance of a neutral adviser or mediator (the "Neutral Adviser") who is accredited by the Centre for Dispute Resolution ("CEDR") in London or an organisation of equivalent standing before resorting to litigation.
- 36.4 If the Parties are unable to agree on a Neutral Adviser, or if the Neutral Adviser agreed upon is or becomes unable or unwilling to act, either party may within fourteen (14) days from the date of the proposal to appoint a Neutral Adviser or within fourteen (14) days of notice to any party that the Neutral Adviser is unable or unwilling to act, apply to CEDR to appoint a Neutral Adviser. The parties shall bear the Neutral Adviser's fees and expenses equally.
- 36.5 Within seven (7) days of the appointment of the Neutral Adviser, the parties will meet with him/her in order to agree a programme for the exchange of any relevant information and the structure to be adopted for the negotiation. In the absence of agreement, the parties shall as far as possible adopt the CEDR Model Mediation Procedure.
- 36.6 All negotiations connected with the dispute will be:
- (a) conducted in complete confidence and the parties undertake not to divulge details of such negotiations except to its professional advisers, who will also be subject to such confidentiality; and
  - (b) without prejudice to the rights of the parties in any future proceedings.
- 36.7 If, having complied with the preceding provisions of this Clause 36, the parties fail to reach agreement, either of the parties may invite the Neutral Adviser to provide a non-binding but informative opinion in writing as to the merits of the dispute and the rights and obligations of the parties. Such opinion will be provided on a without prejudice basis and will be private and confidential to the parties and may not (without the prior written consent of the parties and the

Neutral Adviser) be used in evidence in any proceedings commenced pursuant to the terms of this Contract.

- 36.8 If the parties accept the Neutral Adviser's recommendations or otherwise reach agreement on the resolution of the dispute, such agreement shall be recorded in writing and, once it is signed by both Senior Representatives, shall be final and binding on the parties.
- 36.9 If the parties fail to reach agreement in the structured negotiations within forty (40) days of the Neutral Adviser being appointed, each party shall, after the expiry of such period (and not before), be entitled to refer any dispute or difference to adjudication in accordance with Schedule 8 (Adjudication Procedure) or to litigation.

#### *Related Disputes*

- 36.10 Where a dispute under this Contract raises issues which are substantially the same as or connected with issues raised in a related dispute under the Prime Contract between O&S and the Authority and/or under the O&S Contract between Serco and O&S (each a "Related Dispute"), O&S shall, to the extent permitted by the Prime Contract, make representations on behalf of the Subcontractor (at the Subcontractor's own cost) to any Neutral Adviser appointed to resolve the Related Dispute under the Prime Contract. Any costs allocated to Serco under Clause 36 of the Prime Contract or O&S under Clause 36 of the O&S Contract which relate to representations made by O&S on the Subcontractor's behalf shall be borne by the Subcontractor. The Subcontractor acknowledges and accepts the provisions of Clause 36 (Dispute Resolution) of the Prime Contract and Clause 36 of the O&S Contract.
- 36.11 In the event of any dispute arising under or in connection with the Prime Contract and such dispute is referred to the dispute resolution procedure set out in Clause 36 (Dispute Resolution) of the Prime Contract, O&S may, if it considers (acting reasonably) that the subject matter of such dispute is the same as or similar or related to or otherwise concerns a dispute under this Contract, serve notice thereof upon the Subcontractor and thereby require that the dispute shall (in relation to that aspect which is the same as or similar or related to or otherwise concerns a dispute under or in connection with the Prime Contract ("Related Matter")) be determined in accordance with the decision (in respect of the Related Matter) under Clause 36 (Dispute Resolution) of the Prime Contract ("Prime Contract Decision"). Where a notice is served by O&S pursuant to this Clause 36.11, the determination under Clause 36 (Dispute

Resolution) of the Prime Contract shall insofar as it is in respect of the Related Matter (and insofar as is permitted by law) be binding (*mutatis mutandis*) upon the Parties as though it was a determination in respect of the Related Matter in the dispute hereunder.

36.11A In the event of any dispute arising under or in connection with the O&S Contract and such dispute is referred to the dispute resolution procedure set out in Clause 36 (Dispute Resolution) of the O&S Contract, O&S may, if it considers (acting reasonably) that the subject matter of such dispute is the same as or similar or related to or otherwise concerns a dispute under this Contract, serve notice thereof upon the Subcontractor and thereby require that the dispute shall (in relation to that aspect which is the same as or similar or related to or otherwise concerns a dispute under or in connection with the O&S Contract ("**Related Matter**")) be determined in accordance with the decision (in respect of the Related Matter) under Clause 36 (Dispute Resolution) of the O&S Contract ("**O&S Contract Decision**"). Where a notice is served by O&S pursuant to this Clause 36.11, the determination under Clause 36 (Dispute Resolution) of the O&S Contract shall insofar as it is in respect of the Related Matter (and insofar as is permitted by law) be binding (*mutatis mutandis*) upon the Parties as though it was a determination in respect of the Related Matter in the dispute hereunder.

36.12 Without prejudice to the provisions of Clause 36.11, in the event that there is a Related Dispute:

- (a) the Referring Party hereby consents to the period within which the Adjudicator must deliver its decision being extended until the date 10 Business Days after the date on which the Prime Contract Decision or O&S Contract Decision is made (and undertakes to notify the Adjudicator of such extension) to enable the Adjudicator to take into account the Prime Contract Decision and O&S Contract Decision when making his decision under this Contract;
- (b) not used;
- (c) the Subcontractor acknowledges and accepts that any entitlement it has in relation to any Related Dispute is subject to Clause 2B of this Contract and that it shall only be entitled to enforce a decision of the Adjudicator appointed under this Contract to the extent that O&S is entitled to the same rights under the Prime Contract Decision or O&S Contract Decision.



36.13 The Subcontractor shall provide reasonable assistance and information to O&S in any dispute under the Prime Contract and/or the O&S Contract and will be bound by the outcome of such dispute where it is a Related Dispute.

36.14 Nothing contained in this Clause 35 shall restrict either party's freedom to commence legal proceedings to preserve or protect any legal right or remedy in respect of any proprietary or trade secret right.

36.15 Notwithstanding the existence of a dispute under this Contract, the Subcontractor shall, if required by O&S, diligently continue, observe and perform all of its obligations in relation to the Services in accordance with the requirements set out in this Contract.

### 37. Notices

37.1 Except as otherwise expressly provided, no notice or communication from one party to the other shall have any validity under this Contract unless made in writing by or on behalf of the party giving such notice.

37.2 Save for any notices or other communication to be given pursuant to Schedule 2 (*Statement of Requirements*) or in the ordinary course of operations under this Contract, any notice or other communication whatsoever which either party is required or authorised by this Contract to give or make to the other shall be given or made either by letter delivered by hand or by recorded or registered post, or by facsimile or e-mail transmission, confirmed by recorded or registered post, addressed to the other party at the address and marked for the attention of the person specified below for each party:

#### O&S

Orchard & Shipman House  
1 Progress Business Park  
Whittle Parkway  
Slough  
SL1 6DQ



### The Subcontractor

Northern Ireland Housing Executive  
2 Adelaide Street  
Belfast  
BT2 6PB

For the attention of

- 37.3 Any notice or communication delivered in accordance with this Clause 37 shall be deemed for the purposes of this Contract to have been given or made (for a letter delivered by hand) upon delivery to the addressee, (for a letter delivered by recorded or registered post) on the second Business Day after posting or (for a facsimile transmission or e-mail) on receipt of a confirmation of transmission.
- 37.4 For the avoidance of doubt, if a notice or communication given by electronic mail is not acknowledged, the notice or communication shall be deemed to have been given when the letter confirming the notice or communication is delivered in accordance with Clause 37.3.
- 37.5 Either party may change its address for service, number for facsimile transmission or the person for whose attention any notice or communication is to be marked by giving notice as provided in this Clause 37.

### 38. Change of Law

- 38.1 The Subcontractor shall neither be relieved of its obligations to supply the Services in accordance with the provisions of the Contract nor be entitled to an increase in the Service Charges as a result of:
- (a) a General Change in Law; or
  - (b) a Specific Change in Law where the effect of that change in Law on the Services is known at the Contract Signature Date
- 38.2 If a Specific Change in Law occurs during the term of the Contract, the Subcontractor shall notify O&S of the likely effects of that change including:
- (a) whether any modification is required to the Services (the Service Charges or the Contract); and
  - (c) whether any relief from compliance with the Subcontractor's obligations (including any obligation to achieve any milestones or to meet any service level requirements at any time) is required.



38.3 As soon as practicable after any notification in accordance with Clause 38.2, the parties shall discuss and agree the matters referred to in that clause and any ways in which the Subcontractor may be able to mitigate the effect of the Specific Change in Law. If the Subcontractor has already implemented any mitigation, it may also draw these to the attention of O&S.

38.4 Any increase in the Service Charges or relief from the Subcontractor's obligations agreed by the Parties pursuant to this Clause 38 shall (subject to Clause 2B) be implemented in accordance with Schedule 16 (*Contract Change Control*).

### 39. Entire Agreement

39.1 This Contract constitutes the entire understanding between the parties relating to the subject matter of this Contract and supersedes all prior agreements between the parties and relating thereto.

39.2 Neither party has relied on any warranty or representation of any party (except for the Warranties) and each party irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation or breach of any warranty not contained in this Contract and/or to rescind this Contract unless such misrepresentation or warranty was made fraudulently.

### 40. Relationship of the Parties

40.1 Nothing in this Contract shall constitute, or be deemed to constitute, a partnership nor a contract of employment between the parties nor, except as expressly provided, shall either party be deemed to be the agent of the other.

40.2 Subject to any express provisions to the contrary in this Contract, the Subcontractor shall have no right or authority to and shall not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of O&S or bind O&S in any way.

The Subcontractor confirms that it is entering into this Contract as principal and not as agent for any other person.

### 41. Set Off

41.1 If any sum of money shall be due from the Subcontractor to O&S, the same may be deducted from any sum then due, or which at any time thereafter may



become due, to the Subcontractor under this Contract or any other agreement with O&S.

**42. Costs and Expenses**

42.1 Each party shall be responsible for all its own costs and expenses in connection with the negotiation, preparation, execution and performance of this Contract and all matters contemplated by this Contract.

**43. Third Party Rights**

43.1 Other than where provided for in this Contract by express reference to the Contracts (Rights of Third Parties) Act 1999, a person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract notwithstanding that any such term may purport to confer or may be construed as conferring a benefit on such third party. This does not affect any right or remedy of such third party which exists or is available apart from under the Contracts (Rights of Third Parties) Act 1999.

43.2 This Contract may be varied by the parties in accordance with Clause 15 even though such variation has not been agreed to by any person entitled to the benefit of this Contract, or any provision of this Contract, by virtue of the Contracts (Rights of Third Parties) Act 1999.

**44. Severability**

44.1 If any provision of this Contract (or any part or phrase within a provision of this Contract) is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision (or part or phrase of such provision) shall be severed and the remainder of the provisions of this Contract shall continue in full force and effect as if this Contract had been executed with the invalid, illegal, or unenforceable provision eliminated.

44.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Contract, O&S and the Subcontractor shall immediately commence good faith negotiations to remedy such invalidity.

**45. Recovery of Sums Due**

45.1 No payment made by O&S shall indicate or be taken to indicate O&S's acceptance or approval of any part of the Services or any act or omission of the

Subcontractor or shall absolve the Subcontractor from any obligation or liability imposed upon the Subcontractor under this Contract.

- 45.2 Any payments made by O&S under this Contract, including the final payment under this Contract, shall not prevent O&S from recovering any amount proven to have been overpaid or wrongfully paid including, but not limited to, payments made to the Subcontractor by mistake of law or fact.

**46. Waiver of Rights**

- 46.1 No failure or delay by any party in exercising any right, power or privilege under this Contract shall impair such right, power or privilege or be construed as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 46.2 No waiver of any of the provisions of this Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing.
- 46.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

**47. Remedies Cumulative**

- 47.1 The rights and remedies of the parties provided in this Contract are cumulative and not exclusive of any rights and remedies provided by law.

**48. Further Assurance**

- 48.1 The Subcontractor shall, from time to time, at the request of O&S do such acts and things and execute such documents as may reasonably be required by O&S to properly implement the provisions of, and/or provide O&S with the full benefit of, this Contract and the O&S Contract.
- 48.2 Where a time period in relation to an obligation is not otherwise expressed in this Contract, the Subcontractor shall act in a timely manner when supplying the relevant information or assistance which O&S is required to provide under the O&S Contract so as to allow O&S sufficient time to respond to Serco before the equivalent deadline under the O&S Contract.

**49. Survival of Terms**

49.1 The termination or expiry of this Contract shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.

49.2 The provisions shall survive termination or expiry of this Contract for whatever reason:

- (a) Clause 1 (Definitions and Interpretations);
- (b) Clause 8 (Records, Rights of Inspection and Provision of Information);
- (c) Clause 9.8 (Indemnity for Employee Claims);
- (d) Clause 10 (Authority Tangible Property and Interim Support Tokens);
- (e) Clauses 11.1 (Existing Intellectual Property Rights and new Intellectual Property Rights created by the Authority), 11.2 to 11.4 inclusive (Transfer of Intellectual Property Rights to the Authority), 11.5 (Waiver of Moral Rights), 11.7 (Licence of Intellectual Property Rights to the Authority and O&S);
- (f) Clauses 12.3(e) and 12.9 (Data Protection and Freedom of Information);
- (g) Clause 19 (Indemnity);
- (h) Clause 20 (Insurance);
- (i) Clauses 21.7 to 21.11 inclusive (Payment on Early Termination);
- (j) Clause 22 (Handover);
- (k) Clause 29 (Confidentiality)
- (l) Clause 30 (Publicity);
- (m) Clause 36 (Dispute Resolution);
- (n) Clause 37 (Notices);
- (o) Clause 32 (Corrupt Gifts and Payments of Commission to the Authority);
- (p) Clause 3 (The Services);

- (q) Schedule 4 (Exit Management and Handover); and
- (r) Schedule 18 (Payments on Termination).

In addition, any other provisions, which expressly or by implication relate to a period following termination or expiry, shall continue to the extent necessary to give effect to the intention of the parties.

**50. Counterparts**

50.1 This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

**51. Law and Jurisdiction**

51.1 This Contract shall be governed by English Law and be subject to the exclusive jurisdiction of the English Courts, Scottish Courts and Northern Irish Courts.

SIGNED by the parties or their duly authorised attorneys the day and year first above written

Signed by  
for and on behalf of Orchard & Shipman  
(Glasgow) Limited

Director

Signed on behalf of  
NORTHERN IRELAND HOUSING  
EXECUTIVE  
by its duly authorised representative

(Print name)

(Signature)



## Schedule 1

### Definitions

In this Contract the following expressions shall have the following meanings unless the context otherwise requires:

<i>Expression</i>	<i>Meaning</i>
"Accommodation Proposal"	a response to an Accommodation Request given by the Subcontractor to O&S containing the information on the proposed accommodation to be provided to the relevant Service User(s) and (where relevant) on the transportation arrangements to be adopted for the relevant dispersal;
"Accommodation Request"	a request for the Subcontractor to provide appropriate accommodation for the Service User or Users identified in the request;
"Accommodation Services"	those Services, as more particularly described in Paragraph 4 of Schedule 2 ( <i>Statement of Requirements</i> ), under which the Subcontractor shall provide accommodation to Service Users.
"Additional Services"	services which may be required by O&S in addition to the Services of the Contract set out in Schedule 2 ( <i>Statement of Requirements</i> ) and Schedule 5 ( <i>Service Charges</i> ).
"Adjudicator"	means a person nominated as such by the President for the time being of the Chartered Institute of Arbitrators.
"Associate"	each body corporate which is from time to time a subsidiary or holding company of the Subcontractor or a subsidiary of a holding company of the Subcontractor and each person, or group of persons together, having control (within the meaning of section 416 of the Income and Corporation Taxes Act 1988) of the Subcontractor;
"Asylum Seekers"	Service Users and all persons who are being or who are to be supported by or through the Authority under Part VI of the Immigration and Asylum Act 1999 and refugees (being persons recognised as such by the government of the United Kingdom of Great Britain and Northern Ireland);
"Authority"	means as defined in Recital A;
"Authority Warranty"	<b>Collateral</b> the collateral warranty executed as a deed between the Authority, O&S and the Subcontractor in the form or substantially in the form as set out in Schedule 22 (Sub-contractor's Agreement) of the O&S Contract;
"Authority Manager"	<b>Contract</b> has the meaning given to it in the Prime Contract;
"Authority Proposed"	<b>Proposed</b> means a request for a change served by the Authority pursuant to



<b>"Change Paper"</b>		Clause 15 of the Prime Contract;
<b>"Authority Property"</b>	<b>Tangible</b>	has the meaning given to it in the Prime Contract;
<b>"Authority Event"</b>	<b>Termination</b>	has the meaning given to it in the Prime Contract;
<b>"Bridging Operate"</b>	<b>Permit to</b>	has the meaning given to it in the O&S Contract;
<b>"Business Plan"</b>	<b>Continuity</b>	the documents and processes produced in accordance with Schedule 20 ( <i>Business Continuity Plan and Disaster Recovery</i> ) to ensure the continuity of the provision of the Services by the Subcontractor and its ability to satisfy any changes in the level of Service Users for which O&S requires the Services to be provided;
<b>"Business Day"</b>		a day (other than a Saturday or Sunday) on which the clearing banks are open for business in London;
<b>"Change of Control"</b>		a change in the person, or in the membership of a group of persons together, having control (within the meaning of section 416 of the Income and Corporation Taxes Act 1988) of the relevant person;
<b>"Commercially Sensitive Information"</b>		means the information (if any) designated as such by the Subcontractor or by O&S (as the case may be) in Schedule 10 ( <i>Commercially Sensitive Information</i> ) comprising information of a commercially sensitive nature relating to the Subcontractor or O&S (as the case may be), its Intellectual Property Rights or its business or which either party has indicated to the other that, if disclosed, would cause the relevant party significant commercial disadvantage or material financial loss;
<b>"Complex Bail Cases"</b>		shall have the meaning set out in Paragraph 1.2.1.2 of Schedule 2 (Statement of Requirements);
<b>"Confidential Information"</b>		information (whether written or oral) in relation to a party to this Contract the disclosure of which would constitute an actionable breach of confidence, which has either been designated as confidential by the relevant party in writing or that ought to be considered confidential (however it is conveyed or on whatever media it is stored) including commercially sensitive information, information which relates to the business, affairs, customers, suppliers, products, software, developments, trade secrets, Intellectual Property Rights, know-how and personnel of the relevant party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998;
<b>"Continuous Improvement"</b>		means the process of continuous improvement of the Services, as further described in Schedule 6 (Continuous Improvement)
<b>"Contract"</b>		this contract and each of the Schedules to this contract as varied from

		time to time in accordance with Clause 15 (Change Control);
<b>"Contract Effective Date"</b>		whichever shall be the later of:
	(a)	29 <sup>th</sup> December 2012; and
	(b)	the date on which the Permit to Operate is issued;
<b>"Contract Manager"</b>		the Subcontractor Contract Manager and/or (as the context may require) the O&S Contract Manager as named within Schedule 12 (Key Representatives) and as appointed in accordance with Clause 7;
<b>"Contract Management Group"</b>		the group of the same name, as further described in paragraph 6.1 of Schedule 7 ( <i>Contract Management</i> );
<b>"Contract Price Adjustment Amount"</b>		shall have the meaning given to it in Clause 2B.2(i);
<b>"Contract Price Adjustment Event"</b>		means an event under the O&S Contract or a Related Services Subcontract whereby O&S is or becomes entitled to compensation, reimbursement, indemnification or other payment from the Authority or a Related Services Subcontractor (as applicable);
<b>"Contract Relief Event"</b>		means an event under the O&S Contract whereby O&S is or becomes entitled to relief from any consequence of failed performance or under-performance;
<b>"Contract Signature Date"</b>		the date of this Contract;
<b>"Contract Term"</b>		the term of the Contract, which commences on the Contract Signature Date and terminates on the Expiry Date;
<b>"Contracting Authority"</b>		any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006;
<b>"Control"</b>		means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;
<b>"Conviction"</b>		other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including convictions regarded as spent by virtue of section 1(1) of the Rehabilitation of Offenders Act 1974 (or the equivalent under Northern Ireland legislation) but which are excluded from being regarded as spent because the offence, employment or work in question falls within Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) (or the equivalent under Northern Ireland legislation) or any replacement or amendment to that Order);

<b>"Corporate Partners"</b>	local authorities, the Department of Health, the Department of Education, certain voluntary sector organisations and any other Government departments who have an interest in the performance of the Services;
<b>"Corresponding Payment"</b>	shall have the meaning given to it in Clause 2B.2(ii);
<b>"Customer Services"</b>	<b>Support</b> means those Services as more particularly described in Paragraph 4 of Schedule 2 ( <i>Statement of Requirements</i> ) under which the Subcontractor shall provide;
<b>"Crown Body"</b>	any department, office or agency of the Crown;
<b>"Data Controller"</b>	shall have the same meaning as set out in the Data Protection Act 1998;
<b>"Data Processor"</b>	shall have the same meaning as set out in the Data Protection Act 1998;
<b>"Data Protection Legislation"</b>	the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
<b>"Data Subject"</b>	shall have the same meaning as set out in the Data Protection Act 1998;
<b>"Default"</b>	in respect of either party, any breach of the obligations of such party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of such party, its employees, agents or sub-contractors in connection with, or in relation to, the subject matter of this Contract and in respect of which such party is liable to the other;
<b>"Default Notice"</b>	a notice served by O&S in accordance with Clause 17.1 as a result of a shortfall by the Subcontractor in the performance of this Contract;
<b>"Dispersal and Referral Rules"</b>	the rules governing the dispersal of IA Service Users as defined in Annex E to Schedule 2 ( <i>Statement of Requirements</i> ) of the O&S Contract;
<b>"Discrimination Legislation"</b>	has the meaning given to it in Clause 33.1;
<b>"Equipment"</b>	means all equipment (including without limitation any vehicles) used to provide Services directly to Service Users), materials, consumables and plant to be used by the Subcontractor in the performance of the Services other than Authority's Tangible Property or the Subcontractor's corporate office equipment and furniture, laptops, mobile phones, and

	management cars;
<b>"Emergency Support Tokens" or "EST"</b>	Tokens provided to Service Users on a temporary basis;
<b>"Environmental Information Regulations" or "EIR"</b>	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner and/or the relevant Government Department in relation to such legislation;
<b>"Escalation Process"</b>	means the initial stages of the process for dealing with Disputes without the intervention of third parties as set out in Clause 36.1;
<b>"Euro Compliant" means that:</b>	<p>(i) the introduction of the euro within England and Wales shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Authority's, Serco's or O&amp;S's business;</p> <p>(ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and</p> <p>(iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):</p> <ul style="list-style-type: none"> <li>• be able to perform all such functions in any number of currencies and/or in euros;</li> <li>• during any transition phase applicable to England and Wales, be able to deal with multiple currencies and in relation to the euro and the national currency of England and Wales dual denominations;</li> <li>• recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;</li> <li>• incorporate protocols for dealing with rounding and currency conversion;</li> <li>• recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of England and Wales and/or the euro; and</li> <li>• permit the input of data in euro and display an outcome in euro where such data, supporting the Authority's, Serco's and O&amp;S's normal business practices, operates in euro and/or the national</li> </ul>

currency of England and Wales;

**"Exit Management Plan"** the plan (as the same is prepared, maintained and agreed pursuant to Clause 13) setting out the obligations of the Subcontractor to facilitate:

(a) the orderly transfer of the Services (or their equivalent or any part thereof) to the Authority, Serco, O&S or a Successor Contractor (as the case may be); and/or

(b) the termination of the provision of the Services on expiry or termination of this Contract

and, without limitation, including those matters and complying with those provisions set out in Schedule 4 (Exit Management and Handover);

**"Expiry Date"** means, subject to the provisions for extension and early termination contained within this Contract, the date which is five years after the Contract Effective Date;

**"Family Member"** a Service User stipulated by O&S to the Subcontractor as a Service User who must be accommodated with certain other named Service Users;

**"Family Member Charges"** in respect of each Payment Period for which the Family Member Charges fall to be calculated, the aggregate of £A for each day within such Payment Period where £A is the charge for a day determined after applying the Family Member Rates to the aggregate number of Family Members actually accommodated by the Subcontractor in accordance with Schedule 2 (*Statement of Requirements*) over the night at the end of such day;

**"Family Member Rate"** shall have the meaning set out in Appendix C and/or Appendix D (as applicable) of Schedule 5 (*Service Charges*);

**"FOIA"** (a) the Freedom of Information Act 2000 and any subordinate legislation made thereunder from time to time together with any guidance and/or codes of practice issued by the Information Commissioner and/or relevant Government Department in relation to such legislation; and

(b) where applicable, the Freedom of Information (Scotland) Act 2002;

**"Food Voucher"** a printed voucher, store card or other artefact, not exchangeable for cash, issued by the Subcontractor to relevant Service Users, exchangeable by the relevant Service User for food, and other essential goods, personal toiletries and baby care products;

**"Food/Food Voucher Charges"** in respect of each Payment Period for which the Food/Food Voucher Charges fall to be calculated, the aggregate of £B for each day within such Payment Period, where £B is the number of Service Users (in

respect of which the Subcontractor has been instructed, in accordance with Schedule 2 (*Statement of Requirements*), to provide a full board accommodation service and/or Food Vouchers) multiplied by such amount as O&S may from time to time specify as being the daily allowance for the provision of Food/Food Vouchers to Service Users;

**"Force Majeure Event"**

in respect of either party, any act or event (including but not limited to any riot, civil unrest, war, act of terrorism, fire, earthquake, storm, flood or other natural catastrophe) which is outside of the reasonable control of the relevant party and has materially affected the ability of the relevant party to perform its obligations in accordance with the terms of this Contract but not:

(a) any industrial action by the employees of the relevant party or any Associate of the relevant party;

(b) any event arising as a result of a deterioration in the financial position of the relevant party or any Associate of the relevant party;

(c) any event rendering accommodation being provided under the Services unsuitable for use in providing the Services (unless the same event affects at least 10 per cent of such accommodation); nor

(d) any delay or failure by a sub-contractor or supplier of the relevant party or any other person within the control of that party (except where that delay or failure is also due to a Force Majeure Event);

**"Full Operation Period"**

means the period from the date on which the Transition Period ends until the Expiry Date.

**"General Change in Law"**

means a change in Law which comes into effect after the Contract Signature Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Subcontractor) or which would affect or relate to a comparable supply of services of the same or similar nature to the supply of the Services.

**"Hand Over Period"**

the period which shall:

(a) commence on whichever shall be the earlier of:

(i) the date which is 18 months before the date on which this Contract is otherwise due to expire (or such later date as the parties may from time to time agree); and

(ii) the date on which either party shall serve a notice of termination of this Contract for any reason whatsoever; and

(b) end on the date six months after the expiry or termination of this Contract;

<b>"IA Service Users"</b>	Service Users which O&S requires to be supported in line with the requirements of Schedule 2 ( <i>Statement of Requirements</i> ). For the avoidance of doubt a person shall cease to be an IA Service User from the time that O&S notifies the Subcontractor that O&S no longer requires the relevant Service User to be so supported;
<b>"ICT Environment"</b>	the Non Subcontractor System and the Subcontractor System;
<b>"Independent Experts"</b>	a firm of chartered accountants nominated by agreement between O&S and the Subcontractor or failing agreement (within 5 days of either party requesting the other to so agree) nominated on the application of either party by the President for the time being of the Institute of Chartered Accountants in England and Wales;
<b>"Information"</b>	means all information including oral, electronic and visual information and written information in any medium;
<b>"Initial Accommodation"</b>	the properties in which the Subcontractor accommodates IA Service Users;
<b>"Innovations and Gain Sharing Board"</b>	means the board referred to in Paragraph 9.1 of Schedule 7 ( <i>Contract Management</i> );
<b>"Insured"</b>	for the purposes of Clause 20 and Schedule 9 ( <i>Insurance</i> ) means the Subcontractor
<b>"Insurer"</b>	for the purposes of Clause 20 and Schedule 9 ( <i>Insurance</i> ) means the person(s) providing the Required Insurances;
<b>"Intellectual Property Rights" or "IPRs"</b>	all intellectual property rights including, but not limited to, patents, trade secrets, trade marks, service marks, trade names, copyrights and other rights in works of authorship (including rights in computer software), moral and artists' rights, design rights, inventions (whether or not capable of protection by patent or registration), trade or business names, domain names, know-how, database rights and semi-conductor topography rights and whether any of the foregoing are registered or unregistered and including applications for such registration and all rights or forms of protection of a similar nature anywhere in the world;
<b>"Interim Support Tokens"</b>	a form of emergency support that is issued to eligible Service Users in the form of tokens when their regular support has not yet commenced, such tokens being redeemable by Service Users at designated outlets, such as Post Offices;
<b>"IP Infringement Claim"</b>	means a claim, demand or action by a third party for infringement (or alleged infringement) of Intellectual Property rights in any materials supplied by or licensed by the Subcontractor in connection with this Contract;
<b>"Key Performance"</b>	the indicators of effective service delivery set out in Appendix A to

<b>Indicators” or “KPIs”</b>	Schedule 13 ( <i>Performance Regime</i> );
<b>“Key Representatives”</b>	means those individuals nominated by O&S and the Subcontractor respectively as their primary points of contact, who undertake responsibilities in relation to this Contract and whose details are set out in Schedule 12 ( <i>Key Representatives</i> );
<b>“Know-How”</b>	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in O&S's, the Authority's, Serco's or the Subcontractor's possession before this Contract.
<b>“Law”</b>	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978 (or the equivalent under Northern Ireland legislation), exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Subcontractor is bound to comply.
<b>“List of Subcontractor Employees”</b>	means a list of employees of the Subcontractor engaged in the delivery of the Services pursuant to this Contract.
<b>“Local Authority”</b>	means a local authority constituted under the Local Government Act 1972 (or the equivalent under Northern Ireland legislation);
<b>“Losses”</b>	means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands;
<b>“Malicious Software”</b>	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code 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;
<b>“Management Information”</b>	means the information specified in the Monitoring and Management Information Schedule
<b>“Management Information Portal” and “MIP”</b>	has the meaning given to it in the Prime Contract;
<b>“Material Default”</b>	any Default or any persistent Default by the Subcontractor which Default has, or persistent Default cumulatively has, a material adverse effect on the provision of all or any material part of the Services;
<b>“Material Sub-</b>	any person who is a party to a contract, lease or licence, or a series of

<b>contractor"</b>	related contracts, leases and/or licences, for the provision of accommodation to the Subcontractor, which taken together:
	(a) is reasonably capable of being used for the accommodation in accordance with this Contract; or
	(b) relates to the provision to the Subcontractor of premises, accommodation or goods or services which are required by the Subcontractor to provide to IA Service Users;
	(c) relates to the provision to the Subcontractor of Transport Services
<b>"Mobilisation Period"</b>	means as defined by and in accordance with the O&S Contract;
<b>"Mobilisation Plan"</b>	means the plan which sets out the activities associated with mobilising the Contract, as set out in Schedule 3 ( <i>Mobilisation and Transition</i> ) of the O&S Contract;
<b>"Monthly Service Payment"</b>	means the Service Charges paid in respect of each of the Services in each Payment Period as defined in Schedule 5 ( <i>Service Charges</i> );
<b>"Nominated Third Party"</b>	a person or body nominated by O&S from time to time to provide services to or in respect of IA Service Users;
<b>"Non Subcontractor System"</b>	means software which is owned by or licensed to the Authority, Serco or O&S including software which is or will be used by the Subcontractor for the purposes of providing the Services but excluding the Subcontractor Software;
<b>"OGC"</b>	means the Office of Government Commerce and any successor body thereto;
<b>O&amp;S Contract</b>	means the contract dated 11 May 2012 between Serco and O&S for the provision of services in relation to asylum seekers in Scotland and Northern Ireland;
<b>"O&amp;S Default Termination"</b>	means termination of the O&S Contract by Serco pursuant to Clause 21.2 of the O&S Contract where the default giving rise to such termination is not directly attributable to a breach of this Contract by the Subcontractor;
<b>"O&amp;S Termination Event"</b>	any of the following:
	(a) O&S Default Termination; and
	(b) termination of this Contract by the Subcontractor pursuant to Clause 21.4(a) (O&S default); and
	(c) termination of this Contract by the Subcontractor pursuant to Clause 21.4 (c).

<b>"Other Providers"</b>	other contractors that have agreed to provide services similar in nature to the Services in so far as they relate to support for the purposes of Section 4 and/or Section 95 and/or Section 98 of the 1999 Act in respect of any other Region;
<b>"Pass-through Costs"</b>	means goods and/or services procured on behalf of O&S in providing the Services which are charged to O&S at cost including but not limited to short term support vouchers and emergency travel vouchers. The Pass-through Costs shall be all inclusive and the Subcontractor shall not be permitted to profit from the provision of these goods and/or services. The charging mechanism for Pass-through Costs is specifically detailed within Schedule 5 ( <i>Services Charges</i> );
<b>"Payment Period"</b>	an accounting and invoicing period of each calendar month as used by O&S for its accounting and invoicing purposes (there being twelve consecutive such periods within each financial year);
<b>"Performance Report"</b>	a report produced by the Subcontractor for the purposes of paragraph 6.2.3 of Schedule 7 ( <i>Contract Management</i> );
<b>"Performance Standards"</b>	the performance standards expected from the Subcontractor as set out in Paragraph 4 of Schedule 2 ( <i>Statement of Requirement</i> );
<b>"Permit to Operate"</b>	has the meaning given to it in the Prime Contract;
<b>"Persistent Failure"</b>	shall have the meaning set out in paragraph 4.3(a) of Schedule 13 ( <i>Performance Regime</i> );
<b>"Personal Data"</b>	means personal data as defined in Part 1 (1) of the Data Protection Act 1998;
<b>"Price Adjustment"</b>	means any sum, increased sum, or separate payment to the Subcontractor which is additional to the annual Service Charges as specified as at the date of this Contract (whether pursuant to any term of this Contract, by way of damages for breach of contract, on the basis of <i>quantum meruit</i> or otherwise) in respect of or in any way connected with the subject matter of this Contract;
<b>"Prime Contract"</b>	means the contract dated 21 March 2012 between the Authority and Serco for the provision of services in relation to asylum seekers in Scotland and Northern Ireland;
<b>"Private Accommodation"</b>	accommodation owned or rented by a private individual, or another body not funded by or through the Authority, with whom the Service User is staying, usually friends or family, prior to responsibility for that Service User passing to the Subcontractor;
<b>"Process"</b>	has the meaning given to it under the Data Protection Legislation but, for the purposes of these Conditions, it shall include both manual and automatic processing.

**"Project Data"**

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
  - (i) supplied to the Subcontractor by or on behalf of the Authority, Serco or O&S;
  - (ii) which the Subcontractor is required to generate, process, store or transmit pursuant to this Contract; or
- (b) any Personal Data for which the Authority, Serco or O&S is the Data Controller;

**"Protected Data"**

any data (including but not limited to personal data, as such term is defined in the Data Protection Act 1998) provided by the Authority, Serco or O&S or otherwise to the Subcontractor for the purposes of the Subcontractor providing the Services under this Contract;

**"Subcontractor's Background IPRs"**

- (a) IPRs owned by the Subcontractor before the Contract Signature Date, for example those subsisting in the Subcontractor's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Subcontractor's Know-How or generic business methodologies; and/or
- (b) IPRs created by the Subcontractor independently of this Contract but excluding IPRs owned by the Contractor subsisting in the Subcontractor Software.

**"Provisional Staff List"**

a list of personnel (including any employees of sub-contractors of the Subcontractor) who are:

- (a) wholly or mainly assigned to work in the provision of the Services;
- (b) liable to transfer to the Authority or a Successor Subcontractor or Serco or O&S or their sub-contractor under TUPE; and
- (c) identified as "Proposed Transferring Employees" by the Subcontractor in the relevant Termination Disclosure Letter;

**"Region"**

All areas of Northern Ireland

**"Regional Contracts"**

the contracts dated on the same date as this Contract and made by the Authority, Serco and/or O&S in relation to the provision of accommodation services in the Region;

**"Regional Stakeholders"**

persons or bodies in a region which are affected or could be reasonably expected to be affected by the Subcontractor's provision of the Services and the presence of Asylum Seekers in the region including, without limitation:

- (a) local authorities;
- (b) health, education and social service providers; and
- (c) organisations engaged in the provision of assistance and services to, and promotion of the interests of, Asylum Seekers;

**"Regulatory Bodies"** 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 the matters dealt with in this Contract or any other affairs of the Authority, Serco or O&S and "Regulatory Body" shall be construed accordingly;

**"Related Services Sub-contract"** means:

- (a) a sub-contract for services the same as or similar to the Services to be provided by O&S pursuant to the O&S Contract outside the Region between O&S or Serco and either the Subcontractor or a third party; and
- (b) any sub-contract within the Region for services forming a different and/or complementary part of the Services to be provided by O&S pursuant to the O&S Contract between O&S or Serco and either the Subcontractor or a third party;

**"Related Services Sub-contractor"** means a counterparty to O&S or Serco in relation to a Related Services Sub-contract;

**"Relationship Matrix Card"** the scorecard set out in Appendix A to Schedule 7 (*Contract Management*)

**"Relevant Conviction"** any Conviction that involved any element of deception, dishonesty, violence or a sexual offence;

**"Relevant Law"** any applicable law (for example Northern Irish law), statute, proclamation, bye-law, directive, decision, regulation, rule, order, notice, or court or delegated or subordinate legislation and any applicable official request or requirement;

**"Relocation Request"** a request made to O&S from the Subcontractor for permission to move a User (in accordance with Paragraph 2. of Annex C to Schedule 7 (*Statement of Requirements*)) to different accommodation of the Subcontractor;

**"Reasonable Period"** a period (agreed or determined in accordance with Clause 17.2) for determining the circumstances which have given rise to the service of a Default Notice;

**"Required Action"** has the meaning given to it in Clause 17.10(a);

**"Required Insurances"** the policies of insurance held by the Subcontractor as the Insured and set out in Schedule 9 (*Insurances*), and any insurances required by law

in the United Kingdom;

- "Response Times"** the period of time within which the Subcontractor must provide services in relation to emergencies and reactive maintenance activities as set out in Annex B to Schedule 2 (*Statement of Requirements*);
- "Request Information"** for a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
- "Security Plan"** the Subcontractor's systems and procedures approved from time to time by O&S to support the Subcontractor's obligations to maintain security, control and safety.
- "Security Policy"** means the Security Policy Framework published by the Cabinet Office ;
- "Senior Representative"** the Subcontractor Senior Representative and/or (as the context may require) the O&S Senior Representative as appointed in accordance with Clause 7;
- "Serco"** means Serco Limited (registered number 242246) whose registered office is at Serco House, 16 Bartley Wood Business Park, Bartley Way, Hook, Hampshire RG27 9UY;
- "Serco Bridging Permit to Operate"** means as defined in the O&S Contract;
- "Serco Permit to Operate"** means as defined in the O&S Contract;
- "Serco Information Portal" or "SIP"** means the electronic portal operated by Serco in connection with the Services;
- Serco Termination Event** has the meaning given in the O&S Contract;
- "Service Area"** any of the four categories of Service provided under this Contract, being management Services and Accommodation Services;
- "Service Charges"** means those charges payable by O&S to the Subcontractor from time to time for the provision of the Services, as calculated in accordance with Clause 5 and Schedule 5 (*Service Charges*);
- "Service Credit"** the amounts to be deducted (in accordance with Schedule 13 (*Performance Regime*)) of the O&S Contract from the payments which would otherwise be payable by Serco to O&S under the O&S Contract;
- "Service Delivery Plan"** means the Subcontractor's documents which form a plan from mobilisation during the Mobilisation Period, including the Subcontractor's operational procedures and which shall form the contract management plan to be used by Contract Managers in managing the Services on a day to day basis

<b>"Services"</b>		the services which are to be provided by the Subcontractor to O&S under the terms of this Contract;
<b>"Service User"</b>		a person in respect of whom O&S requires (and only for so long as O&S so requires) the Subcontractor to provide Services referred to in Schedule 2 ( <i>Statement of Requirements</i> ) to O&S and with the relevant accommodation being provided within the Specified Region, including any person in respect of whom services similar to the Services are being provided at the date of this Contract by the Subcontractor and in respect of whom O&S requires or may from time to time require the Subcontractor to provide the services referred to in Schedule 2 (and with the relevant accommodation being provided within the Specified Region) in accordance with the terms of this Contract;
<b>"Service Year"</b>		each period of 12 Payment Periods from the Contract Signature Date until the date of expiry or termination of this Contract;
<b>"Severe Defect"</b>		a defect which precludes accommodation being habitable in accordance with the criteria set out in paragraph 3.1 of Annex B to Schedule 2 ( <i>Statement of Requirement</i> );
<b>"Sharing and Relocation Rules"</b>		the rules on the sharing of accommodation by Service Users as set out in Annex C to Schedule 2 ( <i>Statement of Requirement</i> );
<b>"Single"</b>		a Service User who is not stipulated by O&S to the Subcontractor as a Service User who must be accommodated with certain other named Service Users;
<b>"Software"</b>		the Specially Written Software, Subcontractor Software and the Third Party Software.
<b>"Specially Written Software"</b>		any software created by the Subcontractor (or by a third party on behalf of the Subcontractor) specifically for the purposes of this Contract.
<b>"Specific Change in Law"</b>	in	a change in Law which comes into effect after the Contract Signature Date, that relates specifically to the operations of the Authority and which would not affect the supply of services of the same or similar nature to the supply of Services to an entity other of the Authority;
<b>"Specified Region"</b>		the Region of Northern Ireland being the Region in respect of which the Subcontractor is to provide the Services and to which Service Users are to be dispersed under this Contract;
<b>"Stakeholder"</b>		means employees of the Authority whom are not deemed to be Key Representatives but have an interest in the delivery of the Services;
<b>"Strategic Management Board"</b>	Review	means the board of the same name as more particularly described in paragraph 6.2 of Schedule 7 ( <i>Contract Management</i> );
<b>"Statement of</b>	of	or "SOR" means the specification of the Services as set out in Schedule

<b>Requirements"</b>	2 (Statement of Requirements)
<b>"Staff Procedures"</b>	<b>Vetting</b> the Authority's, Serco's and/or O&S's procedures for the vetting of staff whose role will involve the handling of information of a sensitive or confidential nature or the handling of which is subject to any relevant security measures;
<b>"Standards"</b>	the British or international standards, Authority's internal policies and procedures, Government codes of practice and guidance referred to in Schedule 2 ( <i>Statement of Requirement</i> ) together with any other specified policies or procedures identified in Schedule 2 ( <i>Statement of Requirement</i> );
<b>"Sub-contractor's Agreement"</b>	means an agreement with Serco and/or O&S in a form similar to the Authority's Collateral Agreement with such amendments as O&S may require;
<b>"Subcontractor Equipment"</b>	the equipment provided by the Subcontractor for the provision of the Services which shall include (but not be limited to) vehicles, hardware, computer and telecoms devices and equipment supplied by the Subcontractor or its sub-contractors (but not hired, leased or loaned from the Authority or Serco or O&S);
<b>"Subcontractor Related Party"</b>	<b>Related</b> means any employee, officer, consultant, agent or any other person whatsoever acting for or on behalf of the Subcontractor or otherwise under the Subcontractor's control and direction (including but not limited to sub-contractors);
<b>"Subcontractor Software"</b>	Software which is proprietary to the Subcontractor including software which is or will be used by the Subcontractor for the purposes of providing the Services including the software specified as such in Schedule 2 (Statement of Requirements);
<b>"Subcontractor System"</b>	the information and communications technology system used by the Subcontractor in performing the Services including the Software, Subcontractor Equipment (but excluding the Non Subcontractor System);
<b>"Successor Contractor"</b>	any person appointed by the Authority, Serco or O&S to provide the Services (or their equivalent or any part of thereof) in succession to the Subcontractor;
<b>"Temporary Dispersal Accommodation"</b>	temporary accommodation that is provided on a short term basis e.g. a hotel, that the Subcontractor may use in a dispersal area, and for a period specified by O&S until longer term dispersal accommodation becomes available for a Service User in the relevant Region;
<b>"Termination Disclosure Letter"</b>	in respect of any Termination Transfer, the first letter from the Subcontractor to O&S which describes itself as the "Termination Disclosure Letter" and which the Subcontractor delivers to O&S on the relevant Termination Warranty Date so as to qualify those Warranties

	which are to be given by the Subcontractor to O&S on that date;
<b>"Termination Redundancy"</b>	the termination by the Subcontractor of the contract of employment of an employee of the Subcontractor which termination is caused by a O&S Termination Event;
<b>"Termination Redundancy Costs"</b>	has the meaning set out in paragraph 2 of Schedule 18 ( <i>Payments on Termination</i> );
<b>"Termination Transfer"</b>	the transfer of responsibility for the provision of the Services (or their equivalent) from the Subcontractor to the Authority and/or Serco and/or O&S and/or a Successor Contractor on or following the termination or expiry of this Contract;
<b>"Termination Transferring Contracts"</b>	those sub-contracts relating to the Services which the Subcontractor has entered into with Material Sub-contractors and which O&S notifies the Subcontractor during the Hand Over Period will be required by O&S or a Successor Contractor or the Authority or Serco (as the case may be) on the termination or expiry of this Contract;
<b>"Termination Warranty Date"</b>	in respect of any actual or proposed Termination Transfer, the date on which O&S confirms (in accordance with Clause 27.4) that it requires the Subcontractor to give the Warranties set out in Part B of Schedule 11 ( <i>Warranties</i> ) in respect of that Termination Transfer;
<b>"Third Party Software"</b>	software which is proprietary to any third party which is or will be used by the Subcontractor for the purposes of providing the Services, in Schedule 2 ( <i>Statement of Requirements</i> );
<b>"Total Service Failure"</b>	shall have the meaning set out in paragraph 2.6 of Schedule 13 ( <i>Performance Regime</i> ).
<b>"Transfer Date"</b>	in relation to any group of Transferring Employees which the Transferring Employees transfer under TUPE to the Authority, a Successor Contractor or Successor Contractors or to O&S or its or their sub-contractors and where there are several such transfers on different dates the expression <b>Transfer Date</b> shall mean in relation to each separate group of Transferring Employees the date of their transfer;
<b>"Transferring Employees"</b>	<p>the employees of the Subcontractor or any sub-contractor of the Subcontractor who are identified on the Provisional Staff List and who are employed by the Subcontractor at the time of the termination of the provision of the Services or any part of the Services under this Contract to transfer under TUPE to the Authority, a Successor Contractor or to Successor or to O&amp;S or its or their sub-contractors BUT:</p> <p>(i) less any person so listed whose employment with the Subcontractor or any of its sub-contractors ends prior to the Termination Transfer;</p>

- (ii) less any person so listed whose employment does not transfer pursuant to the TUPE Regulations by virtue of Regulations 4(7) and 4(8) of the TUPE Regulations (employees objecting to employment transferring); and
- (iii) less any person who is the subject of a secondment arrangement; and
- (iv) plus any person employed or engaged after the relevant Termination Warranty Date and prior to the relevant Termination Transfer by the Subcontractor or any of its sub-contractors in compliance with the obligations under paragraph 5.12 of Schedule 4 (*Exit Management and Handover*) (other than such a person whose employment ends before the Termination Transfer or who does not transfer pursuant to the TUPE Regulations by virtue of Regulations 4(7) and 4(8) of such regulations),

and "Transferring Employee" means any one of them;

**"Transferring Intellectual Property Rights"**

all Intellectual Property Rights created on or after the date of this Contract by the Subcontractor and/or any Subcontractor Related Parties as a result of or in the course of the operation of this Contract (other than any Intellectual Property Rights in any software and/or business processes created for the purposes of enabling or facilitating the Subcontractor to provide the Services as opposed to as a result of the provision of the Services) but including for the avoidance of doubt all Intellectual Property Rights in:

- (a) any report which the Subcontractor and/or any Subcontractor Related Parties produces and supplies to O&S in connection with the provision of the Services;
- (b) any data or other information which the Subcontractor may input into or supply to O&S for the purposes of any database maintained by the Authority or by Serco or O&S in connection with its activities; and
- (c) any data gathered by the Subcontractor in the course of undertaking the Services.

**"Transition Period"**

the period during which Service Users who are listed on the Transition Service User List are transferred into accommodation provided by the Subcontractor from other accommodation which they are occupying, in order that they may start to receive Services under the terms of this Contract;

**"Transition Plan"**

the plan annexed to Schedule 3 (*Mobilisation and Transition*) of the O&S Contract as Annex A which details the activities to be undertaken by the Subcontractor, Serco, O&S and the Authority during the Transition

	Period;
<b>"Transition Service User List"</b>	the list referred to in paragraph 9.3 of Schedule 3 ( <i>Mobilisation and Transition</i> ) of the O&S Contract;
<b>"Transport Services"</b>	means those Services as more particularly described in Paragraph 4 of Schedule 2 ( <i>Statement of Requirements</i> ) under which the Subcontractor shall transport Service Users.
<b>"TUPE" or "TUPE Regulations"</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006;
<b>"Unavoidable Breakage Costs"</b>	shall have the meaning set out in Paragraph 1 of Schedule 18 ( <i>Payments on Termination</i> );
<b>"Unsafe"</b>	accommodation deemed to be unsafe for use following the criteria set out in paragraph 2.1 of Annex B to Schedule 2 ( <i>Statement of Requirements</i> );
<b>"VAT"</b>	value added tax as provided for in the Value Added Tax Act 1994;
<b>"Value for Money"</b>	means the optimum combination of whole life cost and quality to meet Serco's, O&S's and the Authority's requirements;
<b>"Volume Related Payment"</b>	means the Charges which are payable depending on the volume of Service Users and/or journeys made and where there are no fixed costs for the Services as further defined in Schedule 5 ( <i>Service Charges</i> );
<b>"Warranties"</b>	the representations, warranties and undertakings set out in Schedule 11 ( <i>Warranties</i> );
<b>"Working Day"</b>	the period for the completion of one diurnal cycle of Working Hours;
<b>"Working Hours"</b>	for all Authority offices and establishments and any other offices and establishments relating to the provision of Services to IA Service Users, "Working Hours" means between the hours of 0730 and 1900 on any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under section 1 of the Banking and Financial Dealings Act 1971 in the locality in which the Service User is living; and  For offices and establishments to the extent concerned with the provision of Services to IA Service Users, "Working Hours" means between the hours of 0900 and 1700 on any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day that is a bank holiday (as defined above)