

CONCESSION AGREEMENT

relating to electric vehicle charge point installation across Isle of Anglesey

Isle of Anglesey County Council
Authority

(1)

[•]
Concessionaire

(2)

***[NOTE TO TENDERERS: This Agreement is in draft form and as such
remains without prejudice and subject to contract.]***

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BETWEEN

- (1) **Isle of Anglesey County Council** of Council Offices, Llangefni, Anglesey, LL77 7TW (the “**Authority**”); and
- (2) **[INSERT NAME OF CONCESSIONAIRE]** incorporated and registered in [England and Wales] with company number [●] whose registered office is at [●] (the “**Concessionaire**”),

each a “**Party**” and together the “**Parties**”.

BACKGROUND

- (A) Pursuant to the Procurement Act 2023, the Authority published a contract notice and Invitation to Tender (reference [●]) dated [●] on the Central Digital Platform seeking expressions of interest from potential providers for the operation of a concession relating to the installation, management and operation of electric vehicle charge point installations across the Isle of Anglesey.
- (B) On [●], the Concessionaire submitted its Tender in response to the Invitation to Tender.
- (C) On the basis of the Concessionaire’s Tender, the Authority selected the Concessionaire as its preferred supplier.
- (D) The Concessionaire is engaged in the business of installing, managing and operating electric vehicle charge point installations and has the appropriate skill, knowledge and experience in that field and has agreed to provide the Services for the Authority in accordance with the terms and conditions of this Agreement.
- (E) This Agreement is a concession contract awarded under the Procurement Act 2023.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

“**Achieve**” means in respect of a Milestone, that the Concessionaire has achieved all of the requirements of that Milestone to the Authority’s reasonable satisfaction (and “**Achievement**”, “**Achieving**” and “**Achieved**” shall be construed accordingly).

“**Additional Site**” means a car-park attached to existing Authority-owned infrastructure (including, without limitation, leisure centres, art galleries, schools, libraries or business units) and generates revenue via a “Pay and Display” regime. [**NOTE TO TENDERERS:**

The Authority is in the process of considering the appropriate route for identifying Additional Sites and welcomes comment on the information/characteristics that the Concessionaire would need to allow it to accept the Additional Sites. The Authority is in the process of considering any potential limitations on the nature and number of Additional Sites that may be added.]

“Affected Party” has the meaning given to it in clause 16.1.

“Affiliate” means, in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time.

“Applicable Laws” means, depending on the context, all or any laws, statutes, proclamations, recommendations, codes of practice, by-laws, directives, regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation (including any declarations of conformity) assimilated or modified by or under the EUWA, at any time or from time to time in force in the whole or any part of the United Kingdom and which are or may become applicable to this Agreement or any document referred to in this Agreement, or for the carrying out of the Services.

“Authority Data” means

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Authority’s Confidential Information, and which:
 - (i) are supplied to the Concessionaire by or on behalf of the Authority; or
 - (ii) the Concessionaire is required to generate, process, store or transmit pursuant to this Agreement; or
- (b) any Personal Data for which the Authority is the Controller.

“Authority Materials” means all documents, information, items and materials in any form (whether owned by the Authority or a third party), which are provided by the Authority to the Concessionaire in connection with the Services.

“Authority Policies” means the Authority’s business policies and codes set out in Schedule 13 (*Authority Policies*), as updated by notification to the Concessionaire from time to time.

“Authority Responsibilities” means any responsibilities of the Authority specified in Schedule 1 (*Specification*).

“Authority Supplied Equipment” means any equipment, including tools, systems, cabling or facilities, provided by or on behalf of the Authority to the Concessionaire and which is used directly or indirectly in the supply of the Services.

“Bribery Act” means the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

“Business Continuity and Disaster Recovery Plan” means a plan which sets out the procedures to be adopted by the Concessionaire in the event of a Disaster (including the procedures to be taken by the Concessionaire in planning and providing for any such event).

“Change” means any change to this Agreement including to the Concession and/or any of the Services.

“Change Control Note” means the written record of a Change agreed or to be agreed by the Parties pursuant to the Change Control Procedure.

“Change Control Procedure” means the procedure for changing this Agreement, as set out in Schedule 11 (*Change Control Procedure*).

“Change of Ownership” means is any change in the Concessionaire’s direct or indirect ownership or control from that existing at the Commencement Date.

“Charges” means:

- (a) the Concession Fees; and
- (b) the Customer Charges.

“Commencement Date” means the date of this Agreement.

“Commercially Sensitive Information” means the information listed in Schedule 12 (*Commercially Sensitive Information*) comprising the information of a commercially sensitive nature relating to the Concessionaire, its Intellectual Property Rights or its business or which the Concessionaire has indicated to the Authority that, if disclosed by the Authority, would cause the Concessionaire significant commercial disadvantage or material financial loss.

“Concession” means the right to carry out the Services across the Sites.

“Concession Fee” means the charges which shall become due and payable by the Concessionaire to the Authority in consideration of operating the Concession in accordance with the provisions of this Agreement, as such charges are set out in Schedule 7 (*Concession Fee*).

“Concessionaire Equipment” means any equipment, including tools, systems, cabling or facilities used by the Concessionaire or its Sub-Contractors (but not hired, leased or loaned from the Authority) for the provision of the Services (including the electric vehicle charge points).

“Concessionaire Materials” means all documents, information, items and materials in any form (whether owned by the Concessionaire or a third party), which are provided by the Concessionaire to the Authority in connection with the Services.

“Concessionaire Personnel” means all employees, workers, agents, consultants, contractors and other representatives of the Concessionaire, or any of its subcontractors, who are engaged in the performance of this Agreement from time to time, and **“Concessionaire Person”** means any of them.

“Concessionaire's Tender” means the tender submitted by the Concessionaire.

“Confidential Information” means all confidential information (however recorded or preserved) disclosed by a Party or its Representatives to the other Party and that Party's Representatives in connection with this Agreement, including but not limited to:

- (a) any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, affairs, customers, suppliers or plans of the disclosing Party; and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party;
- (b) any information developed by the Parties in the course of carrying out this Agreement;
- (c) Personal Data;
- (d) any Commercially Sensitive Information but not including any Information which:
 - (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
 - (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;

- (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;
- (iv) was independently developed without access to the Confidential Information; or
- (v) relates to the Concessionaire's performance under this Agreement.

"Contract Manager" means the persons respectively designated as such by the Authority and the Concessionaire, the first such persons being set out in Schedule 8 (*Contract Management*).

"Contract Year" means any twelve (12)-month period starting on the Commencement Date and on each anniversary of the Commencement Date.

"Contracting Authority" has the meaning given to it in section 2 of the Procurement Act.

"Controller" has the meaning given to that term in the Data Protection Legislation.

"Customer" means customers who use or receive the provision of the Operational Services from the Concessionaire.

"Customer Charges" means the respective charges which become due and payable by each Customer to the Concessionaire in respect of the Services and if payable at any time at the relevant rates of VAT applicable to such respective charge.

"Customer Charges Cap" means the price that is 20% above the price index published by Zapmap from time to time and made available at <https://www.zap-map.com/ev-stats/charging-price-index>.

"Customer Personal Data" means Personal Data relating to a Customer.

"Customer Terms" means the terms between the Concessionaire and each Customer to whom the Services are provided as set out in Schedule 4 (*Charge Point Customer Terms*).

"Data Protection Legislation" means all applicable data protection and privacy legislation in force from time to time in the UK including:

- (a) the UK GDPR;
- (b) the DPA 2018 (and regulations made thereunder);
- (c) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and

- (d) the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a Party.

“Data Subject” has the meaning given to that term in the Data Protection Legislation.

“Delay” has the meaning given to that term in clause 15.1(a).

“Disaster” means the occurrence of one or more events which, either separately or cumulatively, mean that the Concession and/or Services, or a material part of the Concession and/or Services will be unavailable for a period of time or which is reasonably anticipated will mean that the Concession and/or Services, or a material part of the Concession and/or Services will be unavailable for that period.

“Disclosing Party” has the meaning given to that term in clause 39.1.

“Discrimination Acts” has the meaning given to that term in clause 50.1.

“Dispute” has the meaning given to that term in clause 36.1.

“Dispute Resolution Procedure” means the procedure set out in clause 36.

“Distribution System” means the network of electrical lines owned or operated by the DNO and used for the distribution of electricity;

“DNO” or **“Distribution Network Operator”** means SP Energy Networks (SPEN).

“DNO Works” means any non-contestable or contestable works to be carried out by the DNO for the purposes of securing the required electricity supply connection for the purposes of delivering the Services at the relevant Site.

“DPA” means Data Protection Act 2018.

“Draft Action Plan” means a plan prepared pursuant to clause 17.2(b)(ii).

“Employment Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced.

“Environmental Damage” means any injury or damage to persons (including material offence to man's senses), living organisms or property or any material pollution or impairment of the environment resulting from the discharge, emission, escape or migration of any substance, energy, noise or vibration.

“Environmental Information Regulations” means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“Environmental Laws” means any Applicable Laws and Standards which relate to or exist for the purpose of protecting the environment or a part of the environment.

“Environmental Liability” means any liability under Environmental Laws.

“Environmental Losses” means any losses suffered or reasonably incurred by a person in respect of (i) any Environmental Liability, and/or (ii) any reasonable action taken by such person to prevent, reduce, limit or mitigate any Environmental Liability (excluding insurance).

“Estimated Revenue” means the estimated Gross Revenue that the Concessionaire is expected to receive from the Services for each Contract Year during the Operational Phase as calculated based on the actual Gross Revenue of the previous Contract Year, prevailing market circumstances in Wales and a view to offering best value to Customers.

“Excluded Site” has the meaning given to that term in clause 12.3.

“Excusable Event” means a Service Level Failure which arose as a direct result of the occurrence of:

- (a) the DNO Works not being completed by the Operational Services Commencement Date;
- (b) the Authority not allowing the Concessionaire to access and use any part of a Site required for the purposes of carrying out the Services;
- (c) any Necessary Consent that cannot be obtained within the time period set out in the Specification due to a delay caused by a third party;
- (d) No Fault Found unless an identical fault occurs within twenty eight (28) days; or
- (e) material breach by the Authority of any of the Authority Responsibilities,

except to the extent that any event described above:

- (f) is caused by or contributed to by any act or omission of the Concessionaire, any Sub-Contractor, any Concessionaire Personnel or any other person for whom those parties are responsible; or
- (g) is a result of any act or omission of the Authority to which the Concessionaire has given its prior consent.

“Exit Assistance” means the assistance to be provided by the Concessionaire in accordance with the Exit Plan.

“Exit Period” means the period beginning on the earlier of:

- (a) the date a Notice of Default is received by a Party; or
- (b) six (6) months before the Termination Date,

and ending six (6) months after the Termination Date.

“Exit Plan” means the plan produced and updated in accordance with Schedule 15 (*Exit Management*) which shall be substantially in the form of that set out in Appendix 1 of that Schedule.

“Extended Term” shall have the meaning given to that term in clause 3.2.

“FOIA” shall have the meaning given to that term in clause 38.1.

“Force Majeure Event” means any circumstance not attributable to a Party and not within a Party’s reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- (f) collapse of buildings, fire, explosion or accident; and
- (g) any labour or trade dispute, strikes, industrial action or lockouts (except that if the Affected Party is the Concessionaire, any labour or trade dispute, strike, industrial action or lockout involving the Concessionaire's workforce or the workforce of any Sub-Contractor of the Concessionaire).

“General Change in Law” means a change in Applicable Laws which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Concessionaire) or which would affect or relate to a comparable operation of a concession or supply of services of the same or a similar nature to the operation of the Concession or the supply of the Services.

“Good Industry Practice” means using Standards, practices, methods and procedures conforming to the Applicable Laws and published by any relevant trade associations and exercising that degree of skill and care, diligence, prudence and foresight which would

reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

“Government Authority” means any national, supra-national (including the European Union), state or local government, any political subdivision thereof or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other similar entity and includes the Secretary of State.

“Gross Revenue” shall have the meaning given to that term in Schedule 7 (*Concession Fee*).

[**“Guarantee”** means the guarantee given to the Authority by the Guarantor in relation to the Concessionaire’s obligations under this Agreement.]

[**“Guarantor”** means [●].]

“Implementation Plan” means the programme for carrying out the Services across the Sites as set out in Schedule 2 (*Implementation Plan*) as updated from time to time in accordance with the terms of this Agreement (including, without limitation, the Specification).

“Insolvency Event” means, in relation to a Party:

- (a) Administration: any step being taken by any person with a view to the administration of that Party under Part II of the Insolvency Act 1986;
- (b) Insolvency: that Party either stopping or suspending or threatening to stop or suspend payment of all or a material part of (or of a particular type of) their debts, or being unable to pay their debts, or being deemed unable to pay their debts under section 123(1) or (2) of the Insolvency Act 1986 except that section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there was substituted £50,000 (fifty thousand pounds Sterling);
- (c) Arrangements with Creditors: the directors of that Party making any proposal under Section 1 of the Insolvency Act 1986, or that Party proposing or making any arrangement or composition with its creditors generally;
- (d) Security Enforceable: any step being taken to enforce security over or a distress, execution, sequestration or other process being levied or enforced against any or the whole or a substantial part of the property of that Party or the whole or a substantial part of the assets or undertaking of that Party, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;

- (e) Stopping Business/Winding-Up: any step being taken by that Party with a view to its winding-up, bankruptcy or dissolution or any person presenting a winding-up petition or that Party ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Operator before that step is taken;
- (f) Analogous Events: any event occurring which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in (a) to (e) above.

“Intellectual Property Rights” means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“Key Personnel” means those personnel identified in Schedule 8 (*Contract Management*) for the roles attributed to such personnel, as modified pursuant to clause 28.

“Longstop Date” means:

- (a) in the case of any Site, the date that is 18 months from the Commencement Date; and
- (b) in the case of an Option Site, the date that is 24 months from the date of the Option Notice.

“Losses” means all liabilities, damages, losses (including loss of profits, loss of business, loss of reputation, loss of savings and loss of opportunity), fines, awards, expenses and costs (including all interest, penalties, legal costs (calculated on a full indemnity basis) and reasonable professional costs and expenses).

“Maintenance and Replacement Schedule” means the maintenance and replacement schedule referred to in clause 11.2.

“Management Reports” means the reports to be prepared and presented by the Concessionaire in accordance with clause 26.

“Milestone” means an event or task described as such in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date.

“Milestone Date” means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved.

“Necessary Consents” means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the operation of the Concession and/or performance of the Services.

“No Fault Found” means a loss or impairment of functionality, the cause of which the Concessionaire is not able to identify following a detailed investigation as reasonably expected of a competent provider of services substantially similar to those Services provided under this Agreement.

“Notice of Default” shall have the meaning given to that term in clause 53.2 or 54.2 (as the case may be);

“Operational Phase” means the period starting on the Operational Services Commencement Date and ending on the earlier of expiry of the Term and termination.

“Operational Service” means the services to be provided by the Concessionaire to Customers during the Operational Phase, being the operation and management of electric vehicle charge points and the administration of Customer Charges chargeable to Customers as more particularly described in the Specification.

“Operational Services Commencement Date” means in relation to an Operational Service at each Site, the date identified in the Implementation Plan upon which the Operational Service is to commence at that Site.

“Option Notice” has the meaning given to that term in clause 12.2(a).

“Option Site” means a Site set out in Part B of Schedule 16 (*Sites*) selected pursuant to an Option Notice.

“Permitted Delay Event” has the meaning given to it in clause 15.2;

“Personal Data” has the meaning given to that term in the Data Protection Legislation.

“Processor” has the meaning given to that term in the Data Protection Legislation.

“Procurement Act” means the Procurement Act 2023, as amended or updated from time to time.

“Prohibited Act” means the following acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage as an inducement or reward for any improper performance of a relevant function of activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
 - (i) committing any offence:
 - (ii) under the Bribery Act;
 - (iii) under legislation or common law concerning fraudulent acts; or
 - (iv) of defrauding, attempting to defraud or conspiring to defraud the Authority; and
- (c) any activity, practice or conduct which would constitute one of the offences listed under (b) above, if such activity, practice or conduct had been carried out in the UK.

“Quarter” means each period of three (3) months. The first Quarter shall commence on the Commencement Date.

“Recipient” has the meaning given to it in clause 39.1.

“Relevant Approval” means a consent, approval or permission, including any relevant derogation required to be granted by a Relevant Approval Authority in relation to the Services in order to permit the operation of such Services with or without Customers.

“Relevant Approval Authority” means any or all of any Government Authority, the Notified Body, or any other entity which has the appropriate authority for the granting of a Relevant Approval.

“Relevant Transfer” means a relevant transfer for the purposes of Employment Regulations.

“Relevant Requirements” means all Applicable Laws relating to bribery, corruption and fraud, including the Bribery Act and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act.

“Replacement Concessionaire” means any third party supplier of Replacement Services appointed by the Authority from time to time.

“Replacement Services” means any services which are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the

Services following the termination or expiry of this Agreement, whether those services are provided by the Authority internally or by any Replacement Concessionaire.

“Representatives” means, in relation to a Party, its employees, officers, contractors, subcontractors, representatives and advisors.

“Security Interest” shall be construed as a reference to (a) any right of ownership, lien, mortgage, charge, pledge, hypothecation, attachment, security interest, assignment by way of security, right of possession, right of detention, right of set-off or other encumbrance, (b) any other preferential arrangement resulting in a secured transaction or having the same economic or legal effect as any of the foregoing, (c) any agreement to give any of the foregoing, (d) any arrangement to prefer one creditor over another creditor, (e) the interest of the vendor or owner under a conditional sale agreement, lease, hire purchase agreement or other title retention arrangement or (f) any interest described in (a) to (e) above created or existing over any interest described in (a) to (e) above.

“Service Level Failure” means:

- (a) in the case of the Service Level titled “Charge Point Reliability” with ID “O1”, a failure by the Concessionaire to meet the “Acceptable” performance level for any one (1) month;
- (b) in the case of the Service Level titled “Charge Point Fix Times” with ID “O6”, a failure by the Concessionaire to meet the “Acceptable” performance level for any one (1) Contract Year of the Operational Phase; and
- (c) in the case of all other Service Levels, a failure by the Concessionaire to meet the “Acceptable” performance level in respect of a Service Level for either:
 - (i) a period of two (2) consecutive months; or
 - (ii) a period of three (3) non-consecutive months in any six (6) month period.

“Service Levels” are the service levels to which the Services are to be provided, as set out in Schedule 3 (*Service Levels*).

“Services” means the design, construction, supply, installation, testing and commissioning, operation, management and maintenance of electric vehicle charge points at the Sites as more particularly described in the Specification, including all services, functions and responsibilities which are incidental or ancillary to those services or required for their proper and lawful performance.

“Site” means:

- (a) any site set out in Part A of Schedule 16;

- (b) any Option Site; and
- (c) any Additional Site agreed to be a "Site" pursuant to a Change made in accordance with the Change Control Procedure,

provided that such site is not an Excluded Site.

"Social Value" means each social value set out in Schedule 14 (*Social Values*).

"Specification" means the specification set out in Schedule 1 (*Specification*).

"Specific Change in Law" means a change in Applicable Laws which comes into effect after the Commencement Date that relates specifically to the business of the Authority or Concessionaire, and which would not affect a comparable concession to the Concession or comparable supply of services of the same or a similar nature to the supply of the Services.

"Standards" means all the laws, rules, regulations, recommendations and instructions, including (without limitation) guidance, codes of practice and conduct which have the force of law or with which it is generally accepted within the United Kingdom energy and transport industry that it is good practice to comply, relating to the performance of this Agreement and/or applicable to the Services which are or have been issued by any Relevant Approval Authority or other person from time to time legally authorised to set standards in respect of the energy and transport industry.

"Sterling" means the lawful currency from time to time of Wales;

"Taxes", "Tax" or "Taxation" means all present and future taxes, charges, imposts, duties or levies of any kind whatsoever, payable at the instance of or imposed by any Government Authority, together with any penalties, additions, fines, surcharges or interest thereon.

"Term" means the period commencing on the Commencement Date and ending on the date that is fifteen (15) years after the Commencement Date.

"Termination Threshold" means:

- (a) during the Delivery Phase, the occurrence of three (3) Service Level Failures for a period of two (2) consecutive months; or
- (b) during the Operational Phase, the occurrence of four (4) Service Level Failures in a period of two (2) consecutive months.

"Third Party IPR Claim" has the meaning given to it in clause 43.4.

“Transferable Assets” means the assets used by the Concessionaire exclusively in the operation of the Concession and/or the Services at any or all Site(s) (but excluding the EV charging point(s) itself).

“Transferring Assets” has the meaning given to that term in paragraph Schedule 156.2 of Schedule 15.

“UK GDPR” means has the meaning given in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

“Value Added Tax” or **“VAT”** means value added tax as provided for in the Value Added Tax Act 1994 and legislation (whether delegated or otherwise) supplemental thereto and any similar sales, consumption or turnover tax replacing or introduced in addition to the foregoing.

“Welsh Language Obligations” means the obligations of the Authority in respect of the use of the Welsh language, whether under any Law, under any Welsh language scheme made under the Welsh Language Act 1993, under any Welsh language standards which apply to the Authority under the Welsh Language (Wales) Measure 2011 (whether or not a compliance notice has been given to the Authority) or any specific obligations in respect of the use of the Welsh language in connection with the operation of the Concession or delivery of Services which are notified to the Concessionaire from time to time by the Authority.

“Working Day” means Monday to Friday, excluding any public holidays in Wales.

“Working Hours” means the period from 9.00 am to 5.00 pm on any Working Day.

1.2 In this Agreement, unless the context otherwise requires:

- (a) Clause, Schedule and paragraph headings do not affect the interpretation of this Agreement.
- (b) A **“person”** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (c) The Schedules form part of this Agreement and have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- (d) A reference to a **“company”** includes any company, corporation or other body corporate, wherever and however incorporated or established.
- (e) Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.

- (f) This Agreement is binding on, and ensures to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party include that party's personal representatives, successors and permitted assigns.
- (g) Unless expressly provided otherwise in this Agreement, a reference to legislation or a legislative provision:
 - (i) is a reference to it as amended, extended or re-enacted from time to time; and
 - (ii) includes all subordinate legislation made from time to time under that legislation or legislative provision.
- (h) A reference to “**writing**” or “**written**” excludes fax but not email.
- (i) Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- (j) A reference to “**this Agreement**” or to any other Agreement or document is a reference to this Agreement or that other Agreement or document, in each case as varied from time to time.
- (k) A reference to “**month**” is a reference each calendar month, where the first month shall be for a period commencing on the Commencement Date and ending on the last day of the calendar month during which the Commencement Date. Each month thereafter shall be each calendar month save that the last month of this Agreement shall end on the date of expiry or termination of this Agreement. The start point for each month shall be 00:00 hours falling at the beginning of the first day of the month. The end point for each month shall be 23:59 and 59 seconds falling at the end of the last day of the month.
- (l) References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- (m) Any words following the terms “**including**”, “**include**”, “**in particular**”, “**for example**” or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

1.3 If there is any conflict or inconsistency between the provisions in the main body of this Agreement and the Schedules, such conflict or inconsistency shall be resolved according to the following order of priority:

- (a) the clauses of this Agreement;

- (b) Schedule 1 (*Specification*) to this Agreement; and
- (c) the remaining Schedules to this Agreement.

2 GRANT OF CONCESSION TO THE CONCESSIONAIRE

The Authority hereby grants the Concession to the Concessionaire and the Concessionaire accepts and promises to operate the Concession for the Term in accordance with the provisions of this Agreement.

3 COMMENCEMENT AND DURATION

3.1 Term

Subject to clause 3.2, this Agreement shall take effect on the Commencement Date and shall continue for the Term when it shall automatically terminate without notice (unless the Agreement is terminated earlier in accordance with the provisions of this Agreement or by operation of law).

3.2 Extension

No later than eighteen (18) months before the end of the Term, the Concessionaire may give written notice to the Authority requesting a five (5) year extension to the term of the Agreement. Within three (3) months of receipt of such notice, the Authority shall notify the Concessionaire whether or not it agrees, in its absolute discretion, to extend the term of the Agreement. If the Authority agrees to such an extension, then the Agreement shall be extended by five (5) years (the “**Extended Term**”). The Agreement shall terminate automatically at the end of the Extended Term (unless the Agreement is terminated earlier in accordance with the provisions of this Agreement or by operation of law).

3.3 [Guarantee]

All of the Authority’s obligations hereunder, including but not limited to the obligation to make any payment hereunder, are subject to the Authority having received:

- (a) the Guarantee duly signed and dated by the Guarantor; and
- (b) if requested by the Authority, a legal opinion addressed to the Authority in form and substance satisfactory to the Authority in respect of the due authorisation, execution and delivery by the Guarantor of the Guarantee.

4 REPRESENTATIONS AND WARRANTIES

- 4.1 The Concessionaire provides the representations and warranties in clause 4.2 to the Operator. The Concessionaire acknowledges and agrees that the Authority is relying on

the representations and warranties set out below and is entering into this Agreement on the basis of them.

4.2 The Concessionaire undertakes, represents and warrants to the Authority that as at the Commencement Date:

- (a) [the Concessionaire is a wholly owned Subsidiary of the Guarantor;]
- (b) the Concessionaire is a company properly organised and validly existing under the laws of England and Wales as a limited liability company. It has the power to carry on its business as it is now being conducted and has all licences, consents, approvals, permits, authorisations, exemptions and certifications required for that purpose;
- (c) the Concessionaire has full right, capacity, power and authority to enter into this Agreement, to operate the Concession and to provide the Services;
- (d) this Agreement is executed by a duly authorised representative of the Concessionaire and once duly executed, this Agreement will constitute its legal, valid and binding obligations;
- (e) the Concessionaire shall discharge its obligations under this Agreement using personnel of appropriate skill, experience and qualifications and in accordance with Good Industry Practice;
- (f) the Concessionaire will perform and procure the performance of its obligations under this Agreement in compliance with all Applicable Laws and Standards;
- (g) the Concessionaire has (or, at the appropriate time, will have) all Necessary Consents required for the operation of the Concession and/or provision of the Services;
- (h) the Concessionaire is of sound financial standing, and the Concessionaire is not aware of any circumstances (other than any circumstances that may be disclosed in the auditor's report on the accounts) which will materially adversely affect that financial standing in the future;
- (i) entering into this Agreement and performing its obligations under this Agreement will not:
 - (i) conflict with the Concessionaire's Articles of Association; and
 - (ii) conflict with or result in a breach of any existing contract to which the Concessionaire is a party or in the creation of any Security Interest over the Concessionaire or any of its property;

- (j) there are no actions, suits, legal proceedings or regulatory investigations pending or, to the Concessionaire's knowledge, threatened against it or affecting the Concessionaire which, if decided against the Concessionaire, would have a material adverse effect upon the Concessionaire's financial condition or business or its ability to perform its obligations under this Agreement;
- (k) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- (l) the Concessionaire does not know, nor should it know, of any information in existence at the time these representations and warranties are made which would cause the Authority not to enter into this Agreement if the Authority was aware of that information; and
- (m) none of the Concessionaire Events of Default has happened.

4.3 Each of the representations and warranties set out in this clause 4 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.

4.4 If the Concessionaire becomes aware that a representation or warranty given by it under this clause 4 has been breached, is untrue or is misleading, it shall promptly notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.

4.5 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Concessionaire.

5 DUE DILIGENCE

5.1 The Concessionaire acknowledges and confirms that:

- (a) the Authority has delivered or made available to the Concessionaire all of the information and documents that the Concessionaire considers necessary or relevant for the performance of its obligations under this Agreement;
- (b) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Authority pursuant to clause 5.1(a);
- (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Commencement Date) of all

relevant details relating to the performance of its obligations under this Agreement (including without limitation the suitability of Authority Supplied Equipment); and

(d) it has entered into this Agreement in reliance on its own due diligence.

5.2 Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Concessionaire by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by Law.

5.3 The Concessionaire:

(a) warrants and represents that all information and statements made by the Concessionaire as a part of the procurement process, including without limitation the Concessionaire's Tender or response to any selection questionnaire, remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of this Agreement; and

(b) shall promptly notify the Authority in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to operate the Concession and/or perform the Services.

5.4 The Concessionaire shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Concessionaire in accordance with clause 5.3(b), save where such additional costs or adverse effect on performance have been caused by the Concessionaire having been provided with fundamentally misleading information by or on behalf of the Authority and the Concessionaire could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Concessionaire shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

5.5 Nothing in this clause 5 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

6 CONCESSIONAIRE GENERAL OBLIGATIONS

6.1 The Concessionaire shall operate the Concession and provide the Services to the Authority in accordance with the terms and conditions of this Agreement for the duration of the Term.

6.2 The Concessionaire shall, when providing the Services and operating the Concession:

- (a) act in accordance with:
 - (i) the Specification;
 - (ii) the Implementation Plan;
 - (iii) the Service Levels;
 - (iv) Good Industry Practice;
 - (v) all Applicable Laws and Standards (including, without limitation, the EV Regulations);
 - (vi) the Authority Policies; and
 - (vii) the insurances procured under this Agreement and any limits imposed on them;
- (b) ensure the Concessionaire Equipment, Authority Supplied Equipment and any other goods and materials used in providing the Services are in a condition which is fit for purpose and intended use at all times and are free from defects in workmanship, installation and design in all material respects;
- (c) ensure that all standards and techniques used in providing the Services are of the standard expected of a market-leading provider of similar services;
- (d) at all times allocate sufficient resources with the appropriate technical expertise to operation the Concession and to provide the Services in accordance with this Agreement;
- (e) use reasonable endeavours to achieve the Estimated Revenue in each Contract Year of the Operational Phase;
- (f) in a manner that does not damage the Authority's reputation, bring the Authority into disrepute, embarrass the Authority or engage in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority;
- (g) not do or omit to do anything which may cause the Authority to lose any licence, authority, consent or permission or place the Authority in breach of any agreement on which it relies for the purposes of its function;
- (h) co-operate with the Authority and any other parties reasonably required by the Authority in all matters relating to this Agreement and the operation of the Concession (including by providing reasonable information, advice and reasonable assistance);

- (i) manage the supply of electricity to the Sites, including without limitation communicating with the DNO in all matters related to the supply of electricity;
- (j) comply with all the Authority's reasonable instructions in relation to this Agreement and the operation of the Concession; and
- (k) gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Concessionaire's compliance with its obligations under this Agreement;
- (l) comply with the Public Charge Point Regulations 2023, including (but not limited to) compliance with the obligations set out in the following regulations (as and when in force):
 - (i) Regulation 5 (contactless payment);
 - (ii) Regulation 6 (payment roaming);
 - (iii) Regulation 7 (99% reliability of rapid charge points);
 - (iv) Regulation 9 (24/7 helpline);
 - (v) Regulation 10 (open data requirements); and
 - (vi) Regulation 11 (pricing transparency),

noting for the avoidance of doubt that the Concessionaire is the "charge point operator" for the purposes of the Public Charge Point Regulations 2023; and

- (m) comply with the Welsh Government's Code of Practice on Ethical Employment in Supply Chains (<https://www.gov.wales/ethical-employment-supply-chains-code-practice-guidance-and-training>) insofar as it relates to the operation of the Concession and the provision of the Services.

6.3 The Concessionaire shall be responsible for and bear all costs, outgoings and expenses incurred in relation to the implementation, performance, management, maintenance and development of the Services and the operation of the Concession, including:

- (a) the costs of contracts which are entered into by the Concessionaire to enable it to operate the Concession and provide the Services;
- (b) the costs incurred in connection with the supply of electricity to the Site; and
- (c) all maintenance, licence and other third party fees.

For the avoidance of doubt, the Concessionaire acknowledges that it shall not be entitled to any financial assistance or recover any additional costs from the Authority in relation to the Services and operation of the Concession.

6.4 The Concessionaire acknowledges that:

- (a) the Authority has accepted (or intends to accept) a connection offer from the DNO in relation to the DNO Works at each Site and has entered into (or intends to enter into following completion of the DNO Works) an enduring connection agreement with the DNO in respect of the connection of each Site to the Distribution System; and
- (b) without prejudice to any obligation of the Concessionaire in relation to management of the DNO Works, liaison with the DNO and/or payment for the DNO Works (as the case may be), nothing in this Agreement shall authorise or entitle the Concessionaire to apply for or enter into any agreement with the DNO in respect of the connection of any Site to the Distribution System.

7 WELSH LANGUAGE

7.1 The Concessionaire warrants that it shall:

- (a) comply with and operate the Concession and provide the Services in accordance with the Welsh Language Obligations as if they applied to the Concessionaire; and
- (b) not supply the Services in breach of the Welsh Language Obligations, nor in such a way as to render the Authority in breach of its Welsh Language Obligations.

8 CUSTOMER TERMS

8.1 The Concessionaire shall ensure that the provision of Services to Customers is on the basis of the Customer Terms.

8.2 The Concessionaire shall ensure that:

- (a) the Customer Terms comply with the Consumer Rights Act 2015 (and any other Applicable Law relating to consumer rights and/or supply of charging points); and
- (b) Customer are made reasonably aware of the Customer Terms prior to each use of the Services.

8.3 The Customer Terms shall not be varied without the Authority's prior written consent.

8.4 The Concessionaire shall be responsible for any claims, liabilities or obligations arising from a Customer's use of the Services.

9 AUTHORITY OBLIGATIONS

- 9.1 The Authority shall use reasonable endeavours to comply with the Authority Responsibilities.

10 CONSENTS AND COMPLIANCE

- 10.1 The Concessionaire shall ensure that all Necessary Consents are in place to operate the Concession and provide the Services, and the Authority shall not (unless otherwise agreed in writing) incur any additional costs associated with obtaining, maintaining or complying with the same. Where the Concessionaire is required to submit an application for any Necessary Consent, the Concessionaire shall first submit the draft application to the Authority who shall approve such application prior to its submission. Where the Authority reasonably requires amendments to such application, the Concessionaire shall make such amendments to the application prior to its submission.
- 10.2 Where there is any conflict or inconsistency between the provisions of this Agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Concessionaire has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Concession and the Concessionaire has notified the Authority in writing.
- 10.3 The Concessionaire shall (and shall procure that the Concessionaire Personnel shall) perform its obligations under this Agreement (including those in relation to the Concession and/or the Services) in accordance with all Applicable Laws and Standards (including in relation to health and safety). The Authority reserves the right to suspend the operation of the Concession and/or the provision of Services in whole or in part without paying compensation if and whenever the Concessionaire is, in the reasonable opinion of the Authority, in contravention of Applicable Laws and Standards.
- 10.4 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards of which it becomes aware and which relate to or arise in connection with the operation of the Concession, performance of the Services and/or this Agreement. The Concessionaire shall instruct the Concessionaire Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

11 EQUIPMENT

11.1 Concessionaire Equipment

- (a) The Concessionaire shall be solely responsible for the cost of carriage of Concessionaire Equipment to the Sites, including its off-loading, removal of all

packaging, installation, maintenance, operation, repair and all other associated costs.

- (b) Likewise on termination or expiry of this Agreement the Concessionaire shall be responsible for the removal and safe disposal from the Sites of all relevant Concessionaire Equipment that has not been purchased by the Authority, including the cost of packing, carriage and making good the Sites following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.
- (c) All the Concessionaire's property, including Concessionaire Equipment, shall remain at the sole risk and responsibility of the Concessionaire.
- (d) The Concessionaire shall not create or allow any Security Interest to be created over the Concessionaire Equipment without the Authority's prior written consent.
- (e) The Concessionaire shall ensure that throughout the Term it supplies or makes available and maintains in good condition and in working order in accordance with manufacturers' instructions (and replaced where necessary or required to comply with this Agreement) the Concessionaire Equipment.
- (f) The Concessionaire shall keep all hazardous Concessionaire Equipment under proper control and safekeeping.
- (g) The loss, damage or destruction for any reason of any Concessionaire Equipment shall not relieve the Concessionaire of its obligation to supply the Services in accordance with this Agreement.

11.2 Maintenance and replacement of Concessionaire Equipment

- (a) The Concessionaire shall within twenty (20) Working Days after the Operational Services Commencement Date for each Site prepare for the Authority's approval a draft Maintenance and Replacement Schedule for each piece of Concessionaire Equipment.
- (b) Following the approval of the Maintenance and Replacement Schedule, the Concessionaire shall maintain and replace such Concessionaire Equipment in accordance with the provisions of the Maintenance and Replacement Schedule.
- (c) In addition to clause 11.2(b), the Concessionaire shall also replace any Concessionaire Equipment where such Concessionaire Equipment is beyond repair, obsolete or no longer in line with Good Industry Practice.

11.3 Authority Supplied Equipment

- (a) The Authority shall retain ownership of the Authority Supplied Equipment and nothing in this Agreement shall transfer any title or right of ownership in the Authority Supplied Equipment to the Concessionaire.
- (b) The Concessionaire shall ensure at its own cost and at all times from the date of delivery of any Authority Supplied Equipment by the Authority, that:
 - (i) accurate documents recording the identity and/or location of the Authority Supplied Equipment are kept and copies of such documents are made available to the Authority's Contract Manager on request;
 - (ii) nothing is done or omitted to or in connection with any Authority Supplied Equipment which jeopardises or may jeopardise the rights of the Authority in or over any of the Authority Supplied Equipment and the Concessionaire shall not create or allow any Security Interest to be created over the Authority Supplied Equipment;
 - (iii) it shall regularly (and in any event promptly following a request by the Authority's Contract Manager) assess the condition of the Authority Supplied Equipment and take all necessary action to maintain such Authority Supplied Equipment in at least as good a condition as the condition in which they were delivered by the Authority to the Concessionaire; and
 - (iv) the Authority's Contract Manager is notified as soon as reasonably practicable in writing of any defect in any Authority Supplied Equipment.
- (c) All risk of loss, theft, damage and destruction of any Authority Supplied Equipment shall be with the Concessionaire at all times:
 - (i) from the delivery of each Authority Supplied Equipment to the Concessionaire until redelivery of that item to the Authority in accordance with this Agreement; and
 - (ii) when any Authority Supplied Equipment is otherwise in the possession or control of the Concessionaire, any Sub-Contractor, any Concessionaire Personnel or any other person for whom those parties are responsible.
- (d) In the event that any Authority Supplied Equipment suffers any damage at any time while the Authority Supplied Equipment is in the Concessionaire's possession and/or control, the Concessionaire shall be obliged to repair such damage at its own cost as soon as reasonably practicable and in any event within

the earlier to occur of the date failing thirty (30) days after the date on which the damage is suffered and the expiry and/or termination of this Agreement.

- (e) The Concessionaire shall on the earliest of:
 - (i) the expiry and/or termination of this Agreement; or
 - (ii) the date set out in any notice served by the Authority on the Concessionaire requiring the return of any Authority Supplied Equipment,

return the Authority Supplied Equipment to the Authority in at least as good a condition as the condition in which they were delivered by the Authority to the Concessionaire and in working order.

12 SITES

12.1 General

The Concessionaire shall provide the Services at each of the Sites unless the Authority determines, acting reasonably, that any one of the Sites shall be excluded because it is not possible to provide the Services at that Site due to a failure to complete the DNO Works by the Operational Services Commencement Date. It shall be reasonable for the Authority to determine that the Site shall not be excluded if the failure to complete the DNO Works arises out of or in connection with any act or omission of the Concessionaire.

12.2 Option Sites

- (a) At any time during the Term, the Authority may give written notice to the Concessionaire requiring the Concessionaire to provide the Services and operate the Concession at any one or more Option Sites in accordance with the terms of this Agreement (“**Option Notice**”). The Option Notice shall specify:
 - (i) any one or more of the Option Sites set out in Part B to Schedule 16 (*Sites*); and
 - (ii) the source of funding of any DNO Works required to be carried out at the Option Site(s), including confirmation as to whether or not such DNO Works shall be carried out at the Concessionaire’s cost.
- (b) Subject to clause 12.2(c), promptly after receipt of the Option Notice and in any event no later than [twenty (20) Working Days] from receipt of such notice, the Concessionaire shall provide the Authority with an updated version of the Implementation Plan to reflect the Services required at the Option Site(s) specified in the Option Notice. The Authority, acting reasonably, shall notify the

Concessionaire of any amendments required to the updated version of the Implementation Plan within [twenty (20) Working Days] of receiving the updated version of the Implementation Plan and the Concessionaire shall incorporate such amendments. The Concessionaire shall provide the Authority with the final version of the Implementation Plan within [ten (10) Working Days] of the Authority notifying the Concessionaire of any amendments and this shall be deemed to be the "Implementation Plan" for the purposes of this Agreement.

- (c) If the DNO Works at an Option Site are required to be carried out at the Concessionaire's cost and the Concessionaire does not agree to be responsible for such costs, then the Concessionaire shall notify the Authority no later than ten (10) Working Days of receipt of the Option Notice of the same. Following receipt of such notice, the Parties shall enter into good faith discussions to seek and agree on the source of funding of the DNO Works at such Option Site. If, following such discussions, the Parties cannot agree to the source of funding of the DNO Works at such Option Site, then the Concessionaire shall not be required to provide the Services at that Option Site and that Option Site shall be excluded for the purposes of clause 12.3.

12.3 **Substitute Sites**

Where a Site has been excluded in accordance with clause 12.1 and/or clause 12.2(c) ("**Excluded Site**"), the Authority may by written notice to the Concessionaire nominate a site with similar characteristics to the Excluded Site for the provision of the Services ("**Substitute Site**"). Promptly after receipt of such notice, the Concessionaire shall enter into good faith discussions with the Authority to establish the feasibility of carrying out the Services at the Substitute Site. Any material amendment to this Agreement required as a result of the Substitute Site (including, without limitation, updating Part A to Schedule 16 (*Sites*) to include the Substitute Site as a "Site" and any other necessary amendments to the Implementation Plan) shall be subject to the Change Control Procedure.

12.4 **Additional Sites**

At the Authority's request, the Concessionaire shall use reasonable endeavours to establish the feasibility of carrying out the Services at any Additional Site. Any material amendment to this Agreement required as a result of the Additional Site (including, without limitation, updating Part A to Schedule 16 (*Sites*) to include the Additional Site as a "Site" and any other necessary amendments to the Implementation Plan) shall be subject to the Change Control Procedure.

13 LEASES

[NOTE TO TENDERERS: IACC does not anticipate that leases will be entered into at award of this Agreement. IACC will discuss timescales and approach with the successful Tenderer.]

The Authority and the Concessionaire shall enter into a lease in substantially the same terms and format as that set out in Schedule 17 (*Form of Lease*) for each of the Sites owned by the Authority.

14 MILESTONES

14.1 The Concessionaire shall perform the Services and its other obligations so as to:

- (a) Achieve each Milestone by the Milestone Date; and
- (b) commence the Operational Services at all of the Sites by no later than the Longstop Date.

14.2 In the event that the Concessionaire does not:

- (a) Achieve each Milestone by the Milestone Date, then clause 17.2 shall apply save to the extent that the Concessionaire is entitled to a Permitted Delay; and/or
- (b) commence the Operational Services at all of the Sites by no later than the Longstop Date, then this shall constitute a Concessionaire Event of Default.

14.3 Changes to the Milestones and/or the Milestone Dates set out in the Implementation Plan shall be agreed in writing between the Authority and the Concessionaire.

15 DELAYS

15.1 General

- (a) If at any time, the Concessionaire becomes aware that it will not (or is unlikely to) Achieve any Milestone by the Milestone Date and/or commence the Operational Services at all of the Sites by the Longstop Date (each a "**Delay**"), it shall immediately notify the Authority of the fact of the Delay and summarise the reasons for it.
- (b) The Concessionaire shall as soon as possible and in any event not later than ten (10) Working Days after the initial notification under clause 15.1(a) give the Authority full details in writing of:
 - (i) the reasons for the Delay;
 - (ii) the consequences of the Delay; and

- (iii) if the Concessionaire claims that the Delay is due to a Permitted Delay Event, the reason for making that claim.
- (c) The Concessionaire shall use reasonable endeavours to eliminate or mitigate the consequences of the Delay.
- (d) Where the Concessionaire considers that a Delay is being caused or contributed to by a Permitted Delay Event, the Concessionaire shall not benefit from the relief set out in Clauses 15.2 to 15.3 to the extent that the Concessionaire has not fulfilled its obligations set out in, and in accordance with, this clause 15.
- (e) Any disputes about or arising out of Delays shall be resolved through the Dispute Resolution Procedure. Pending the resolution of the Dispute the Concessionaire shall continue to work to resolve the causes of, and mitigate the effects of, the Delay in accordance with the provisions of this clause 15.
- (f) Notwithstanding the other provisions in this clause 15, the Authority may, acting within its sole discretion, grant any other extension to the Milestones as the Authority may consider reasonable or proportionate.

15.2 Permitted Delay Events

The following are events which may cause the Concessionaire a Delay for which the Concessionaire may be entitled to a Permitted Delay ("**Permitted Delay Events**"):

- (a) the DNO Works have not been completed by the Operational Services Commencement Date;
 - (b) the Authority does not allow the Concessionaire to access and use any part of a Site required for the purposes of carrying out the Services;
 - (c) any Necessary Consent that cannot be obtained within the time period set out in the Specification due to a delay caused by a third party; or
 - (d) material breach by the Authority of any of the Authority Responsibilities,
- except to the extent that any event described in this clause 15.2:
- (e) is caused by or contributed to by any act or omission of the Concessionaire, any Sub-Contractor, any Concessionaire Personnel or any other person for whom those parties are responsible; or
 - (f) is a result of any act or omission of the Authority to which the Concessionaire has given its prior consent.

15.3 Permitted Delay

- (a) Without prejudice to clause 15.1(c) and subject to clause 15.1(d), if the Concessionaire would have been able to Achieve the Milestone by its Milestone Date, but the Concessionaire has failed to do so as a result of a Permitted Delay Event, the Concessionaire will have the rights and relief set out in this clause 15.3.
- (b) The Concessionaire shall:
 - (i) be allowed an extension of time equal to the Delay caused by that Permitted Delay Event; and
 - (ii) not be in breach of this Agreement as a result of the failure to Achieve the relevant Milestone by its Milestone Date during such extension of time.
- (c) If clause 15.3(b) applies, the Authority's Contract Manager shall:
 - (i) consider the duration of the Delay, the nature of the Permitted Delay Event, and the effect of the Delay on the Concessionaire's ability to comply with the Implementation Plan;
 - (ii) consult with the Concessionaire's Manager in determining the effect of the Delay;
 - (iii) fix a revised Milestone Date; and
 - (iv) if appropriate, make any consequential revision to subsequent Milestones in the Implementation Plans.
- (d) Any Change that is required to the Implementation Plan or the Longstop Date as a result of the Authority's Contract Manager's determination pursuant to clause 15.3(c) shall be documented in writing. If the Concessionaire's analysis of the effect of the Delay in accordance with clause 15.3(c)(ii) permits a number of options, then the Authority shall have the right to select which option shall apply.
- (e) The Authority shall not delay unreasonably when considering and determining the effect of a Delay under this clause 15.
- (f) Any extension of time granted pursuant to this clause 15 (or as appropriate, revisions to Milestones in the Implementation Plans) shall be in full and final settlement in respect of the impact of that Delay on the Concessionaire and the Concessionaire shall make a separate claim under this clause 15 for each instance of Delay.

16 FORCE MAJEURE

- 16.1 Provided it has complied with the remaining provisions of this clause 16, if a Party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (the “**Affected Party**”), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations.
- 16.2 The corresponding obligations of the other Party will be suspended to the same extent as those of the Affected Party.
- 16.3 The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event but not later than two (2) Working Days from its start, notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and
 - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event.
- 16.4 An Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 16.5 If the Affected Party fails to comply with any of its obligations under clause 16.3 then no relief for the Force Majeure Event (including the provisions of clause 16.2) shall be available and the obligations of the Affected Party shall continue in full force and effect.
- 16.6 The Concessionaire cannot claim relief if the Force Majeure Event is one which, in accordance with Good Industry Practice, the Concessionaire should have foreseen and provided for the cause in question.
- 16.7 The Affected Party shall notify the other Party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 16.8 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than four (4) weeks, the Party not affected by the Force Majeure Event may terminate this Agreement immediately by giving written notice to the Affected Party and the provisions of clause 55 shall apply.

17 SERVICE LEVELS

17.1 General

- (a) The Service Levels shall apply to the performance by the Concessionaire of its obligations under this Agreement.
- (b) The Concessionaire shall operate the Concession and provide the Services in such a manner as will ensure that each Service Level meets or exceeds the “Acceptable” performance level in respect of that Service Level and shall comply with the requirements of Schedule 3 (*Service Levels*).
- (c) The Concessionaire’s performance against the Service Levels shall be used in part by the Authority to monitor and assess the Concessionaire’s compliance with its obligations pursuant to this Agreement and to qualify and substantiate judgements should the Authority consider exercising any of its rights under this Agreement.
- (d) The Authority’s rights under this clause 17 shall be without prejudice to any of the Authority’s other rights or remedies including any right to terminate this Agreement.

17.2 Service Level Failure

- (a) If the Concessionaire’s performance against any Service Level is likely to or fails to meet the “Acceptable” performance level of that Service Level, the Concessionaire shall immediately notify the Authority in writing and the Authority.
- (b) In the event of a Service Level Failure (save to the extent that such Service Level Failure has occurred as result of an Excusable Event):
 - (i) the Concessionaire shall use reasonable endeavours to eliminate or mitigate the consequences of any Service Level Failure; and
 - (ii) the Concessionaire shall, within ten (10) days of delivering the Service Level Report, prepare a draft action plan (“**Draft Action Plan**”) to the Authority for approval setting out:
 - (A) the actions the Concessionaire will undertake to correct the Service Level Failure; and
 - (B) its compliance with the provisions of this Agreement relating to the relevant Service Level.

The Concessionaire shall be responsible for the reasonable costs of preparing the Draft Action Plan;

- (iii) the Authority shall, within ten (10) days of receipt of the Draft Action Plan:
 - (A) accept the Draft Action Plan;
 - (B) notify the Concessionaire that it requires revisions to the Draft Action Plan; or
 - (C) reject the Draft Action Plan and require the Concessionaire to prepare a new Draft Action Plan;
- (iv) if the Authority requires revisions to a Draft Action Plan or rejects a Draft Action Plan pursuant to clause 17.2(b)(iii), the Concessionaire shall, within ten (10) days, submit a revised Draft Action Plan to the Authority taking into account the Authority's required revisions and/or comments (and the provisions of clause 17.2(b)(iii) shall apply to such revised Draft Action Plan);
- (v) if the Authority accepts the Draft Action Plan pursuant to clause 17.2(b)(iii) then:
 - (A) that Draft Action Plan shall become an "**Approved Action Plan**" and the Concessionaire shall comply with the provisions of the Approved Action Plan at its own expense; and
 - (B) the Authority may agree in writing that the Service Level Failure which is the subject of this Approved Action Plan shall not apply for the purposes of determining if the performance against the Service Levels meets or falls below the Termination Threshold for so long as the Concessionaire remains in compliance with the provisions of the Approved Action Plan; and
- (vi) in the event that:
 - (A) the Authority does not accept the revised Draft Action Plan; or
 - (B) the Concessionaire fails to comply with the provisions of an Approved Action Plan (which includes failure to remedy the Service Level Failure by any date specified in the Approved Action Plan),

then this shall constitute a Concessionaire Event of Default for the purposes of clause 53.

18 CUSTOMER CHARGES

- 18.1 In consideration of the operation of the Concession and the provision of the Services by the Concessionaire in accordance with the terms and conditions of this Agreement, the Concessionaire may charge the Customer Charges to Customers. The Authority shall not be responsible for the payment of Customer Charges and the Concessionaire shall keep all Customer Charges payable by the Customers.
- 18.2 The level of the Customer Charges chargeable to Customers shall be set by the Concessionaire, provided always that:
- (a) the Customer Charges do not exceed the Customer Charges Cap; and
 - (b) the Concessionaire has due regard to the prevailing market circumstances and with a view to offering best value to Customers.
- 18.3 The initial Customer Charges are set out in Schedule 5 (*Initial Customer Charges*).
- 18.4 The Concessionaire may not change the Customer Charges unless it has first conducted a benchmarking review and consulted with the Authority, in each case, in accordance with clause 19.
- 18.5 The Customer Charges shall be immediately payable by the Customers upon the use of the Services.
- 18.6 The Concessionaire shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to each Customer pursuant to this Agreement. Such records shall be retained for inspection by the Authority for seven (7) years from the Termination Date.

19 VARYING THE CUSTOMER CHARGES

- 19.1 If the Concessionaire wishes to change the Customer Charges the Concessionaire shall undertake a benchmarking exercise to determine whether the proposed changes to the Customer Charges are in line with market practice (both locally and on a regional basis).
- 19.2 The Concessionaire shall provide reasonable evidence to the Authority to demonstrate that the Concessionaire has properly undertaken the benchmarking exercise and had regard to it when changing the Customer Charges.
- 19.3 Notwithstanding the provisions of clause 19.2, the Concessionaire shall be responsible for setting the Customer Charges.

20 AUTHORITY BENCHMARKING OF CUSTOMER CHARGES

- 20.1 The Parties shall comply with Schedule 6 (*Benchmarking*).

21 CONCESSION FEE

- 21.1 In consideration of grant of the operation of the Concession by the Authority in accordance with the terms and conditions of this Agreement, the Concessionaire shall pay the Concession Fee to the Authority.
- 21.2 The Concessionaire shall notify the Authority of the total Gross Revenue for each Quarter within ten (10) Working Days of the end of each Quarter. The Authority will then issue an invoice to the Concessionaire for the Concession Fee.
- 21.3 The parameters for calculating the Concession Fee shall remain fixed during the Term.
- 21.4 Where the Authority submits an invoice to the Concessionaire in accordance with clause 21.2, the Concessionaire will consider and verify that invoice in a timely fashion.
- 21.5 Where the Concessionaire fails to comply with clause 21.4, and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 22.1 after seven (7) days has passed after the date on which it is received by the Concessionaire.

22 PAYMENT

22.1 Payment and set-off

- (a) The Concessionaire shall pay the Authority any sums due under a valid invoice no later than a period of thirty (30) days from the date on which the Concessionaire has determined that the invoice is valid and undisputed.
- (b) Where any Party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with the Dispute Resolution Procedure.
- (c) The Concessionaire shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable by or payable to the Authority pursuant to this Agreement. Such records shall be retained for inspection by the Authority for six (6) years from the end of the Contract Year to which the records relate.
- (d) The Authority may at any time, set off any liability of the Concessionaire to the Authority against any liability of the Authority to the Concessionaire, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. Any exercise by the Authority of its rights under this clause 22.1 shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

- (e) All amounts due under this Agreement from the Concessionaire to the Authority shall be paid in full without any set-off, counterclaim, deduction or withholding (other than deduction or withholding tax as required by Applicable Laws).

22.2 VAT

- (a) The charges payable by a Party under this Agreement are stated exclusive of VAT. Where any taxable supply for VAT purposes is made under or in connection with this Agreement by one Party to the other, the recipient of that supply shall, in addition to any payment received for that supply under this Agreement, pay the supplying Party such VAT as is chargeable and at the prevailing rate as applicable in respect of the supply at the same time as payment is due subject to the receipt of a valid VAT invoice.
- (b) The Concessionaire shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Concessionaire's failure to account for, or to pay, any VAT relating to payments made to the Concessionaire under this Agreement.

22.3 Interest

- (a) If the Concessionaire fails to pay any undisputed Concession Fee properly invoiced under this Agreement, the Authority shall have the right to charge interest on the overdue amount at the a rate of four per cent (4%) above the base rate for the time being published by the Bank of England. All such interest will be calculated on the basis of the actual number of days elapsed and a three hundred and sixty-five (365) day year and will be payable on demand.
- (b) Where the Concessionaire has disputed the amount of Concession Fee due, provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until seven (7) days after resolution of the dispute between the Parties.

22.4 Payment inclusive

Save as expressly provided otherwise in this Agreement, payment of the Concession Fee is inclusive of all costs, expenses and disbursements incurred by the Concessionaire in connection with this Agreement.

22.5 Payment in Sterling

The Concession Fee is denominated in, and shall (together with all other payments payable by any Party under this Agreement) be made in, Sterling.

22.6 Taxation on indemnity payments

- (a) If and to the extent that any sums payable by one party to another under this Agreement by way of indemnity prove to be insufficient, by reason of any Taxation suffered thereon, for the receiving party to discharge its corresponding liability to a third party, the paying party shall on the receiving party's demand pay to the receiving party such additional sum as (after taking into account any Relief to which the receiving party is entitled as a result of the liability which gives rise to the indemnity and any Taxation suffered by the receiving party on the additional sum and the time that the same is suffered) shall be required to make up the relevant deficit.
- (b) If and to the extent that any sum (the "**Indemnity Sum**") constituting (directly or indirectly) an indemnity to a party hereunder (the "**First Party**") but paid by another party under this Agreement to any person other than the First Party, shall be treated as taxable in the hands of the First Party, the paying party shall on demand by the First Party pay to the First Party such sum (the "**Compensation Sum**") as (after taking into account any Taxation suffered by the First Party and the time when such Taxation is payable on the Compensation Sum) shall reimburse the First Party for any Taxation suffered by it in respect of the Indemnity Sum. In calculating any amounts due under this clause 22.6(b) the First Party shall take into account any Relief to which it becomes entitled as a result of the liability which gives rise to the indemnity.

23 FORECASTING AND RECORDS

23.1 By 9.00 am on the tenth (10th) Working Day of each expiry of each Quarter of the Operational Phase, the Concessionaire shall deliver to the Authority a statement of:

- (a) forecasted Gross Revenue for that Quarter, broken down as may be reasonably required by the Authority from time to time;
- (b) actual Gross Revenue for the preceding Quarter, broken down as may be reasonably required by Authority from time to time;
- (c) a statement of cumulative Gross Revenue for that Contract Year up to the relevant Quarter;
- (d) a comparison of the Gross Revenue for the preceding Quarter with the forecast previously provided by the Concessionaire for that Quarter;
- (e) the calculation of the Concession Fee applicable for that Quarter; and

- (f) any other supporting information or documentation as may be required by the Authority from time to time.
- 23.2 No later than one (1) Quarter before the end of the last Contract Year of the Delivery Phase and before the end of each Contract Year of the Operational Phase, the Concessionaire shall provide the Authority with the Estimated Revenue for the following Contract Year.
- 23.3 No later than ten (10) Working Days after the end of each Contract Year of the Operational Phase, the Concessionaire shall deliver to the Authority a statement of:
 - (a) Estimated Revenue for that Contract Year, broken down as may be reasonably required by the Authority from time to time;
 - (b) actual Gross Revenue for that Contract Year, broken down as may be reasonably required by Authority from time to time;
 - (c) a comparison of the Gross Revenue for that Contract Year with the Estimated Revenue previously provided by the Concessionaire for that Contract Year;
 - (d) calculation of the total Concession Fee payable for that Contract Year; and
 - (e) any other supporting information or documentation as may be required by the Authority from time to time.
- 23.4 If the Concessionaire fails to deliver any statements or certificates as required in accordance with this clause 23, then the Authority may instruct an auditor to check Gross Revenue for the Contract Year or Quarter in question and the Concessionaire shall pay the Authority's proper costs of such audit (including the auditor's fee) on demand, subject to the provision by the Authority of a VAT invoice in respect of such costs.
- 23.5 The Authority may audit and check the certificates referred to in this clause 23 at any time. If such certificate is found to be inaccurate by one per cent (1%) or more of the true figure, the Concessionaire shall pay all the Authority's reasonably and properly incurred costs in undertaking such audit on demand, subject to the provision by the Authority of a VAT invoice in respect of such costs. Any discrepancy between the Concession Fee(s) certified by the Concessionaire and the Concession Fee(s) as determined by the Authority audit shall, in the case of:
 - (a) any underpayment by the Concessionaire, be paid by the Concessionaire to the Authority within ten (10) Working Days of the discrepancy being notified to the Concessionaire, subject to the provision by the Authority of a VAT invoice in respect of such underpayment; and

- (b) any overpayment by the Concessionaire, be deducted from the next payment (of whatever form) due by it to the Authority.

23.6 Without prejudice to the generality of clause 42, the Concessionaire shall upon request by the Authority supply to it for its inspection and verification pursuant to this clause 23 copies of relevant entries in the Concessionaire's books of account and supporting invoices, vouchers and other documents and all such further information as the Authority may require regarding the trade, business and activities of the Concessionaire which may be relevant to the calculation of any Concession Fee.

24 INDEMNITIES AND LIABILITY

24.1 The Concessionaire shall indemnify and keep indemnified the Authority and/or its Affiliates on demand from and against all liabilities, losses, demands, claims, damages, amounts agreed upon in settlement, costs and expenses (including all legal and other professional fees, expenses and disbursements) arising out of:

- (a) damage to or loss of the Authority and/or its Affiliates property or third party property;
- (b) death or personal injury to any person; and/or
- (c) any claim made against the Authority arising out of or in connection with the operation of the Concession and/or provision of the Services,

to the extent attributable to the Concessionaire's or Concessionaire's Personnel's or its Sub-Contractor's or their respective servants', agents' and employees':

- (d) breach of the Concessionaire's obligations under or in connection with this Agreement (including any Lease);
- (e) acts or omissions (including in connection with this Agreement and any negligent act or omission or act or omission in breach of this Agreement);
- (f) breach of statutory duty; and/or
- (g) performance or non-performance of the Concessionaire's obligations under this Agreement (including a failure or delay in performance of this Agreement).

24.2 If any third party makes a claim, or notifies an intention to make a claim, against the Authority which may reasonably be considered likely to give rise to a Liability under this indemnity (a "**Claim**"), the Authority shall:

- (a) as soon as reasonably practicable, give written notice of the Claim to the Concessionaire, specifying the nature of the Claim in reasonable detail;

- (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Concessionaire;
- (c) give the Concessionaire and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Authority, so as to enable the Concessionaire and its professional advisers to examine them and to take copies (at the Concessionaire's expense) for the purpose of assessing the Claim; and
- (d) subject to the Concessionaire providing security to the Authority to the Authority's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Concessionaire may reasonably request to avoid, dispute, compromise or defend the Claim.

24.3 The Concessionaire shall not be responsible for:

- (a) any of the matters referred to in clause 24.1 arising as a direct result of:
 - (i) any acts or omissions of Authority; or
 - (ii) any acts or omissions of the Concessionaire, Concessionaire Personnel or any Sub-Contractors or any of its or their officers, employees or agents, in each case, to the extent that they are acting on the written instruction of the Authority (for the avoidance of doubt excluding any approval by the Authority of the implementation of a Change proposed by the Authority under the Change Procedure) or in compliance with its obligations pursuant to this Agreement; or
- (b) any of the matters referred to in clause 24.1 arising as a direct result of negligence or wilful misconduct of the Authority, its employees, agents or contractors (other than to the extent such negligence or wilful misconduct would not have occurred but for a breach by the Concessionaire, the Concessionaire Personnel or its employees, agents or contractors (or any Sub-Contractors or their employees, agents or contractors) of its obligations under this Agreement) or by the breach by the Authority of its obligations under this Agreement; or
- (c) to the extent that the Authority is indemnified pursuant to the insurances procured under this Agreement,

and any liability of the Concessionaire to indemnify the Authority under clause 24.1 and shall be reduced proportionately to the extent that such liability has arisen or has been so caused.

- 24.4 Neither Party shall be liable to the other Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this Agreement.
- 24.5 Notwithstanding the provisions of clause 24.3, the Concessionaire assumes responsibility for and acknowledges that the Authority may, amongst other things, recover:
- (a) sums due to be paid to the Authority by the Concessionaire pursuant to this Agreement;
 - (b) wasted expenditure;
 - (c) additional costs of procuring and implementing replacements for, or alternatives to, the Concession and/or Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;
 - (d) losses incurred by the Authority arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any Sub-Contract, Concessionaire Personnel, regulator or customer of the Authority) against the Authority caused by the act or omission of the Concessionaire; and
 - (e) loss of any anticipated savings.
- 24.6 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with this Agreement, including any losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.

25 ENVIRONMENTAL LIABILITY

The Concessionaire shall indemnify and keep indemnified the Authority and/or its Affiliates on demand from and against any and all Environmental Losses incurred by the Concessionaire and/or its Affiliates (less any amounts received from any third party in respect of such Environmental Losses) to the extent that such losses are due to Environmental Damage resulting from breach of Environmental Laws by the Concessionaire.

26 CONTRACT MANAGEMENT AND REPORTING

- 26.1 The Concessionaire shall provide the Management Reports in the form and at the intervals set out in Schedule 8 (*Contract Management*) or such other reports and/or at such intervals as the Authority may reasonably require.

- 26.2 The Contract Managers and relevant Key Personnel shall meet in accordance with the details set out in Schedule 8 (*Contract Management*) and the Concessionaire shall, at each meeting, present its previously circulated Management Reports in the format set out in that Schedule. Where the Authority reasonably require, the Concessionaire shall also meet with the Authority on an ad-hoc basis.

27 MONITORING

- 27.1 The Authority may monitor the performance of the Concession and/or the Services by the Concessionaire.
- 27.2 The Concessionaire shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 27.1 at no additional charge to the Authority.

28 KEY PERSONNEL

- 28.1 Each Party shall appoint the persons named as such in Schedule 8 (*Contract Management*) as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each Party as being key to the success of the implementation and/or operation of the Concession and/or the Services and who shall be retained on the implementation and/or operation of the Concession and/or the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective Party on the matters for which they are expressed to be responsible.
- 28.2 The Concessionaire shall not remove or replace any of the Key Personnel unless:
- (a) requested to do so by the Authority;
 - (b) the person is on long-term sick leave;
 - (c) the element of the Concession and/or Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
 - (d) the person resigns from their employment with the Concessionaire; or
 - (e) the Concessionaire obtains the prior written consent of the Authority.
- 28.3 The Concessionaire shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Authority shall be entitled to object to any such proposed appointment within five (5) Working Days of being informed of any such replacement if, in its

reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.

- 28.4 The Concessionaire shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than ten (10) Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Concessionaire or the Authority becoming aware of the role becoming vacant.
- 28.5 The Authority may require the Concessionaire to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.
- 28.6 If the Concessionaire replaces the Key Personnel as a consequence of this clause 28, the cost of effecting such replacement shall be borne by the Concessionaire.

29 CONCESSIONAIRE PERSONNEL

- 29.1 At all times, the Concessionaire shall ensure that:
- (a) each of the Concessionaire Personnel is:
 - (i) suitably qualified;
 - (ii) adequately trained; and
 - (iii) capable of providing the applicable Services in respect of which they are engaged;
 - (b) there is an adequate number of Concessionaire Personnel to operate the Concession and provide the Services properly; and
 - (c) only those people who are authorised by the Concessionaire (under the authorisation procedure to be agreed between the parties) are involved in operating the Concession and providing the Services.
- 29.2 The Concessionaire shall replace any of the Concessionaire Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Concessionaire Personnel for any reason, the Concessionaire shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 29.3 The Concessionaire shall use its reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or

management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.

30 TUPE

- 30.1 The Parties agree that the provisions of Schedule 9 (*TUPE*) shall apply to any Relevant Transfer of staff under this Agreement.

31 SUB-CONTRACTING AND ASSIGNMENT

- 31.1 Subject to clause 31.4, neither Party shall assign, novate, subcontract or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the other Party.

- 31.2 The Concessionaire may sub-contract the whole or any part of its obligations under this Agreement if and only if:

- (a) the Sub-Contractor is an entity listed in Schedule 10 (*Pre-Approved Sub-Contractors*); or
- (b) the Concessionaire has obtained express prior written consent of the Authority, such consent not to be unreasonably withheld.

- 31.3 In the event that the Concessionaire enters into any Sub-Contract in connection with this Agreement it shall:

- (a) remain responsible to the Authority for the performance of its obligations under this Agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
- (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Agreement and shall procure that the Sub-Contractor complies with such terms; and
- (c) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Contract Manager.

- 31.4 The Authority shall be entitled to novate (and the Concessionaire shall be deemed to consent to any such novation) this Agreement to:

- (a) any other Contracting Authority; or
- (b) any body which substantially performs any of the functions that previously had been performed by the Authority.

32 CHANGE CONTROL PROCEDURE

32.1 Any requirement for a Change shall be subject to the Change Control Procedure.

33 CHANGE OF LAW

33.1 The Concessionaire shall neither be relieved of its obligations to operate the Concession and/or perform the Services in accordance with the terms of this Agreement nor be entitled to an increase in the Charges as the result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Concession and/or the Services is known at the Commencement Date whether by publication of a bill, as part of a Government departmental consultation paper, a draft statutory instrument or otherwise.

33.2 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 33.1) the Concessionaire shall notify the Authority of the likely effects of that change, including:

- (a) whether any Change is required to the Concession, the Services, the Charges or this Agreement; and
- (b) whether any relief from compliance with the Concessionaire's obligations is required.

33.3 As soon as practicable after any notification in accordance with clause 33.2, the Parties shall discuss and agree the matters referred to in that clause 33.2 and any ways in which the Concessionaire can mitigate the effect of the Specific Change of Law, including:

- (a) providing evidence that the Concessionaire has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
- (b) demonstrating that a foreseeable Specific Change in Law had been taken into account by the Concessionaire before it occurred;
- (c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
- (d) demonstrating that any expenditure that has been avoided has been taken into account in amending the Charges.

- 33.4 Any increase in the Charges or relief from the Concessionaire's obligations agreed by the Parties pursuant to this clause 33 shall be implemented in accordance with the Change Control Procedure.

34 CONTINUOUS IMPROVEMENT

- 34.1 The Concessionaire shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Concession and/or the Services and/or Concessionaire Equipment and report on such to the Authority, including considering:

- (a) the emergence of new and evolving relevant technologies which could improve the Concession and/or the Services and/or Concessionaire Equipment;
- (b) new or potential improvements to the Concession and/or the Services and/or Concessionaire Equipment;
- (c) new or potential improvements to the interfaces or integration of the Concession and/or the Services and/or Concessionaire Equipment with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and
- (d) changes in ways of working that would enable the Concession and/or the Services and/or Concessionaire Equipment to be delivered at lower costs and/or bring greater benefits to the Authority.

- 34.2 Any potential Changes highlighted as a result of the Concessionaire's reporting in accordance with clause 34.1 shall be discussed and agreed during the meetings set out in Schedule 8 (*Contract Management*) and thereafter implemented by the parties using the Change Control Procedure.

35 BUSINESS CONTINUITY AND DISASTER RECOVERY

- 35.1 The Concessionaire shall ensure that it has in place and shall comply at all times with the relevant provisions of its Business Continuity and Disaster Recovery Plan in relation to ensuring business continuity in relation to both day-to-day service disruptions and disasters.

- 35.2 Following the declaration of a Disaster in respect of any of the Services, the Concessionaire shall:

- (a) implement the Business Continuity and Disaster Recovery Plan;
- (b) continue to provide the affected Services to the Authority in accordance with the Business Continuity and Disaster Recovery Plan; and

- (c) restore the affected Services to normal within the period laid out in the Business Continuity and Disaster Recovery Plan.

36 DISPUTE RESOLUTION PROCEDURE

36.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it ("**Dispute**") then the Parties shall follow the procedure set out in this Clause:

- (a) either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the Contract Managers shall attempt in good faith to resolve the Dispute;
- (b) if the Contract Managers are for any reason unable to resolve the Dispute within thirty (30) days of service of the Dispute Notice, the Dispute shall be referred to the Authority's Chief Commercial Officer and the Concessionaire's [TBC] who shall attempt in good faith to resolve it;
- (c) if the Authority's Chief Commercial Officer and the Concessionaire's [TBC] are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them, then the Parties may attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing ("**ADR Notice**") to the other Party to the Dispute, requesting a mediation. The other Party may then decide whether to proceed with mediation by providing written confirmation to the requesting Party and a copy of the ADR Notice shall be sent to CEDR. The mediation will start no later than thirty (30) Working Days after the date of the ADR Notice; and
- (d) if:
 - (i) the Dispute is not resolved within forty-five (45) days of the initiation of the mediation pursuant to clause 36.1(c); or
 - (ii) either Party chooses not to participate in the mediation process,then either Party may commence proceedings in relation to the Dispute under clause 69 and clause 70 which clauses shall apply at all times.

36.2 For the avoidance of doubt, the commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute under clause 69 and clause 70 which clauses shall apply at all times.

37 DATA PROTECTION

37.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 37 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.

37.2 The Concessionaire shall indemnify the Authority against any losses, damages, cost or expenses incurred by the Authority arising from, or in connection with, any breach of the Concessionaire's obligations under this clause 37.

Concessionaire as Controller

37.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Concessionaire is the Controller of the Customer Personal Data.

37.4 The Concessionaire undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Customer Personal Data as Controller.

37.5 The Concessionaire shall be responsible for compliance with Articles 13 and 14 of the UK GDPR in respect of the processing of Customer Personal Data for the purposes of this Agreement.

37.6 The Concessionaire shall:

- (a) ensure that it processes the Customer Personal Data in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects);
- (b) only process the Customer Personal Data outside the UK if the following conditions are fulfilled:
 - (i) the transfer is in accordance with Article 45 of the UK GDPR or section 73 of the DPA 2018; or
 - (ii) the Concessionaire has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or section 75 of the DPA 2018) which could include the International Data Transfer Agreement or International Data Transfer Agreement Addendum to the European Commission's SCCs as published by the Information Commissioner's Office;
 - (iii) the Data Subject has enforceable rights and effective legal remedies; and
 - (iv) the Concessionaire complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any

Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations).

- 37.7 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Concessionaire shall, with respect to its processing of Customer Personal Data as Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
- 37.8 The Concessionaire shall maintain a record of its processing activities in relation to Customer Personal Data in accordance with Article 30 of the UK GDPR and shall make the record available to the other Party upon reasonable request.
- 37.9 The Concessionaire shall promptly notify the Authority upon it becoming aware of any Personal Data breach relating to the Customer Personal Data and shall:
- (a) do all such things as reasonably necessary to mitigate the effects of the Personal Data breach;
 - (b) implement any measures necessary to restore the security of any compromised Personal Data;
 - (c) make any required notifications to the Information Commissioner's Office or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
 - (d) not do anything which may damage the reputation of the Authority or its relationship with the relevant Data Subjects, save as required by Law.
- 37.10 Customer Personal Data shall not be retained or processed by the Concessionaire for longer than is necessary.

Authority as Controller

- 37.11 Where, however, the Authority is the Controller and the Concessionaire is the Processor, the Concessionaire shall, in relation to any Personal Data processed in connection with the performance by the Concessionaire of its obligations under this Agreement:
- (a) process that Personal Data only on the documented written instructions of the Authority, unless the Concessionaire is required by Applicable Laws to otherwise

process that Personal Data. Where the Concessionaire is relying on Applicable Laws as the basis for processing Personal Data, the Concessionaire shall promptly notify the Authority of this before performing the processing required by Applicable Laws unless the Law prohibits the Concessionaire from so notifying the Authority;

- (b) ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Authority, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) not transfer any Personal Data outside of the UK unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (i) the Authority or the Concessionaire has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective remedies;
 - (iii) the Concessionaire complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Concessionaire complies with the reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- (d) notify the Authority immediately if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;

- (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (e) assist the Authority in responding to any request from a Data Subject and in ensuring compliance with the Authority's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Authority without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Agreement;
- (g) at the written direction of the Authority, delete or return Personal Data and copies thereof to the Authority on termination or expiry of this Agreement unless required by Applicable Laws to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the Authority or the Authority's designated auditor pursuant to clause 42 and immediately inform the Authority if, in the opinion of the Concessionaire, an instruction infringes the Data Protection Legislation.

37.12 Where the Concessionaire intends to engage a Sub-Contractor and intends for that Sub-Contractor to process any Personal Data relating to this Agreement, it shall:

- (a) notify the Authority in writing of the intended processing by the Sub-Contractor;
- (b) obtain prior written consent from the Authority to the processing; and
- (c) enter into a written agreement incorporating terms which are substantially similar to those set out in Clauses 37.11 to 37.13.

37.13 Either Party may, at any time on not less than thirty (30) Working Days' written notice to the other Party, revise clauses 37.11 to 37.13 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

37.14 The provisions of this clause 37 shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

38 FREEDOM OF INFORMATION ACT

- 38.1 The Concessionaire acknowledges that the Authority is or may be subject to the Freedom of Information Act 2000 ("**FOIA**") and may be required to disclose information about this Agreement to ensure the compliance of the Authority with the FOIA. The Concessionaire notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities Functions and on the Management of Records (which are issued under sections 45 and 46 of the FOIA respectively) as may be amended, updated or replaced from time to time. The Concessionaire will act in accordance with the FOIA and these Codes of Practice (and any other applicable codes of practice or guidance notified to the Concessionaire from time to time) to the extent that they apply to the Concessionaire's performance under the Contract.
- 38.2 The Concessionaire agrees that the decision on whether any exemption applies as to a request for disclosure of recorded information is a decision solely for the Authority. Where the Authority is managing a request as referred to in this Clause, the Concessionaire shall co-operate with the Authority if it so requests and shall respond within five (5) Working Days of any request by it for assistance in determining how to respond to a request for disclosure.
- 38.3 The Concessionaire shall and shall procure that its sub-contractors shall:
- (a) transfer any request made under the FOIA (the "**Request for Information**") to the Authority as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
 - (b) provide the Authority with a copy of all information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority requesting that information; and
 - (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA (or Regulation 5 of the Environmental Information Regulations).
- 38.4 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and

- (b) is to be disclosed in response to a Request for Information, and in no event shall the Concessionaire respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 38.5 The Concessionaire acknowledges that the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of the FOIA (issued under Section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose information:
 - (a) without consulting the Concessionaire, or
 - (b) following consultation with the Concessionaire and having taken its views into account.
- 38.6 The Concessionaire shall ensure that all Information produced in the course of this Agreement or relating to this Agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 38.7 The Concessionaire acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 38.5.

39 CONFIDENTIALITY

- 39.1 For the purposes of this clause 39, the term **"Disclosing Party"** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and **"Recipient"** shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 39.2 Except to the extent set out in this clause 39 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
 - (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
 - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and

- (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 39.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
 - (a) the Recipient is required to disclose the Confidential Information by Law, provided that clause 38 shall apply to disclosures required under the FOIA; and
 - (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
 - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Agreement;
 - (iii) the conduct of a Welsh Government review in respect of this Agreement;
 - (iv) if the Recipient is the Authority, any of its Affiliates; or
 - (v) circumstances where the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act and the disclosure is being made to the Serious Fraud Office.
- 39.4 If the Recipient is required by Applicable Laws to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Applicable Laws notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 39.5 The Concessionaire may disclose the Confidential Information of the Authority on a confidential basis only to:
 - (a) Concessionaire Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Concessionaire's obligations under this Agreement;
 - (b) its auditors; and

- (c) its professional advisers for the purposes of obtaining advice in relation to this Agreement.

39.6 Where the Concessionaire discloses Confidential Information of the Authority pursuant to this clause 39, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

39.7 The Authority may disclose the Confidential Information of the Concessionaire:

- (a) on a confidential basis to Welsh Government for any proper purpose of the Authority or Welsh Government;
- (b) to the Senedd;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in this Clause (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit; or
- (f) on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this clause 39.1.

39.8 Nothing in this clause 39 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

39.9 The provisions of this clause 39 shall survive for a period of five (5) years from the Termination Date.

40 AUTHORITY DATA

- 40.1 In order to ensure that no unauthorised person gains access to any Authority Data or any Confidential Information or any data obtained in the performance of this Agreement, the Concessionaire undertakes to maintain security systems approved by the Authority.
- 40.2 The Concessionaire will notify the Authority within twenty four (24) hours of becoming aware of any breach of security in relation to Authority Data, Confidential Information and all data obtained in the performance of the Services or under this Agreement and will keep a record of such breaches. The Concessionaire will use its best endeavours to recover such Authority Data or Confidential Information or data however it may be recorded. The Concessionaire will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Authority Data or Confidential Information or data.

41 BRANDING AND PUBLICITY

- 41.1 The Concessionaire shall conform to any required branding standards notified by the Authority (including any guidelines for the use of the Authority's brand on Concessionaire Equipment).

- 41.2 The Concessionaire shall not:

- (a) make any press announcements or publicise this Agreement or its contents in any way; or
- (b) use the Authority's name or logo in any promotion or marketing or announcement of orders,

except as required by Applicable Laws, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

42 AUDIT

- 42.1 During the Term and for a period of seven (7) years after the date of expiry or termination of this Agreement, the Authority (acting by itself or through its Representatives) may conduct an audit of the Concessionaire, including for the following purposes:

- (a) to verify the accuracy of Gross Revenue, Customer Charges and Concession Fee (and proposed or actual variations to them in accordance with this Agreement);
- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;

- (c) to review the Concessionaire's compliance with the Data Protection Legislation, the FoIA and any other legislation applicable to the Services;
- (d) to review any records created during the operation of the Concession or provision of the Services;
- (e) to review any books of account kept by the Concessionaire in connection with the operation of the Concession or the provision of the Services;
- (f) to carry out the audit and certification of the Authority's accounts;
- (g) 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; and
- (h) to verify the accuracy and completeness of the Management Reports delivered or required by this Agreement.

42.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Concessionaire has not complied with its obligations under this Agreement, the Authority may not conduct an audit under this clause 41 more than twice in any calendar year.

42.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Concessionaire or delay the provision of the Services.

42.4 Subject to the Authority's obligations of confidentiality, the Concessionaire shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

- (a) all information requested by the above persons within the permitted scope of the audit;
- (b) reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
- (c) access to the Concessionaire Personnel.

42.5 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) Working Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.

42.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 41, unless the audit

identifies a material failure to perform its obligations under this Agreement in any material manner by the Concessionaire in which case the Concessionaire shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

- 42.7 If an audit identifies that the Concessionaire has failed to perform its obligations under this Agreement in any material manner, the Parties shall agree and implement a remedial plan. If the Concessionaire's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Concessionaire's costs, then the remedial plan shall include a requirement for the provision of all such information.

43 INTELLECTUAL PROPERTY

- 43.1 The Authority and its licensors shall retain ownership of all Intellectual Property Rights in the Authority Materials. The Authority grants to the Concessionaire a personal, non-exclusive, royalty-free, non-transferable licence to use the Authority Materials during the Term for the sole purpose of providing the Services.

- 43.2 All Intellectual Property Rights acquired or created by the Concessionaire or on the Concessionaire's behalf for the Authority, commissioned by the Authority or which relate to the Concession shall vest in the Concessionaire, excluding any Authority Materials contained within them. The Concessionaire grants to the Authority a personal, non-exclusive, royalty-free, transferable licence to use the Concessionaire's Materials during the Term for the sole purpose of providing the Services.

- 43.3 The Concessionaire acknowledges that any rights granted by the Authority to use any of the Authority's Intellectual Property Rights (including any Intellectual Property Rights in the Authority Materials) shall terminate immediately upon the termination of this Agreement for any reason. All goodwill in respect of the Authority's Intellectual Property Rights (including any Intellectual Property Rights in the Authority Materials) shall remain with the Authority at all times.

- 43.4 The Concessionaire shall indemnify the Authority on written demand in respect of all liabilities, losses, demands, claims, damages, amounts agreed upon in settlement, costs and expenses (including all legal and other professional fees, expenses and disbursements) suffered or incurred by or awarded against the Authority in connection with any claim or action against the Authority by any third party that the Concession and/or Services infringes the Intellectual Property Rights of that third party ("**Third Party IPR Claim**").

- 43.5 The Authority agrees that:

- (a) it will notify the Concessionaire in writing as soon as reasonably practicable of any Third Party IPR Claim of which the Authority has notice;

- (b) it will not admit any liability or agree to any settlement or compromise of a Third Party IPR Claim without the prior written consent of the Concessionaire, which will not be unreasonably withheld or delayed;
- (c) the Concessionaire will be entitled to assume exclusive conduct of the Third Party IPR Claim provided that the Concessionaire will consult with the Authority;
- (d) in respect of the conduct of any Third Party IPR Claim and where the Authority is listed as a defendant or co-defendant the Authority shall have the right to require that the Authority and the Concessionaire will conduct the defence of the Third Party IPR Claim jointly and will allow each other full access to all relevant documentation; and
- (e) it will provide reasonable cooperation and assistance to the Concessionaire in the defence or settlement of any Third Party IPR Claim.

44 INSURANCE

44.1 The Concessionaire undertakes to take out and maintain at its own cost from the Commencement Date the following insurances:

- (a) employer's liability insurance for an amount not less than £10,000,000 (five million pounds Sterling) for any one occurrence;
- (b) product liability insurance for an amount not less than £10,000,000 (ten million pounds Sterling) for any one occurrence;
- (c) professional indemnity insurance in the amount of at least than £5,000,000 (five million pounds Sterling) for any one occurrence;
- (d) public liability insurance for an amount not less than £50,000,000 (ten million pounds Sterling) for any one occurrence;
- (e) contractor's all risks insurance for an amount not less than £5,000,000 (five million pounds Sterling) for any one occurrence; and
- (f) cyber liability insurance for an amount not less than £5,000,000 (five million pounds Sterling) for any one occurrence,

(the "**Required Insurances**").

44.2 The Concessionaire shall also maintain the Required Insurances in full force and effect for a further period of six (6) years following termination of this Agreement.

44.3 The Concessionaire shall:

- (a) ensure that the Required Insurances shall be or are effected with an insurer who is, and on terms other than as to premium which are, to the satisfaction of the Authority;
 - (b) prior to the date of this Agreement or within thirty (30) days afterwards, submit to the Authority's Contract Manager a certificate signed by the Concessionaire's insurers or the insurer's appointed agents confirming that the Concessionaire is insured in accordance with the requirements of this clause 44; and
 - (c) from time to time on request produce evidence to the Authority's Contract Manager that such insurance cover remains in force.
- 44.4 If, for whatever reason, the Concessionaire fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Concessionaire.
- 44.5 The terms of any insurance or the amount of cover shall not relieve the Concessionaire of any liabilities under this Agreement.
- 44.6 The Concessionaire shall effect, at its own cost and expense, and keep in effect from the date hereof, such other types of insurance as it is customary or prudent for equivalent employers and businesses to effect.

45 AUTHORITY POLICIES

The Concessionaire shall comply with the Authority Policies as set out in Schedule 13 (*Authority Policies*).

46 SOCIAL VALUES

- 46.1 The Concessionaire shall meet or exceed the target of each Social Value set out in Schedule 14 (*Social Values*).
- 46.2 No later than ten (10) Working Days after the end of each Contract Year, the Concessionaire shall provide a report to the Authority's Contract Manager which summaries the performance by the Concessionaire against each of the Social Values ("**Social Values Report**").
- 46.3 The Social Values Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information:
- (a) information in respect of the previous Contract Year just ended for each Social Value, the actual performance achieved over the Contract Year;
 - (b) a summary of the Concessionaire's performance against the Social Values in the previous Contract Year where the Concessionaire did not meet or exceed the

target of such Social Value and an action plan prepared by the Concessionaire to ensure it shall meet the targets of such Social Values for this Contract Year; and

- (c) forecast of the Concessionaire's performance against the Social Values for this Contract Year.

46.4 The Social Values Report shall be reviewed and their contents agreed by the Parties at the next meeting held.

46.5 The Authority shall be entitled to raise any additional questions and/or request any further information from the Concessionaire regarding any failure by the Concessionaire to meet or exceed the target of any Social Value.

47 MODERN SLAVERY ACT 2015

47.1 The Concessionaire represents and warrants that:

- (a) neither the Concessionaire nor any Concessionaire Personnel or Sub-Contractor has:
 - (i) committed an offence under the Modern Slavery Act 2015 (an “**MSA Offence**”);
 - (ii) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - (iii) is aware of any circumstances that could give rise to an investigation to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- (b) it (and shall procure that the Concessionaire Personnel and/or any Sub-Contractor shall) shall comply with the Modern Slavery Act 2015 at all times; and
- (c) it shall notify the Authority immediately in writing if it becomes aware or has reason to believe that it or any Concessionaire Personnel or Sub-Contractors have breached or potentially breached any of the Concessionaire's obligations under this clause 46 and that such notice shall set out full details of the circumstances concerning the breach or potential breach.

47.2 If the Concessionaire is in Default under this clause 46 the Authority may by notice:

- (a) require the Concessionaire to remove from performance of this Agreement any Concessionaire Personnel or Sub-Contractor whose acts or omissions have caused the Default; or

- (b) immediately terminate this Agreement.

48 CONFLICT OF INTEREST

48.1 The Concessionaire:

- (a) must take action to ensure that neither the Concessionaire nor the Concessionaire Personnel are placed in the position of an actual, potential or perceived conflict of interest; and
- (b) must promptly notify and provide details to the Authority if an actual, potential or perceived conflict of interest happens or is expected to happen.

48.2 The Authority will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential conflict of interest. If, in the reasonable opinion of the Authority, such measures do not or will not resolve an actual or potential conflict of interest, the Authority may terminate this Agreement immediately by giving notice in writing to the Concessionaire where there is or may be an actual or potential conflict of interest.

49 NON-SOLICITATION

In order to protect the Authority's legitimate business interest, the Concessionaire shall not (except with the prior written consent of the Authority) during the term of this Agreement, and for a period of one (1) year thereafter, solicit or attempt to solicit or entice away any senior staff of the Authority who have been engaged or employed in the provision of the Services or the management of this Agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open advertising campaign and not specifically targeted at such staff of the Authority.

50 EQUALITY

50.1 The Concessionaire must not unlawfully discriminate directly or indirectly against any person or harass or victimise any person on grounds such as age; marital status; gender, sexual orientation or gender reassignment; religious or non religious belief; disability; colour; race; nationality or national or ethnic origin and without prejudice to the generality of the foregoing the Concessionaire shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation or any statutory modification or re-enactment thereof relating to discrimination of any kind (the “**Discrimination Acts**”).

50.2 The Concessionaire shall take all reasonable steps to secure that all Concessionaire Personnel, servants, employees or agents or the Concessionaire and all suppliers and

Sub-Contractors employed in the performance of this Agreement do not unlawfully discriminate as set out above.

- 50.3 The Concessionaire shall provide such information as the Authority requests for the purpose of assessing the Concessionaire's compliance with these provisions and shall notify the Authority immediately of any investigation of or proceedings against the Concessionaire in relation to the Discrimination Acts and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.
- 50.4 The Concessionaire shall indemnify the Authority against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Authority arising out of or in connection with any investigation conducted or any proceedings brought in relation to the Discrimination Acts due directly or indirectly to any act or omission by the Concessionaire, its agents, employees or Sub-Contractors.
- 50.5 In the event of any finding of unlawful discrimination being made against the Concessionaire or any Sub-Contractors employed by the Concessionaire, by any Court or Tribunal, or of any adverse finding in any form of investigation during the Term, the Concessionaire shall forthwith take steps to prevent the repetition of any such unlawful discrimination and shall give written notice to the Authority of the finding within seven (7) days of the publication of that finding and shall provide the Authority with the details of such steps taken to prevent repetition as aforesaid.
- 50.6 The Concessionaire shall impose on any Sub-Contractors obligations substantially similar to those imposed on the Concessionaire by this clause 50.

51 PREVENTION OF BRIBERY

- 51.1 The Concessionaire represents and warrants that neither it, nor any Concessionaire Personnel:
- (a) has committed a Prohibited Act;
 - (b) to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or
 - (c) has been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

- 51.2 The Concessionaire shall promptly notify the Authority if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 51.1 at the relevant time.
- 51.3 The Concessionaire shall (and shall procure that its Concessionaire Personnel shall) during the Term:
- (a) not commit a Prohibited Act; and/or
 - (b) not do or omit to do anything that would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;
 - (c) have and maintain in place its own policies and procedures to ensure compliance with the Relevant Requirements and prevent occurrence of a Prohibited Act; and
 - (d) notify the Authority (in writing) if it becomes aware of any breach of clause 51.3(a) or clause 51.3(b), or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage.
- 51.4 The Concessionaire shall maintain appropriate and up to date records showing all payments made by the Concessionaire in connection with this Agreement and the steps taken to comply with its obligations under clause 51.3.
- 51.5 The Concessionaire shall allow the Authority and its third party representatives to audit any of the Concessionaire's records and any other relevant documentation in accordance with clause 42.
- 51.6 If the Concessionaire is in default under this clause 51 the Authority may by notice:
- (a) require the Concessionaire to remove from performance of this Agreement any Concessionaire Personnel whose acts or omissions have caused the default; or
 - (b) immediately terminate this Agreement.
- 51.7 Any notice served by the Authority under clause 51.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

52 ANTI-FACILITATION OF TAX EVASION

- 52.1 The Concessionaire shall and shall procure that persons associated with it or other persons who are performing Services in connection with this Agreement shall:

- (a) not engage in any activity, practice or conduct which would constitute either:
 - (i) a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or
 - (ii) a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017;
- (b) not do, or omit to do, any act that will cause or lead the Authority to commit an offence under section 45(1) or section 46(1) of the Criminal Finances Act 2017;
- (c) notify the Authority (in writing) if it becomes aware of any breach of clause 52.1(a) or has reason to believe that it or any person associated with it has received a request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of this Agreement;
- (d) have and shall maintain in place throughout the term of this Agreement such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Concessionaire) and to ensure compliance with clause 52.1(a));
- (e) if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with Part 3 of the Criminal Finances Act 2017; or
- (f) within one (1) month of the date of this Agreement, and annually thereafter, certify to the Authority in writing signed by an officer of the Concessionaire, compliance with this clause 52 by the Concessionaire and all persons associated with it. The Concessionaire shall provide such supporting evidence of compliance as the Authority may reasonably request.

52.2 The Concessionaire shall keep at its normal place of business detailed, accurate and up-to-date records and books of account showing the steps taken by the Concessionaire to comply with its obligations under this clause 52 during the previous six (6) years. The Concessionaire shall ensure that such records and books of accounts are sufficient to enable the Authority to verify the Concessionaire's compliance with its obligations under this clause 52.

52.3 The Concessionaire shall permit the Authority and its third party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of this clause 52, to access and take copies of the Concessionaire's records and any other information held at the Concessionaire's

premises and to meet with the Concessionaire's personnel to audit the Concessionaire's compliance with its obligations under this clause 52. Such audit rights shall continue for six (6) years after termination of this Agreement. The Concessionaire shall give all necessary assistance to the conduct of such audits during the term of this Agreement and for a period of six (6) years after termination of this Agreement.

52.4 The Concessionaire warrants and represents that neither the Concessionaire nor any of its officers, employees or other persons associated with it:

- (a) has been convicted of any offence involving tax evasion or the facilitation of tax evasion;
- (b) having made reasonable enquiries, so far as it is aware has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence concerning tax evasion or the facilitation of tax evasion; or
- (c) has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts including, without limitation, any exclusion set out in Schedules 6 and 7 of the Procurement Act.

52.5 The Concessionaire shall promptly notify the Authority if, at any time during the Term of this Agreement, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 52.4 at the relevant time.

52.6 Breach of this clause 52 shall be deemed a material breach for the purposes of clause 53.

52.7 If the Authority terminates this Agreement for breach of this clause 52, the Concessionaire shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before termination.

52.8 For the purpose of this clause 52, the question of whether a person is associated with another person shall be determined in accordance with section 44 of the Criminal Finances Act 2017 (and any guidance issued under section 47 of that Act) and, for the purposes of this clause 52, a person associated with the Concessionaire includes but is not limited to any Sub-Contractor.

53 CONCESSIONAIRE EVENT OF DEFAULT

53.1 It shall be a "**Concessionaire Event of Default**" if the following occurs:

- (a) the Concessionaire fails to pay any sum under this Agreement within ten (10) Working Days of the due date and the Authority has given notice in writing of such default and the Concessionaire has failed to pay within ten (10) Working Days of such notice;
- (b) any representation or warranty made (or deemed to be made) by the Concessionaire to the Authority in or pursuant to this Agreement or in any document or certificate issued pursuant to this Agreement is or proves to have been incorrect in any material respect when made which has a material adverse effect;
- (c) the Concessionaire is in breach of any material obligation under this Agreement or persistently breaches any other obligation under this Agreement and, if such breach is capable of remedy, the Authority may only terminate this Agreement under this clause 53.1(c) if the Concessionaire has failed to remedy such breach within ten (10) Working Days of receipt of notice from the Authority to do so;
- (d) any Necessary Consent is modified, revoked, suspended, cancelled, withdrawn, terminated or not renewed, or otherwise ceases to be in full force and effect, and the effect of which might reasonably be considered to have a material adverse effect on the provision of the Services;
- (e) any act or omission by the Concessionaire, any Sub-Contractor, any Concessionaire Personnel or any other person for whom those parties are responsible which may cause the Authority to lose any licence, authority, consent or permission on which it relies and/or cause the Authority to be in breach of its obligations under any agreement connected with the Services;
- (f) in respect of Service Level Failures:
 - (i) an event under clause 17.2(b)(vi) in relation to a Service Level Failure;
or
 - (ii) performance against the Service Levels meets or falls below the Termination Threshold;
- (g) the Concessionaire does not commence the Operational Services at all of the Sites by the Longstop Date;
- (h) breach of the Concessionaire's obligations under clauses 39, 44, 47, 50, 51 and 52;

- (i) an Insolvency Event (or a belief of the Authority (acting reasonably) that there is likely to be an Insolvency Event) in relation to the Concessionaire [or the Guarantor];
- (j) the Concessionaire changes, suspends, ceases or threatens to change, suspend or cease to carry on their business or any substantial part thereof;
- (k) it is or will become unlawful for the Concessionaire to perform or comply with any one or more of its obligations under this Agreement;
- (l) a Change of Ownership without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed);
- (m) [if the Guarantee either ceases to be in full force and effect or the Guarantor's obligations under the Guarantee are or become wholly or partly invalid or unenforceable for any reason whatsoever or the Guarantor fails to comply promptly with any of its obligations pursuant to the Guarantee and the Concessionaire fails to provide to the Authority, within ten (10) Working Days of a demand by the Authority, as applicable, any additional security or collateral which is required by the Authority (acting reasonably);]
- (n) [the Guarantor breaches the Guarantee;]
- (o) any material breach of the Lease by the Concessionaire as "Lessee" under such Lease; or
- (p) the Authority reasonably believes that the circumstances set out in section 78 of the Procurement Act apply.

53.2 If any Concessionaire Event of Default occurs, the Authority may deliver to the Concessionaire a notice (a "**Notice of Default**") specifying the Concessionaire Event of Default which has occurred and the Authority may terminate this Agreement in relation to the provision of Services by notice in writing, such termination to have immediate effect or to be effective on such later date as is specified in the Notice of Default. If, following service of a Notice of Default but before termination of this Agreement in relation to the provision of the Services, the relevant Concessionaire Event of Default is remedied, then the Authority may, in its absolute discretion, elect to withdraw the Notice of Default.

54 AUTHORITY EVENT OF DEFAULT

54.1 It shall be an "**Authority Event of Default**" if the following occurs:

- (a) the Authority is in breach of any material obligation under this Agreement provided that if the breach is capable of remedy, the Concessionaire may only terminate this Agreement under this clause 54.1(a) if the Concessionaire has

failed to remedy such breach within ten (10) Working Days of receipt of notice from the Authority to do so; or

(b) an Insolvency Event in relation to the Authority.

54.2 If any Authority Event of Default occurs, the Concessionaire may deliver to the Authority a notice (a “**Notice of Default**”) specifying the Authority Event of Default which has occurred and the Concessionaire may terminate this Agreement in relation to the provision of Services by notice in writing, such termination to have immediate effect or to be effective on such later date as is specified in the Notice of Default. If, following service of a Notice of Default but before termination of this Agreement in relation to the provision of the Services, the relevant Authority Event of Default is remedied, then the Concessionaire may, in its absolute discretion, elect to withdraw the Notice of Default.

55 CONSEQUENCES OF TERMINATION

55.1 On the expiry of the Term or if this Agreement is terminated in whole or in part for any reason, the provisions of Schedule 15 (*Exit Management*) shall come into effect and the Concessionaire shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Concessionaire.

55.2 On termination or expiry of this Agreement and on satisfactory completion of the Exit Plan (or where reasonably so required by the Authority before such completion) the Concessionaire shall procure that:

- (a) all data and other material belonging to the Authority (including all media of any nature containing information and data belonging to the Authority or relating to the Concession and/or Services), shall be delivered to the Authority forthwith and the Concessionaire's Contract Manager or Chief Executive Officer shall certify full compliance with this clause 55;
- (b) unless and to the extent that the Authority has elected to purchase the relevant equipment in accordance with Schedule 15 (*Exit Management*), all Concessionaire Equipment shall be removed from the Sites and at its own cost the Sites shall be made good following removal of such Concessionaire Equipment so that the Sites are to the same standard as they were prior to the installation of such Concessionaire Equipment; and
- (c) any Authority branding shall be removed from any Concessionaire Equipment that is removed from the Sites in accordance with this clause 55 before that Concessionaire Equipment is used at any other location.

- 55.3 Where the Authority elects to purchase any Concessionaire Equipment on termination or expiry of this Agreement, the Authority shall pay to the Concessionaire an amount equal to the price paid by the Concessionaire for such Concessionaire Equipment, discounted to reflect the age of such Concessionaire Equipment and calculated on a straight line basis over its expected life (as set out in the Maintenance and Replacement Schedule).
- 55.4 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry, including:
- (a) [•]; and [**NOTE TO TENDERERS: IACC to update provisions that will survive the Agreement at contract award**]
 - (b) any other term which it is implied to continue in full and force effect,
- shall remain in full force and effect.
- 55.5 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Agreement which existed at or before the Termination Date.

56 PAYMENTS ON TERMINATION

56.1 Compensation on termination for Concessionaire Event of Default

- (a) If the Authority terminates this Agreement in whole or in part pursuant to clause 53, then:
 - (i) the Authority will have the right to place the carrying out of the Services with a third party and the Concessionaire will pay the Authority the amount of costs reasonably and properly incurred in connection with placing the Services with a third party;
 - (ii) the Concessionaire will pay all outstanding amounts due to the Authority under this Agreement;
 - (iii) the Authority shall be entitled to enter the premises of the Concessionaire and take possession of any equipment or materials belonging to the Authority, and take the benefit of any Services part-performed;
 - (iv) the Concessionaire shall extend to the Authority the benefit of any then subsisting guarantee, condition or warranty which may have been given to the Concessionaire or which is implied by law in favour of the Concessionaire in respect of the Services as provided by the Concessionaire during the Term, provided that in so doing the

Concessionaire shall be relieved of its obligations and liabilities under this Agreement in so far as the benefit of such rights are assigned to the Authority; and

- (v) the Concessionaire will within ten (10) Working Days of a written demand pay the Authority all losses and costs reasonably and properly incurred by the Authority as a result of any Concessionaire Event of Default and the loss of the provision of the Services, and all reasonable losses and costs incurred by the Authority in rectifying any faults or defects arising but not rectified prior to the date of such termination which have not been reimbursed to the Authority.

56.2 Compensation on termination for Authority Event of Default

- (a) If the Concessionaire terminates this Agreement in whole or in part pursuant to clause 54, then the Authority will pay:
 - (i) any amounts payable to the Concessionaire by the Authority which have then fallen due under this Agreement but remain unpaid;
 - (ii) such sum as represents the reasonable cost of labour and materials already incurred or committed by the Concessionaire as at the date of termination of this Agreement in respect of Services (including, without limitation, the cost of terminating sub-contracts and redundancy of employees); and
 - (iii) all other direct losses and costs reasonably and properly incurred as a result of the termination of this Agreement if properly evidenced by the Concessionaire (which, for the avoidance of doubt, shall not include any loss of profit or indirect or consequential losses).

57 TERMINATION UNDER THE PROCUREMENT ACT 2023

57.1 If at any time a set aside order is made by a court in respect of this Agreement pursuant to section 104(2)(a) of the Procurement Act then:

- (a) the provisions of clause 55 (and any other provisions in the Agreement which are intended to apply on or after the date on which the Agreement is terminated for any reason) shall apply as if on the date on which the relevant set aside order is to take effect (and as a result the Agreement is to come to an end); and
- (b) the Authority shall not be required or liable (on whatever grounds) to pay any compensation or restitution to the Concessionaire in respect of any loss, damage, costs, expenses or other liabilities suffered or incurred by the Concessionaire as

a result of or in connection with the relevant set aside order being made, including any loss of revenue or profit that the Concessionaire might otherwise have generated under the Agreement during the Term.

58 EXIT MANAGEMENT

The Parties shall comply with Schedule 15 (*Exit Management*).

59 VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

60 WAIVER

60.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed to be a waiver of any subsequent right or remedy.

60.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

61 RIGHTS AND REMEDIES

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

62 SEVERANCE

62.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

62.2 If any provision or part-provision of this Agreement is deemed deleted under clause 62.1, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

63 ENTIRE AGREEMENT

63.1 This Agreement and the documents referred to in it constitutes the entire agreement between the Parties and supersedes and extinguishes all previous and contemporaneous

agreements, promises, assurances, and understandings between them, whether written or oral, relating to its subject matter.

- 63.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

64 NO PARTNERSHIP OR AGENCY

- 64.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party as the agent of the other party, or authorise any party to make or enter into any commitments for or on behalf of the other party.
- 64.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

65 NON-EXCLUSIVITY

- 65.1 The Concessionaire acknowledges that in entering into this Agreement no form of exclusivity is granted by the Authority, and the Authority is at all times entitled to enter into similar contracts with other operators in relation to the same or similar Services.

66 THIRD PARTY RIGHTS

- 66.1 Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 66.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

67 NOTICES

- 67.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (b) sent by email to the following address (or an address substituted in writing by the party to be served):
 - (i) for notices to the Authority: [ADDRESS].
 - (ii) for notices to the Concessionaire: [ADDRESS].

67.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting; or
- (c) if sent by email, at the time of transmission or, if this time falls outside Working Hours, when Working Hours resume.

67.3 This clause 67 does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

68 COUNTERPARTS

68.1 This Agreement may be executed in any number of counterparts, each of which constitutes a duplicate original, but all the counterparts together constitute the one Agreement. No counterpart shall be effective until each Party has provided to the other at least one executed counterpart.

68.2 Each Party agree that they may execute this Agreement by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of the respective Party's intention to be bound by this Agreement as if signed that Party's manuscript signature.

69 GOVERNING LAW

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Law of England and Wales, as it applies in Wales.

70 JURISDICTION

Each Party irrevocably agrees that the courts of England and Wales sitting in Cardiff shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS WHEREOF this Agreement is executed the day and date referred to above.

EXECUTED by [●] acting by a director, in the presence of:

.....
Director

.....
Witness Signature

Name of Witness
(IN BLOCK CAPITALS)

Address of Witness

.....

.....

Occupation of Witness

.....

.....

EXECUTED by [●] acting by a director, in the presence of:

.....
Director

.....
Witness Signature

Name of Witness
(IN BLOCK CAPITALS)

Address of Witness

.....

.....

Occupation of Witness

.....

.....

Schedule 1– Specification

[NOTE TO TENDERERS: We refer Tenderers to the Specification separately provided as part of this Tender]

Schedule 2 – Implementation Plan

[NOTE TO TENDERERS: The successful Tenderer will be required to provide an Implementation Plan setting out the milestones for the design and installation of the electric charge points across the Sites (which for the avoidance of doubt should include all Stage Gate reviews).]

Schedule 3 – Service Levels

Part A – Delivery Phase Service Levels

1 DEFINITIONS

1.1 In this Part A to Schedule 3, the following definitions shall apply:

“**CDM Regulations**” means Construction (Design and Management) Regulations 2015.

“**Delivery Phase**” means the period starting on the Commencement Date and ending on the Operational Services Commencement Date.

“**Fatal Incident**” means a work-related accident that results in death, either immediately or within 365 days due to injuries sustained in the incident.

“**Serious incident**” means loss of operational performance of the Services where reputation or brand is affected in the short or long term.

“**Stage Gate**” means the Milestone specified as a “Stage Gate” in the Implementation Plan.

2 DELIVERY PHASE SERVICE LEVELS

2.1 The Service Levels applicable during the Delivery Phase are set out in the table of this Part A to Schedule 3.

2.2 All Service Levels are measured over the Delivery Phase.

2.3 Reports on Service Levels shall be in an agreed machine-readable format so that it can be automatically read and processed by a computer system. For example, agreed formats could include but are not limited to Portable Document Format (PDF), OpenDocument Format (ODF), Microsoft Office formats (e.g. .docx, .xlsx, .pptx).

| ID | Service Level | Measure | Performance level |
|----|---|--|--------------------------------------|
| D1 | Programme Delivery Delivery of the Services to agreed standard, including confirmation of successful commissioning and provision of commissioning pack. | Timeliness / Performance Performance measured against project plan by exception and timeliness of plan updates. Plan at Concessionaire's Tender taken as baseline submission with monthly updates and submissions made on an agreed date with Authority. | Acceptable: On time delivery |
| | | | Material: 2 Working Day late |
| | | | Serious: 3 Working Days late |
| | | | Severe: 4 Working Days late |
| | | | Failure: 5+ Working Days late |
| D2 | Stage Gate Delivery Delivery of Stage Gates (highlighting any delays | Timeliness / Performance Completion of Stage Gates at an agreed frequency against | Acceptable: Stage Gate met as agreed |
| | | | Material: 2 Working Days late |

| ID | Service Level | Measure | Performance level |
|----|--|---|--|
| | to the programme, 1wk, 1 month, etc). | the agreed baseline (which may be amended through agreed change control). Scoring is based on the aggregate delivery of all Stage Gates (for all sites) within that month. | Serious: 5 Working Days late Severe: 10 Working Days late Failure: 20+ Working Days late |
| D3 | Reporting Delivery of meeting records & progress reports within 5 Working Days of meeting. | Timeliness / Accuracy Reporting measured at agreed frequency and uses the aggregate provision of all such records within that month. | Acceptable: On time delivery Material: 2 Working Days late Serious: 3 Working Days late Severe: 4 Working Days late Failure: 5+ Working Days late |
| D4 | Design Quality Design submissions approved first time with no defects/ corrective actions. | Rework Required For each design submission, the amount of rework required is measured. Considers the aggregate of all submissions made within the reporting period measured each month. | Acceptable: Design submission is acceptable and will allow work to be completed on schedule. Material: Design submission is largely acceptable, with only minor rework, taking 1-2 days. Serious: Defects in the submission are identified, requiring between one and 2 weeks' work to correct. Severe: Significant defects in the submission are identified, requiring more than 2 weeks' work to correct. Failure: Design submission not acceptable and requiring more than one month's work to correct. |
| D5 | Construction Works On site defects take minimal time to rectify following install and inspection by the Authority. | Rework Required Quality of install and extent of remedial works required as an aggregate of all sites delivered in reporting period measured each month. | Acceptable: Construction accepted with no defects Material: Construction is largely acceptable, with only minor rework, taking 1-2 days. Serious: Significant defects are identified, requiring more than 2 weeks work to correct. Severe: Construction accepted 10 Working Days late. Failure: Construction not acceptable and requiring more than one month's work to correct. |
| D6 | Site Safety Site safety is maintained, and workforce are safe to undertake works without injury. | Availability / Incidents Availability of suitable method statements and risk assessments and measurement of reportable incidents within period across all sites measured each month. | Acceptable: Method statements and risk assessments are available for review prior to site works being undertaken, there is evidence of near miss reporting and there are no reportable incidents in period Material: There is found to be minor deficiencies in method statement and risk assessment paperwork |

| ID | Service Level | Measure | Performance level |
|----|---------------|---------|---|
| | | | Serious: A reportable incident has occurred at a site |
| | | | Severe: Either more than 1 reportable incident has occurred during that month or found to be major deficiencies in method statement and risk assessment paperwork |
| | | | Failure: A serious breach of H&S /CDM Regulations and/or a Serious/Fatal incident |

Part B – Operational Phase Service Levels

1 DEFINITIONS

1.1 In this Part B to Schedule 3, the following definitions shall apply:

“Abandoned Calls” means calls to the Customer Helpline where the user chooses an option from the IVR which directs the call to an operator but then hangs up before the call is answered by an operator.

“Answered Calls” means calls to the Customer Helpline where the user chooses an option from the IVR which directs the call to an operator and are answered by an operator.

“Available” or “Availability” means, for the purposes of:

- (a) paragraph 6 to this Part B to Schedule 3 in respect of the Customer Helpline, Customers are able to successfully connect to an operator during Operational Hours. For the avoidance of doubt, a Customer Helpline cannot be deemed to be Available if the Customer is presented with dead line, engaged tone, a message that all lines are busy or is unable to select the IVR option to speak to an operator during Operational Hours; and
- (b) paragraph 7 to this Part B to Schedule 3 in respect of the Web Portal, the Authority is able to access and utilise all functions of all Web Portal pages, including view static pages, and the Web Portal is able to process reports.

“CDM Regulations” means Construction (Design and Management) Regulations 2015.

“Customer Helpline” means a telephone service provided by the Concessionaire in accordance with paragraph [A7.6] of the Specification.

“Enquiry” means an act of a service user asking for information.

“Complaint” means an act of a service user making a statement that the services are unsatisfactory or unacceptable.

“Fatal Incident” means a work-related accident that results in death, either immediately or within 365 days due to injuries sustained in the incident.

“First Contact Resolutions” means Enquires and Complaints which have been resolved by a single outgoing response recorded in the Interaction History from the Concessionaire during the month.

“Fix” and “Fixed” have the meaning given to those terms in paragraph 8.1 of this Part B to Schedule 3.

“Interaction History” means a mechanism by which the Concessionaire maintains a log of all Enquiries and/or Complaints from users.

“Industry Standard Automated System Performance Reports” means the process of using software to automatically generate, organise, and distribute reports from data sources without manual intervention.

“IVR” means an automated telephone system that allows a caller to interact with a computer system through their voice or by using their phone's keypad.

“Open Charge Point Interface” means an open protocol that allows for automated roaming between various EV charging networks.

“Operational Hours” means the hours set out in paragraph [A7.6.2] of the Specification that a Customer Service Helpline shall be made available by the Concessionaire.

“Serious incident” means loss of operational performance of the Services where reputation or brand is affected in the short or long term.

“Service Incident” means an unplanned event that causes a disruption, interruption, or reduction in the quality of the service where severity is defined in Table 1.

“Web Portal” means the web portal provided by the Concessionaire in accordance with paragraph [A7.6] of the Specification.

2 OPERATIONAL PHASE SERVICE LEVELS

2.1 The Service Levels applicable during the Operational Phase are set out in the table of this Part B to Schedule 3 (*Service Levels*).

2.2 All Service Levels are measured over the Operational Phase.

2.3 Reports on Service Levels shall be in an agreed machine-readable format so that it can be automatically read and processed by a computer system. For example, agreed formats could include but are not limited to Portable Document Format (PDF), OpenDocument Format (ODF), Microsoft Office formats (e.g. .docx, .xlsx, .pptx).

| ID | Service Level | Measure | Performance Level |
|----|--------------------------|--|---|
| O1 | Charge point reliability | Reliability Percentage Defined in section 3 of this document measured each month. | Acceptable: 99.00% and above ¹ |
| | | | Failure: 98.99% and below |
| | | | Acceptable: 95.00% and above |

¹ In accordance with Public Charge Point Regulations 2023 - [Public Charge Point Regulations 2023 guidance - GOV.UK](#)

| ID | Service Level | Measure | Performance Level |
|----|--|---|--|
| O2 | Answered calls rate | Time/Performance Defined in section 4 of this document measured each month. | Material: 94.99% to 94.26% inclusive Serious: 94.25% to 93.51% inclusive Severe: 93.50% to 93.01% inclusive Failure: 93.00% and below |
| O3 | Enquiries and Complaints Resolution Rate. | Defined in section 5 of this document measured each month. | Acceptable: 85.00% and above Material: 80.01% to 84.99% inclusive Serious: 77.51% to 80.00% inclusive Severe: 75.01% to 77.50% inclusive Failure: 75.00% and below |
| O4 | Customer Helpline Availability | Defined in section 6 of this document measured each month. | Acceptable: 99.50% and above Material: 99.01% to 99.49% inclusive Serious: 98.01 to 99.00% inclusive Severe: 97.01% to 98.00% inclusive Failure: 97.00% and below |
| O5 | Web Portal availability | Defined in section 7 of this document measured each month. | Acceptable: 99% and above Material: 98.51% to 98.99% inclusive Serious: 97.51 to 98.50% inclusive Severe: 96.51% to 97.50% inclusive Failure: 96.50% and below |
| O6 | Charge point fix times | Defined in section 8 of this document measured each Contract Year of the Operational Phase. | Acceptable: 0 failures Material: 1 – 3 inclusive failures Serious: 4 – 6 inclusive failures Severe: 7 – 9 failures inclusive Failure: 10 or more failures |
| O7 | Site Safety Site safety is maintained, and workforce are safe to undertake works without injury. | Availability of suitable method statements and risk assessments and measurement of reportable incidents within period across all sites measured each month. | Acceptable: Method statements and risk assessments are available for review prior to site works being undertaken, there is evidence of near miss reporting and there are no reportable incidents in period Material: There is found to be minor deficiencies in method statement and risk assessment paperwork Serious: A reportable incident has occurred at a site Severe: Either more than 1 reportable incident has occurred during period or found to be major deficiencies in method statement and risk assessment paperwork Failure: A serious breach of H&S /CDM Regulations and/or a Serious/Fatal incident |
| O8 | Late Payments to Site Owner and Authority | Timeliness / Accuracy Timeliness and accuracy of payments to landowners and/or | Acceptable: Landowner and/or Authority is paid on time. Material: Landowner and/or Authority is paid up 2 Working Days late. |

| ID | Service Level | Measure | Performance Level |
|----|---------------|--|--|
| | | Authority during the reporting period, aggregates across all sites, measured each month. | Serious: Landowner and/or Authority is paid between 3 and 5 Working Days late. Severe: Landowner and/or Authority is paid between 5 and 10 Working Days late. Failure: Landowner and/or Authority is paid greater than 10 Working Days late. |

3 DEFINITIONS OF SERVICE LEVELS – RELIABILITY

3.1 This Service Level measures the percentage of time each electric vehicle charge point remains reliable. The reliability calculation is as follows:

$$Reliability (\%) = \left(minutes\ in\ Service\ Period - \frac{(downtime - time\ exempt)}{minutes\ in\ Service\ Period} \right) \times 100$$

3.2 In the above calculation, the Concessionaire shall use the Open Charge Point Interface (OCPI) status for determining if equipment is reliable, subject to downtime, or is time exempt. These categories are as follows:

- (a) Reliable
 - (i) Available: Able to commence a charging session
 - (ii) Charging: In use
 - (iii) Reserved: Reserved for a particular driver and unavailable for others
- (b) Downtime
 - (i) Inoperative: Not yet active or temporarily not available for use
 - (ii) Out of order: Out of order or some component is broken or defective
- (c) Time exempt
 - (i) Unknown: No status available so it could be offline
 - (ii) Blocked: Physical barrier such as a vehicle
 - (iii) Planned: Not yet operational but a planned date exists
 - (iv) Removed: No charge point at this site

4 DEFINITIONS OF SERVICE LEVELS – ANSWERED CALLS RATE

- 4.1 This Service Level measures the number of users whose calls to the Customer Helpline are answered by an operator.
- 4.2 The performance of the Concessionaire over the month shall be calculated by dividing the number of Answered Calls during the month by the total number of Answered and Abandoned Calls received during the same month, expressed as a percentage to two decimal places.
- 4.3 Calls to the Customer Helpline abandoned within [**CHOOSE between five (5) and thirty (30) seconds**] shall be excluded from the total of Abandoned Calls.

5 DEFINITIONS OF SERVICE LEVELS – ENQUIRIES AND COMPLAINTS RESOLUTION RATE

- 5.1 This Service Level measures the performance of the Concessionaire to resolve Enquiries and Complaints from Customers in the first interaction.
- 5.2 The Concessionaire shall use the Interaction History to maintain a log of all Enquiries and Complaints, identifying which were First Contact Resolutions, which shall be used as the basis of measuring this Service Level.
- 5.3 The performance of the Concessionaire over the month shall be calculated by dividing total number of First Contact Resolutions during the month by the total number of Enquiries and Complaints created or amended in the Interaction History in the month, expressed as a percentage to two decimal places.
- 5.4 The following shall be excluded from the calculation:
 - (a) Data Subject requests from Customers; and
 - (b) Enquires and Complaints that require escalation to the Authority.

6 DEFINITIONS OF SERVICE LEVELS – CUSTOMER HELPLINE AVAILABILITY

- 6.1 This Service Level measures the Availability of the Customer Helpline during Customer Helpline's Operational Hours for Customers to complete defined Customer interactions.
- 6.2 The Concessionaire is required to ensure the Customer Helpline is Available for use 99.5% of the time during Customer Helpline Operational Hours.
- 6.3 Service Availability shall be determined by Industry Standard Automated System Performance Reports, such reports to be generated by the Concessionaire and (where required by the Authority's Contract Manager) provided to the Authority.

6.4 The performance of the Concessionaire over the month shall be calculated by dividing the number of seconds during Customer Helpline Operational Hours in the month when the Customer Helpline is Available by the total number of seconds in Customer Helpline Operational Hours in the month, expressed as a percentage to two decimal places.

6.5 Periods of maintenance or other events beyond the Concessionaire's reasonable control shall be excluded from the Availability calculation for the month.

7 DEFINITIONS OF SERVICE LEVELS – WEB PORTAL AVAILABILITY

7.1 This Service Level measures the Availability of the Web Portal for the Authority to view static pages. The Concessionaire is required to ensure the Web Portal is available for use 99.5% of the time.

7.2 Service Availability shall be determined by Industry Standard Automated System Performance Reports, such reports to be generated by the Concessionaire and (where required by the Authority's Contract Manager) provided to the Authority.

7.3 The performance of the Concessionaire over the month shall be calculated by dividing the number of seconds when the Web Portal is Available by the total number of seconds during the month, expressed as a percentage to two decimal places.

7.4 Periods of maintenance shall be excluded from the Availability calculation for the month.

8 DEFINITIONS OF SERVICE LEVELS – CHARGE POINT FIX TIMES

8.1 This Service Level is calculated as the number of failures by the Concessionaire to Fix Service Incidents within the applicable maximum Fix Time for the allocated severity levels (A-E) as set out in Table 1. Severity levels will be classified by the Concessionaire following a business process agreed with the Authority's Contract Manager. This Service Level is in effect [seven (7) days per week]. For these purposes:

(a) the "Fix Time" is calculated from the time at which the Service Incident is logged until the time the Service Incident is Fixed;

(b) the time at which a Service Incident is logged is the earliest of:

(i) an alarm being generated by any element of the Services;

(ii) notification of a Service Incident being provided to the Concessionaire;
or

(iii) where a Service Incident is raised by a Customer;

(c) a Service Incident is "Fixed" when resolved and closed (and "Fix" shall be construed accordingly) and:

- (i) corrective action has been successfully completed;
- (ii) the charge point has a status of being “Available”, “Charging” or “Reserved”; and
- (iii) the Service Incident is properly recorded as closed in the incident management log by the Concessionaire.

8.2 In the event of ambiguity or doubt on the severity level, the higher severity should be assumed.

8.3 When a Major Service Incident or Critical Service Incident Fix Time (as defined in Table 1) has been exceeded, the Fix Time shall be reset to zero (0) and the Service Incident count shall be incremented by one (1).

Table 1: Service Incidents and Fix Times

| Impact | Service Incident Severity Level | | | | |
|--|--|---|---|---|---|
| | Insignificant (E) | Significant (D) | Moderate (C) | Major (B) | Critical (A) |
| Operations & Service Impact | No impact on operational performance of the Services | Potential impact on operations performance of the Services | Intermittent impact on operational performance of the Services | Loss of operational performance of the Services | Network-wide loss operational performance of the Services |
| Reputation | No impact on reputation or brand | Low probability of impact on reputation or brand | High probability of impact on reputation or brand | Reputation or brand is affected in short term | Reputation is affected in long term |
| Safety | Risk of first aid required, near miss | Risk of lost time accident (one (1) day), medical treatment | Risk of lost time accident (three (3) days), dangerous occurrence | Low risk of fatality | Medium to high risk of fatality |
| Fix Time | As agreed with the Authority's Contract Manager | Less than ten (10) Working Days | Less than five (5) Working Days | Less than twenty-four (24) hours | Less than four (4) hours |

Part C– Performance Monitoring

1 PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 1.1 Within [twenty (20) Working Days] of the Commencement Date the Concessionaire shall provide the Authority with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 1.2 The Concessionaire shall provide the Authority with performance monitoring reports on a monthly basis ("**Service Level Reports**") which shall contain, as a minimum, the following information in respect of the relevant month just ended:
- (a) for each Service Level, the actual performance level achieved over the Service Level for the relevant month;
 - (b) a summary of all failures to achieve Service Levels that occurred during that month;
 - (c) details of any Service Level Failures;
 - (d) for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence; and
 - (e) such other details as the Authority may reasonably require from time to time.
- 1.3 The Authority and Concessionaire shall attend performance review meetings on a monthly basis which will be the forum for the review of performance monitoring reports. The performance review meetings shall:
- (a) take place within one (1) week of the performance monitoring reports being issued by the Concessionaire at such location and time (within normal business hours) as the Authority shall reasonably require;
 - (b) be attended by the Concessionaire's Contract Manager and the Authority's Contract Manager; and
 - (c) be fully minuted by the Concessionaire and the minutes will be circulated by the Concessionaire to all attendees at the relevant meeting and also to the Authority's Contract Manager and any other recipients agreed at the relevant meeting.
- 1.4 The minutes of the preceding month's performance review meeting will be agreed and signed by both the Concessionaire's Contract Manager and the Authority's Contract Manager at each meeting.

- 1.5 The Concessionaire shall provide to the Authority such documentation as the Authority may reasonably require in order to verify the level of the performance by the Concessionaire.

2 SATISFACTION SURVEYS

- 2.1 The Authority may undertake satisfaction surveys in respect of the Concessionaire's provision of the Services. The Authority shall be entitled to notify the Concessionaire of any aspects of their performance of the provision of the Services which the responses to the satisfaction surveys reasonably suggest are not in accordance with this Contract.

3 PERFORMANCE REPORTING – DELIVERY PHASE

- 3.1 The Concessionaire will be required to report quarterly on the following key metrics with regard to the delivery programme:

- (a) Time:
 - (i) Publication of detailed project plan GANTT chart, baselined, then management of timescales by exception (Delivery Phase only)
 - (ii) Delivery of Stage Gates in line with agreed Implementation Plan. Highlighting and addressing delays to the programme (Delivery Phase only)
 - (iii) Delivery of meeting records & progress reports.
- (b) Quality:
 - (i) Design submissions approved first time with no defects/corrective actions (Delivery Phase only)
 - (ii) On site defects take no longer than stated permitted period to rectify following install (Delivery Phase only)
- (c) Health and Safety:
 - (i) Reportable incidents within period & Health and Safety procedures and protocols followed
 - (ii) Safety moments held at each meeting & relevant Health and Safety and Equality and Diversity issues discussed at all review meetings as they arise with actions carried out to mitigate risk.
- (d) Financial: No late payments (operation only)
- (e) Stakeholders: Feedback from stakeholders - negative or positive

4 PERFORMANCE REPORTING – OPERATIONAL PHASE

4.1 The Concessionaire shall be required to provide reporting on the operational Service Levels as detailed in the table to this Part B of Schedule 3 (*Service Levels*).

4.2 The Concessionaire shall be required to submit operational information and data for reporting in relation to the following site and service operations:

- (a) Charge point availability;
- (b) Fees for charge point use;
- (c) Back office systems;
- (d) User payments;
- (e) User support; and
- (f) Related operational data collection

5 AGREED RELAXATIONS

5.1 Any relaxations to the Service Levels or operational reporting regimes shall be discussed and agreed between the Concessionaire and the Authority if required. Such relaxations may include a determination that some metrics are not applicable for all or part of the month.

5.2 Relaxations will be agreed using the Change Control Procedure.

Schedule 4 – Charge Point Customer Terms

[•]

[NOTE TO TENDERERS: The successful Tenderer will be required to provide its customer terms and conditions to be included in this Schedule 4]

Schedule 5 – Initial Customer Charges

[NOTE TO TENDERERS: Customer Charges to be included at Contract Award in this Schedule 5]

Schedule 6 – Benchmarking

1 INTERPRETATION

1.1 The definitions in this Paragraph apply in this Schedule:

| | |
|-----------------------------|--|
| Benchmark Review | the benchmark review to be undertaken in accordance with this Schedule. |
| Benchmarked Services | the Services taken as a whole. |
| Benchmarker | either the Authority or an independent third party appointed by the Authority following discussions with the Concessionaire under of this Schedule. |
| Benchmarking Report | the report produced by the Benchmarker following a Benchmark Review. |
| Comparison Sample | a sample of organisations providing Equivalent Services identified in accordance with paragraph 6.1(iii) of this Schedule. |
| Equivalent Services | services that are identical, or similar in all material respects, to the Services (including in terms of scope, specification, location, volume and quality of performance) that are generally available within the UK. |
| Good Value | the Customer Charges are less than or equal to ten per cent (10%) more than the median charges for equivalent Services provided by a comparison sample. |
| Median Price | in relation to the Equivalent Services provided by a Comparison Sample, the median price of the relevant services over the previous twelve (12)-month period. In the event that there are an even number of organisations in the Comparison Sample then the Median Price will be the arithmetic mean of the middle two (2) prices. |

2 BENCHMARK REVIEW

- 2.1 The Authority may, by written notice, require a Benchmark Review of the Customer Charges in accordance with the provisions of this Schedule.
- 2.2 The first Benchmark Review may not take place until the expiry of the first (1st) Contract Year of the Operational Phase.
- 2.3 Each subsequent Benchmark Review must be at least twelve (12) months after the previous one.
- 2.4 Subject to paragraph 2.6, if any Benchmark Review determines that the Customer Charges do not represent Good Value, then the Concessionaire shall, in accordance with the Change Control Procedure and within three months of completion of the Benchmark

Review, make a proposal for changes to the Customer Charges representing Good Value in accordance with the recommendations of the Benchmarker under paragraph 7.1(c).

2.5 On receipt of the proposal from the Concessionaire under paragraph 2.4 the Authority shall have the option to:

- (a) accept the new proposal in which case the Parties shall record the change in accordance with the Change Control Procedure; or
- (b) reject the proposal and elect to continue to charge the then current Customer Charges on the existing basis.

2.6 If the Concessionaire reasonably believes the Benchmarker has not complied with the provisions of this Schedule in any material respects, or that the Benchmarker has made a manifest error in determining the results of the Benchmark Review, the Concessionaire may dispute the Benchmark Report and the matter shall be dealt with in accordance with the Dispute Resolution Procedure.

3 PURPOSE AND SCOPE OF BENCHMARK REVIEW

3.1 The purpose of the Benchmark Review shall be to establish whether the Customer Charges are “**Good Value**”.

4 APPOINTMENT OF BENCHMARKER

4.1 Each Benchmark Review shall, at the election of the Authority, be performed by either the Authority itself, Authority Personnel or an independent third party appointed by Authority.

4.2 The Authority shall notify the Concessionaire of the identity of the Benchmarker.

4.3 The Authority has the right at any time to require an independent Benchmarker to enter into an appropriate and reasonable confidentiality undertaking directly with it.

4.4 Each Party shall bear its own costs relating to a Benchmark Review, save that the costs and expenses of an independent Benchmarker shall be shared equally by the Parties.

5 PRINCIPLES OF BENCHMARKING

5.1 The Benchmarker shall conduct the Benchmark Review by applying the following general principles and criteria:

- (a) benchmarking shall be carried out in an objective manner;
- (b) if an independent Benchmarker is appointed, the Benchmarker shall be jointly instructed by the parties;

- (c) benchmarking shall be truly comparative in respect of the Concession and the Services;
- (d) benchmarking shall be structured and undertaken in a way that causes the minimum disruption possible; and
- (e) immediately following selection of the Benchmarker (or upon the Authority confirming that it shall undertake the Benchmarking itself), the parties and the Benchmarker shall agree the general principles and method of benchmarking.

6 BENCHMARKING PROCESS

6.1 The Benchmarker shall produce, and

- (a) where the Authority is undertaking the Benchmarking itself send to the Concessionaire for approval; or
- (b) where an independent Benchmarker is appointed to send to each Party for approval, and
- (c) a draft plan for the Benchmark Review within twenty (20) Working Days after the date of appointment of the Benchmarker. The plan shall include:
- (d) a proposed timetable for the Benchmark Review (including for delivery of the Benchmarking Report);
 - (i) a description of the information that the Benchmarker requires each Party to provide;
 - (ii) a description of the benchmarking methodology to be used; and
 - (iii) details of any organisations providing Equivalent Services which the Authority proposes, having consulted with the Concessionaire (and including any organisations providing Equivalent Services reasonably proposed by the Concessionaire), are included within the Comparison Sample.

6.2 In carrying out the benchmarking analysis, the Benchmarker shall have regard to the following matters when performing a comparative assessment of the Benchmarked Services:

- (a) the locations and business environment under which the Equivalent Services are being provided; and

- (b) any other factors reasonably identified by the Concessionaire which, if not taken into consideration, could unfairly cause the Concessionaire's pricing to appear non-competitive.
- 6.3 Each Party shall give notice in writing to the Benchmarker and to the other Party within five (5) Working Days after receiving the draft plan, advising whether it approves the draft plan or, if it does not approve the draft plan, suggesting amendments to that plan. Neither Party may unreasonably withhold its approval of the draft plan, and any suggested amendments shall be reasonable.
- 6.4 Where a Party suggests amendments to the draft plan under paragraph 6.2(b), the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan and paragraph 6.2 shall apply to any amended draft plan. If the Benchmarker believes that the suggested amendments are not reasonable then the Benchmarker shall discuss the amendments with the Parties to reach a resolution. If the Parties are unable to agree a resolution within ten (10) Working Days of the matter first being referred to each of them by the Benchmarker for discussion, then such matter shall be resolved in accordance with the Dispute Resolution Procedure.
- 6.5 Failure by a Party to give notice under paragraph 6.2(b) shall be treated as approval of the draft plan by that Party.
- 6.6 Once the plan is approved by both Parties, the Benchmarker shall carry out the Benchmark Review in accordance with it. Each Party shall, to the extent it is not precluded from doing so by confidentiality obligations owed to third parties, provide the information described in the plan, together with any additional information reasonably required by the Benchmarker.
- 6.7 The Benchmarker shall share with the Parties, in an even-handed manner, all data relating to the Benchmarking and the Benchmarking Report to the extent that it is lawfully able to do so.
- 6.8 In conducting the Benchmark Review, the Benchmarker shall apply correction factors to the information to take account of reasons for difference in accordance with his professional judgement. Such normalisation information shall be available for approval by the parties before the production of the Benchmarking Report.
- 6.9 The Benchmarker shall perform the Benchmark Review in a fully transparent and open manner and shall promptly provide the Authority and the Concessionaire with full details of all data and methodologies employed at all stages of the Benchmark Review.

7 BENCHMARK REPORT

7.1 The Benchmarker shall prepare a Benchmark Report setting out its findings. Those findings shall:

- (a) include a finding as to whether or not the Customer Charges as a whole are Good Value;
- (b) include other findings regarding the quality and competitiveness or otherwise of the Services; and
- (c) if the Customer Charges are not Good Value, specify the changes that would be required to the Customer Charges and/or Services that would be required to make the Customer Charges Good Value.

7.2 If the Benchmark Report states that the Customer Charges are not Good Value, then paragraph 2.4 shall apply.

Schedule 7 – Concession Fee

- 1.1 The Concession Fee for each Quarter shall be calculated as follows:

Concession Fee = Gross Revenue x [●]% ***[NOTE TO TENDERERS: Successful Tenderer's submission of the revenue percentage to be taken into account.]***

where:

“Gross Revenue” means revenue receivable (including that which is payable but not yet paid) by the Concessionaire from the operation of the Concession (including the payment of Customer Charges) during the relevant Month.

[NOTE TO TENDERERS: This section is to be completed as part of contract award]

Schedule 8 – Contract Management

1 AUTHORISED REPRESENTATIVES

1.1 The Authority's initial Contract Manager: [INSERT DETAILS]

1.2 The Concessionaire's initial Contract Manager: [INSERT DETAILS]

2 KEY PERSONNEL

| Key Personnel name | Key Personnel role and responsibilities | Key Personnel contact details |
|--|---|-------------------------------|
| [INSERT DETAILS OF SCHEME MANAGER'S KEY PERSONNEL] | [•] | [•] |
| [•] | [•] | [•] |
| [•] | [•] | [•] |

3 MANAGEMENT REPORTS

| Report | Content | Frequency | Circulation |
|--------|---------|-----------|-------------|
| [•] | [•] | [•] | [•] |
| [•] | [•] | [•] | [•] |

4 MEETINGS

4.1 Type – [•]

4.2 Quorum – [•]

4.3 Frequency – [•]

4.4 Agenda – [•]

Schedule 9 – TUPE

Part A – Definitions and interpretations in this Schedule

1.1 In this Schedule, the following definitions shall apply:

Employee Liabilities all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;

unfair, wrongful or constructive dismissal compensation;

compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;

compensation for less favourable treatment of part-time workers or fixed term employees;

outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;

employment claims whether in tort, contract or statute or otherwise; and

any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation.

| | | |
|-------------------------------|-------------|--|
| Final List | | a list provided by the Concessionaire of all Concessionaire Personnel who will transfer under the Employment Regulations on the Service Transfer Date. |
| Provisional List | | a list prepared and updated by the Concessionaire of all Concessionaire Personnel who are at the date of the list wholly or mainly engaged in or assigned to the operation of the Concession and/or provision of the Services or any relevant part of the Concession and/or Services which it is envisaged as at the date of such list will no longer be provided by the Concessionaire. |
| Relevant Transfer Date | | in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. |
| Replacement Contractor | Sub- | a sub-contractor of the Replacement Concessionaire to whom Transferring Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor). |
| Service Transfer | | any transfer of the Concession (or any part of the Concession) or the Services (or any part of the Services), for whatever reason, from the Concessionaire or any Sub-Contractor to a Replacement Concessionaire or a Replacement Sub-Contractor. |
| Service Transfer Date | | the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires. |
| Staffing Information | | in relation to all persons identified on the Provisional List or Final List, as the case may be, all information required in Appendix 1 in the format specified and with the identities of Data Subjects anonymised where possible. The Authority may acting reasonably make changes to the format or information requested in in Appendix 1 from time to time. |
| Transferring Employees | | those employees of the Concessionaire and/or the Concessionaire's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date. |

- 1.2 Where a provision in this Schedule imposes an obligation on the Concessionaire to provide an indemnity, undertaking or warranty, the Concessionaire shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Replacement Concessionaire or Replacement Sub-Contractor, as the case may be.

Part B–TUPE on commencement

- 1.1 The Authority and the Concessionaire agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority.

Part C – TUPE on exit

1 PRE-SERVICE TRANSFER OBLIGATIONS

- 1.1 The Concessionaire agrees that, within twenty (20) Working Days of the earliest of:
- (a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
 - (b) receipt of the giving of notice of early termination or any partial termination of this Agreement;
 - (c) the date which is twelve (12) months before the end of the Term; and
 - (d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six (6)-month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Provisional List, together with the Staffing Information and it shall provide an updated Provisional List at such intervals as are reasonably requested by the Authority.

- 1.2 At least forty (40) Working Days prior to the Service Transfer Date, the Concessionaire shall provide to the Authority or at the direction of the Authority to any Replacement Concessionaire and/or any Replacement Sub-Contractor:
- (a) the Final List, which shall identify which of the Concessionaire Personnel are Transferring Employees; and
 - (b) the Staffing Information in relation to the Final List (insofar as such information has not previously been provided).
- 1.3 The Authority shall be permitted to use and disclose information provided by the Concessionaire under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Concessionaire and/or Replacement Sub-Contractor.
- 1.4 The Concessionaire warrants, for the benefit of the Authority, any Replacement Concessionaire, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

1.5 From the date of the earliest event referred to in Paragraph 1.1(a), (b) and (c), the Concessionaire agrees that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Provisional List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Concessionaire Personnel listed on the Provisional List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- (b) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Concessionaire Personnel (including pensions and any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Concession and/or Services (or the relevant part of the Concession and/or Services) by any of the Concessionaire Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Provisional List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to operate the Concession and/or perform the Services (or the relevant part of the Concession and/or Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Provisional List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Concessionaire and any Replacement Sub-Contractor of any notice to terminate employment given by the Concessionaire or relevant Sub-Contractor or received from any persons listed on the Provisional List regardless of when such notice takes effect.

1.6 During the Term, the Concessionaire shall provide, and shall procure that each Sub-Contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in operating the Concession and/or providing the Services;

- (b) the percentage of time spent by each employee engaged in operating the Concession and/or providing the Services; and
- (c) a description of the nature of the work undertaken by each employee by location.

1.7 The Concessionaire shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Concessionaire and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within ten (10) Working Days following the Service Transfer Date, the Concessionaire shall provide, and shall procure that each Sub-Contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Concessionaire and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Final List who is a Transferring Employee:

- (a) the most recent Month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

2 EMPLOYMENT REGULATIONS EXIT PROVISIONS

2.1 The Authority and the Concessionaire acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Concessionaire and/or a Replacement Sub-Contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. The Authority and the Concessionaire further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Concessionaire and the Transferring Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the

Replacement Concessionaire and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Employee.

- 2.2 The Concessionaire shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

- (a) the Concessionaire and/or the Sub-Contractor (as appropriate); and
- (b) the Replacement Concessionaire and/or Replacement Sub-Contractor.

- 2.3 Subject to paragraph 2.4, the Concessionaire shall indemnify the Authority and/or the Replacement Concessionaire and/or any Replacement Sub-Contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission of the Concessionaire or any Sub-Contractor in respect of any Transferring Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Employee whether occurring before, on or after the Service Transfer Date;
- (b) the breach or non-observance by the Concessionaire or any Sub-Contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Employees which the Concessionaire or any Sub-Contractor is contractually bound to honour;
 - (iii) any claim by any trade union or other body or person representing any Transferring Employees arising from or connected with any failure by the Concessionaire or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

- (iv) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions;
 - (v) in relation to any Transferring Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (vi) in relation to any employee who is not identified in the Final List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Concessionaire to the Authority and/or Replacement Concessionaire and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (c) a failure of the Concessionaire or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Employees in respect of the period up to (and including) the Service Transfer Date;
 - (d) any claim made by or in respect of any person employed or formerly employed by the Concessionaire or any Sub-Contractor other than a Transferring Employee identified in the Final List for whom it is alleged the Authority and/or the Replacement Concessionaire and/or any Replacement Sub-Contractor may be liable by virtue of this Agreement and/or the Employment Regulations; and
 - (e) any claim made by or in respect of a Transferring Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Employee relating to any act or omission of the Concessionaire or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Concessionaire to comply with regulation 13(4) of the Employment Regulations.

2.4 The indemnities in paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Concessionaire and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Concessionaire and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date); or
 - (b) arising from the Replacement Concessionaire's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Final List claims, or it is determined in relation to any person who is not identified in the Final List, that his/her contract of employment has been transferred from the Concessionaire or any Sub-Contractor to the Replacement Concessionaire and/or Replacement Sub-Contractor pursuant to the Employment Regulations, then:
 - (a) the Authority shall procure that the Replacement Concessionaire shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Concessionaire; and
 - (b) the Concessionaire may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Concessionaire and/or any Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Applicable Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Concessionaire or a Sub-Contractor, the Authority shall procure that the Replacement Concessionaire shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the fifteen (15) Working Day period specified in paragraph 2.7 has elapsed:
 - (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved;the Authority shall advise the Replacement Concessionaire and/or Replacement Sub-Contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

- 2.8 Subject to the Replacement Concessionaire and/or Replacement Sub-Contractor acting in accordance with the provisions of paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in Applicable Law, the Concessionaire shall indemnify the Replacement Concessionaire and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of paragraph 2.7 provided that the Replacement Concessionaire takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in paragraph 2.8:
- (a) shall not apply to any claim for:
 - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in relation to any alleged act or omission of the Replacement Concessionaire and/or Replacement Sub-Contractor; and
 - (b) shall apply only where the notification referred to in paragraph 2.5(a) is made by the Replacement Concessionaire and/or Replacement Sub-Contractor to the Concessionaire within six (6) months of the Service Transfer Date.
- 2.10 If any such person as is described in paragraph 2.5 is neither re-employed by the Concessionaire or any Sub-Contractor nor dismissed by the Replacement Concessionaire and/or Replacement Sub-Contractor within the time scales set out in paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Employee.
- 2.11 The Concessionaire shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of any person identified in the Final List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) the Concessionaire and/or any Sub-Contractor; and

(b) the Replacement Concessionaire and/or the Replacement Sub-Contractor.

- 2.12 The Concessionaire shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority and any Replacement Concessionaire and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Authority, the Replacement Concessionaire and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Concessionaire and/or Replacement Sub-Contractor, shall promptly provide to the Concessionaire and each Sub-Contractor in writing such information as is necessary to enable the Concessionaire and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

Appendix 1 – Staffing Information

[TBC]

Schedule 10 – Pre-Approved Sub-Contractors

[NOTE TO TENDERERS: To improve efficiencies, the successful tenderer may wish to provide a list of any sub-contractors it intends on engaging for the performance of the Services for pre-approval purposes]

Schedule 11 – Change Control Procedure

1 GENERAL PRINCIPLES

- 1.1 Where the Authority or the Concessionaire sees a need to change this Agreement, the Authority may at any time request, and the Concessionaire may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Concessionaire shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Authority and the Concessionaire in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either Party.
- 1.4 Any work undertaken by the Concessionaire and the Concessionaire Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Change Control Procedure, shall be undertaken entirely at the expense and liability of the Concessionaire.

2 PROCEDURE

- 2.1 Discussion between the Authority and the Concessionaire concerning a Change shall result in any one of the following:
 - (a) no further action being taken; or
 - (b) a request to change this Agreement by the Authority; or
 - (c) a recommendation to change this Agreement by the Concessionaire.
- 2.2 Where a written request for a Change is received from the Authority, the Concessionaire shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Concessionaire to the Authority within three (3) weeks of the date of the request.
- 2.3 A recommendation to amend this Agreement by the Concessionaire shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Concessionaire at the time of such recommendation. The Authority shall give its response to the Change Control Note within three (3) weeks.
- 2.4 Each Change Control Note shall contain:
 - (a) the title of the Change;
 - (b) the originator and date of the request or recommendation for the Change;

- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this Agreement including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Charges;
 - (iv) the documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements; and
 - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note;
- (j) provision for signature by the Authority and the Concessionaire; and
- (k) if applicable, details of how costs incurred by the Parties if the Change subsequently results in the termination of this Agreement under clause 53.1(p) will be apportioned.

2.5 For each Change Control Note submitted by the Concessionaire the Authority shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) accept the Change Control Note by arranging for two (2) copies of the Change Control Note to be signed by or on behalf of the Authority and return one (1) of the copies to the Concessionaire; or

(iii) notify the Concessionaire of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Authority and by the Concessionaire shall constitute an amendment to this Agreement.

Schedule 12 – Commercially Sensitive Information

- 1.1 In this Schedule the Parties have sought to identify the Concessionaire's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the Environmental Information Regulations.
- 1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below (please see the column "**Duration of Confidentiality**").
- 1.3 Without prejudice to the Authority's obligation to disclose Information in accordance with FOIA or clause 39, the Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

Commercially Sensitive Information

| No. | Date | Item(s) | Duration of Confidentiality |
|-----|------|---------|-----------------------------|
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |

Schedule 13 – Authority Policies

[NOTE TO TENDERERS: The Authority will confirm and provide to bidders any further policies together with any updates to this Schedule 13.]

1.1 The Authority Policies are set out as follows:

- (a) Equality and Diversity Policy (Version 5.0) dated November 2024;
- (b) Policy for Prevention of Fraud and Corruption (Version 2.97) dated 29 September 2025;
- (c) Whistleblowing Policy (Version 3.3) dated January 2025;
- (d) Welsh Language Standards (Standard 155) dated October 2017;
- (e) Corporate Health and Safety Policy (Version 12.0) dated November 2022;
- (f) Officers' Code of Conduct (Version 3.2) dated April 2023;
- (g) Towards Net Zero Plan dated March 2025;
- (h) IT Security Policy (Version 2.5) dated November 2024; and
- (i) Data Processing Agreement Guidance (Version 1.0) dated July 2018.

Schedule 14– Social Values

[•]

[NOTE TO TENDERERS: The successful Tenderer's Social Values submitted as part of the Tender to be included in this Schedule 14]

Schedule 15 – Exit Management

1 PURPOSE OF THIS SCHEDULE

- 1.1 The Concessionaire is required to ensure the orderly transition of the Services to the Authority or any Replacement Concessionaire (as applicable) in the event of any termination or expiry of this Agreement.
- 1.2 This Schedule describes the roles and responsibilities of the Parties which are intended to achieve this, and the principles upon which the Exit Plan shall be based.
- 1.3 This Schedule may also apply to any exit from individual Sites as arising during the term of the agreement.

2 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

- 2.1 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within three (3) months of the Commencement Date.

3 EXIT PLAN

- 3.1 The Concessionaire shall, within three (3) months of the Commencement Date, submit an Exit Plan to the Authority which complies with the requirements of this Schedule which shall be substantially in the form of that set out in Annex A of this Schedule.
- 3.2 The Parties shall use their reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within thirty (30) Working Days of its submission, either Party may refer the dispute to the Dispute Resolution Procedure.
- 3.3 The Exit Plan shall:
 - (a) includes details of the activities to be undertaken by the Concessionaire to facilitate a smooth handover of the service provision to the Authority or a Replacement Concessionaire and to ensure the continuity of the Concession and/or Services;
 - (b) address each of the issues set out in this Schedule to facilitate the transition of the Services from the Concessionaire to the Replacement Concessionaire or Authority (as applicable) and ensure that there is no disruption in the supply of the Services and no deterioration in the quality of delivery of the Services;
 - (c) detail how the Service will transfer to the Replacement Concessionaire or Authority (as applicable) including, to the extent applicable, details of the processes, documentation, data transfer, systems migration, and security; and

- (d) provide a timetable for exit and compliance with the requirements of this Agreement.
- 3.4 The Concessionaire shall review and, if appropriate, update the Exit Plan on a basis consistent with the principles set out in this Schedule:
 - (a) in the first month of each Contract Year (commencing with the second Contract Year) to reflect any changes in the Services that have occurred since the Exit Plan was last agreed; and
 - (b) following any major change to the Services under this Agreement.
- 3.5 During the Exit Period, the Concessionaire shall comply with all of its obligations in the Exit Plan.

4 EXIT ASSISTANCE

- 4.1 During the Exit Period, the Concessionaire shall provide access, during Working Hours, to the Authority or Replacement Concessionaire to:
 - (a) any information relating to the Services as remains in the possession or control of the Concessionaire; and
 - (b) such members of the Concessionaire's Personnel involved in the provision of the performance of this Agreement and who are still employed or engaged by the Concessionaire.

5 PAYMENT FOR EXIT SERVICES

- 5.1 The Concessionaire shall not be entitled to reimbursement of its costs incurred in providing the Exit Assistance.

6 TRANSFERABLE ASSETS

- 6.1 During the Term, the Concessionaire shall create, maintain and update a register containing a detailed register of all Transferable Assets (including description, condition, location and details of ownership).
- 6.2 Within twenty (20) Working Days of the commencement of the Exit Period, the Authority shall notify the Concessionaire which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Concessionaire ("**Transferring Assets**").
- 6.3 With effect from the expiry or termination of this Agreement, the Concessionaire shall transfer the ownership of Transferring Assets to the Authority and/or the Replacement Concessionaire for the consideration of £1 (one pound Sterling). Risk in the Transferring

Assets shall pass to the Authority or the Replacement Concessionaire (as appropriate) at the expiry or termination of this Agreement and title shall pass on payment for them. The Concessionaire shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this transfer.

7 CONCESSIONAIRE EQUIPMENT (CHARGING POINTS)

- 7.1 During the Term, the Concessionaire shall create, maintain and update a register containing a detailed register of all items of Concessionaire Equipment that comprise the electric vehicle charge points ("**Transferrable Charge Points**") (including description, condition, location and details of ownership).
- 7.2 Within twenty (20) Working Days of the commencement of the Exit Period, the Authority shall notify the Concessionaire which, if any, of the Transferrable Charge Points the Authority requires to be transferred to the Authority and/or the Replacement Concessionaire ("**Transferring Charge Points**").
- 7.3 With effect from the expiry or termination of this Agreement, the Concessionaire shall transfer the ownership of Transferring Assets to the Authority and/or the Replacement Concessionaire for the consideration determined in accordance with Clause 55.3. The Concessionaire shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this transfer.

Appendix 2 – Template Exit Plan

| Contract Exit Plan | |
|--|-----------------------|
| Contract No: | Contract Name: |
| Concessionaire name: | Date: |
| <p>Continuing Service Requirements</p> <ul style="list-style-type: none"> An obligation by the supplier to continue performing the services at the same level of quality for the transition period and to continue to comply with all the obligations in the contract. Requirements for the provision of parallel services for a certain period, with the right to extend the term as necessary to resolve issues before the final cutover. An obligation by the supplier to keep the same supplier team performing services during the transition period. Confidentiality on any communications regarding the termination of the relationship. | |
| <p>Data Security and Privacy</p> <ul style="list-style-type: none"> The transfer of all data belonging to the Authority. Determining an acceptable method by which the supplier will destroy the Authority's proprietary information. How the supplier will destroy and remove sensitive information from all media, ensuring it is not disclosed to other individuals or organisations. The return or transfer back of each party's assets. | |
| <p>Knowledge and Documentation Transfer</p> <ul style="list-style-type: none"> Require the supplier to transfer access to everything the Authority will need to maintain the service. Clearly define which party owns the work performed by the supplier. Fully document the service description for any additional services of the supplier during the transition period (e.g. training employees or training new supplier personnel). Require the supplier to supply copies of data, procedures, access logs, error logs, documentation and other information that the supplier generates as a part of providing the contract services. The supplier should also grant the Authority the right to provide this information to potential successor suppliers. | |
| <p>Costs</p> <ul style="list-style-type: none"> The Authority will not be penalised for an early exit, especially if the termination is due to the supplier's failure to perform the contract adequately. When compensation should be paid and how much, including compensation for any continuing base services and transition activities. The return of any pre-paid fees for which services have not been rendered. | |

Personnel

- Ensure that supplier personnel and key resources with relevant knowledge and expertise remain on the project and committed during the transition.
- Define the exit-strategy team and its roles.
- The treatment of employees and any obligations to inform or consult under TUPE.

SIGN OFF - Concessionaire's contracts officer:

Date:

SIGN OFF – Authority's contracts officer:

Date:

Schedule 16 – Sites

Part A – Sites

| Site Ref. | Site Name & Address | Site Coordinates | Connection Capacity (Envisioned Infrastructure) | Site Grid Connection Status Information | Site category | Site ownership |
|-----------|---|-------------------------|---|--|---------------|---|
| 1 | Benllech Lower Wendon Beach Car Park LL74 8TU | 53.318338, -4.219372 | 69 kVA connection (three 22 kW AC fast chargers with six outlets over six bays). | DNO Works completed. GRP cabinet installed on-site for use. | Category A | IACC Freehold |
| 2 | Valley Station Road Car Park LL65 3EB | 53.281632, -4.563284 | 110 kVA connection | DNO Works completed. GRP cabinet installed on-site for use. | Category A | IACC Freehold On lease to Valley CC |
| 3 | Amlwch Amlwch Leisure Centre LL68 9TH | 53.402789, -4.349030 | 69 kVA connection | DNO Works completed. GRP cabinet installed on-site for supplier to use. | Category A | IACC Freehold |
| 4 | Llanfairpwll St Tysilio Park and Ride/Share Car Park LL61 5YR | 53.226450, -4.188889 | 350 kVA connection | Substation installed, grid connection works completed, and GRP installed. | Category A | IACC Freehold |
| 5 | Menai Bridge Car Park Bulkeley Square Car Park LL59 5DF | 53.226101, -4.162030 | 69 kVA connection | Grid connection secured, connection works confirmed for June 2025. | Category A | IACC Freehold |
| 6 | Holyhead Holyhead Leisure Centre LL65 2YE | 53.295964, -4.629361 | 217 kVA connection (predominantly DC chargers) | Substation to be installed in 2025, grid connection secured, and GRP installed on-site for use. Scheduled completion 202[●] | Category A | IACC Freehold |
| 7 | Beaumaris Castle LL58 8AP | 53.265448, -4.088231 | 69 kVA connection | DNO Works to be scheduled in Autumn 2025 along with site GRP cabinet installation. | Category A | IACC Freehold |
| 8 | Llangefni Oriol Ynys Mon LL77 7TQ | 53.262949, -4.311832 | 140 kVA connection (predominantly DC chargers) | Grid connection secured. New 500 kVA substation and GRP cabinet to be installed. Scheduled completion April 2025. | Category A | IACC Freehold |
| 9 | Brynsiencyn Groeslon Car Park | 53.179480, -4.268715 | 69 kVA connection (one DC charger) | DNO Works completed. GRP cabinet installed on-site for use. | Category A | IACC Freehold |

| Site Ref. | Site Name & Address | Site Coordinates | Connection Capacity (Envisioned Infrastructure) | Site Grid Connection Status Information | Site category | Site ownership |
|-----------|--|-------------------------|--|--|---------------|----------------|
| | LL61 6HX | | | | | |
| 10 | Church St Car Park Niwbwrch LL61 6SD | 53.164362, -4.360414 | 69 kVA connection | DNO connection quotation received. Scheduled completion March 2025. GRP cabinet scheduled to be installed by IACC during the same timeframe. | Category A | IACC Freehold |

Part B – Option Sites

| Site Ref. | Site Name & Address | Site Coordinates | Connection Capacity (Envisioned Infrastructure) | Site Grid Connection Status Information | Site category | Site ownership |
|-----------|--|-------------------------|--|---|---------------|----------------|
| 11 | Lon Goch Amlwch LL68 9EL | 53.409950, -4.343849 | 69 kVA connection | Request submitted to SPEN. Funding secured to schedule development of the site. | Category B | IACC Freehold |
| 12 | Church Bay Car Park LL65 4ET | 53.371518, -4.555024 | 69 kVA connection | Request submitted to SPEN. Funding secured to schedule development of connection at site. | Category B | IACC Freehold |
| 13 | Menai Bridge YDH Leisure Centre LL59 5SS | 53.227688, -4.177318 | 69 kVA connection | Request submitted to SPEN. Funding secured to schedule development of connection at site. | Category B | IACC Freehold |
| 14 | Ffordd Lligwy Car Park Moelfre LL72 8LT | 53.351920, -4.238057 | 69 kVA connection | Request submitted to SPEN. Funding secured to schedule development of connection at site. | Category B | IACC Freehold |
| 15 | Swift Square Car Park | 53.311887, -4.632234 | 140 kVA connection | Request submitted to SPEN. Replacement site. Funding to be confirmed. ULEV Application submitted for funding during 2026/27 (awaiting response from TfW/WG) | Category B | IACC Freehold |
| 16 | Holyhead & Lon Isallt Trearddur Bay | 53.280884, -4.618937 | 140 kVA connection | Request submitted to SPEN. Replacement site. Funding to be confirmed. ULEV Application submitted for funding during 2026/27 (awaiting response from TfW/WG) | Category B | IACC Freehold |

Schedule 17 – Form of Lease

[NOTE TO TENDERERS: We refer Tenderers to the form of lease separately provided as part of this Tender]