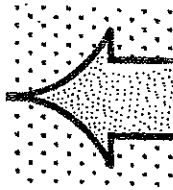


DATED 20/08 2015



NHS BUSINESS SERVICES (1)
AUTHORITY

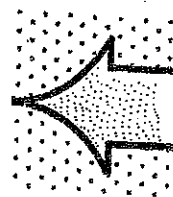
and

DHL SUPPLY CHAIN LIMITED (2)

Deed of Variation

MILLS & REEVE

THIS DEED is made on 20th AUGUST 2015



BETWEEN:

- (1) **NHS BUSINESS SERVICES AUTHORITY** whose principal office is at Stella House, Goldcrest Way, Newburn Riverside, Newcastle Upon Tyne, NE15 8NY (the "Retained Organisation"); and
- (2) **DHL SUPPLY CHAIN LIMITED** (formerly Exel Europe Limited) (registered number 528867), a company incorporated in England whose registered office is at Solstice House, 251 Midsummer Boulevard, Central Milton Keynes, MK9 1EQ (the "Service Provider")

each a "Party" and together the "Parties".

BACKGROUND

- (A) On 4 September 2006 the Retained Organisation and the Service Provider entered into a master services agreement under which the Service Provider has agreed to provide the Services to the Retained Organisation ("MSA").
- (B) The Retained Organisation and the Service Provider have also entered into the Amendment Agreements, Side Agreements and the Supplemental Agreements (each as defined below) relating to the MSA.
- (C) In order to achieve cost savings and efficiencies in the delivery of the Services, the Parties have agreed to vary the MSA on the terms set out in this Deed.
- (D) The Parties acknowledge that the operation of the Agreement in practice as at the date of this Deed is in a number of material respects, whilst commercially agreed between the Parties, not reflected by the current text of the Agreement.

IT IS AGREED as follows:

1 Definitions and Interpretations

1.1 Definitions

Terms defined in Schedule 1 (*Definitions*) of the MSA have the same meaning in this Deed, unless otherwise defined or the context otherwise requires. In this Deed:

"Amendment Agreements" means those amendment agreements entered into by the Parties relating to the MSA as detailed in Schedule 1 to this Deed;

"Guarantee" means the guarantee given by the Guarantor and dated 8 September 2006 under which the Guarantor guarantees the performance of the Service Provider's obligations under the MSA;

"Guarantor" means Deutsche Post AG, with its headquarters at D-53250 Bonn, Germany;

"Side Agreements" means those side agreements entered into by the Parties relating to the MSA, as detailed in Schedule 1 to this Deed;

"Supplemental Agreements" means those supplemental agreements entered into by the Parties relating to the MSA, as detailed in Schedule 1 to this Deed; and

"Variation Date" means 1 October 2015.

1.2 Interpretation

The provisions of Clause 1.2 (*Interpretations*) of the MSA shall apply to this Deed as if set out in full with references to "this Agreement" being treated as references to this "Deed".

2 Variation of the MSA

2.1 With effect from the Variation Date, the Retained Organisation and the Service Provider agree to:

2.1.1 amend the main body of the MSA as shown in the copy of the MSA attached at Schedule 2 to this Deed, where deletions to the original contract are shown in struck through text and additions are shown in underlined text;

2.1.2 amend Schedule 1 (Definitions) of the MSA as shown in the copy of Schedule 1 (Definitions) attached at Schedule 3 to this Deed, where deletions to the original contract are shown in struck through text and additions are shown in underlined text;

2.1.3 amend Schedule 5 (Transfer Property and New Property) of the MSA as shown in the copy of Schedule 5 (Transfer Property and New Property) attached at Schedule 4 to this Deed, where deletions to the original

contract are shown in struck through text and additions are shown in underlined text;

- 2.1.4 amend Schedule 10 (Joint Teams) by replacing the existing Schedule 10 (Joint Teams) with the document attached at Schedule 5 to this Deed;
- 2.1.5 amend Schedule 15 (Remuneration, Rebasing and Adjusting) of the MSA as shown in the copy of Schedule 15 (Remuneration, Rebasing and Adjusting) attached at Schedule 6 to this Deed, where deletions to the original contract are shown in struck through text and additions are shown in underlined text;
- 2.1.6 amend Schedule 20 (Dispute Resolution Procedure) of the MSA as shown in the copy of Schedule 20 (Dispute Resolution Procedure) attached at Schedule 7 to this Deed, where deletions to the original contract are shown in struck through text and additions are shown in underlined text;
- 2.1.7 amend Schedule 23 (Key Performance Indicators) as shown in the copy of Schedule 23 (Key Performance Indicators) attached at Schedule 8 to this Deed, where deletions to the original contract are shown in struck through text and additions are shown in underlined text;
- 2.1.8 amend Schedule 24 (SP Management Structure) by replacing the existing Schedule 24 (SP Management Structure) with the document attached at Schedule 9 to this Deed;
- 2.1.9 amend Schedule 26 (Performance Measuring System) of the MSA as shown in the copy of Schedule 26 (Performance Measuring System) attached at Schedule 10 to this Deed, where deletions to the original contract are shown in struck through text and additions are shown in underlined text;
- 2.1.10 replace Schedule 29 (Commercially Sensitive Information) of the MSA with the new Schedule 29 (Commercially Sensitive Information) attached at Schedule 11 to this Deed;
- 2.1.11 replace Schedule 34 (Notices) of the MSA with the new Schedule 34 (Notices) attached at Schedule 12 to this Deed;

- 2.1.12 amend the MSA to include a new Schedule 42 (Continuous Improvement and Savings); attached at Schedule 13 to this Deed;
- 2.1.13 amend the MSA to include a new Schedule 43 (Neutral Logistics Model), attached at Schedule 14 to this Deed;
- 2.1.14 amend the MSA to include a new Schedule 44 (Pricing and Approved Product Terms), attached at Schedule 15 to this Deed;
- 2.1.15 amend the MSA to include a new Schedule 45 (Cost Register) attached at Schedule 16 to this Deed;
- 2.1.16 amend the MSA to include a new Schedule 46 (Cost Units and Cost Drivers) attached at Schedule 17 to this Deed;
- 2.1.17 amend the MSA to include a new Schedule 47 (Worked examples) attached at Schedule 18 to this Deed;
- 2.1.18 amend the MSA to include a new Schedule 48 (Pensions), attached at Schedule 19 to this Deed; and
- 2.1.19 disapply the provisions of Schedule 37 (Service Provider's Financial Information).
- 2.2 Aside from the variations listed in Clause 2.1 above, the terms of the MSA shall remain unchanged.
- 2.3 The Parties agree that the terms of the Supplemental Agreements shall remain unchanged and be unaffected by the variations to the MSA as set out in this Deed except to the extent that such Supplemental Agreements incorporate and/or make reference to the application of a term of the MSA which has been varied by this Deed.
- 2.4 With effect from the Variation Date, the Retained Organisation and the Service Provider agree that Clauses 5 and 6 of the Supplemental Agreement to the Master Services Agreement for the provision of Additional Working Capital between (i) Secretary of State for Health; (ii) NHS Business Services Authority; and (iii) DHL Supply Chain Limited dated 6 August 2014 shall be deemed to be deleted.
- 2.5 For the avoidance of doubt, the parties agree that any profit generated as a result of any Side Agreements, Amendment Agreements or Supplemental Agreements shall

be included in calculating whether the Service Provider has exceeded the Annual Allowable Profit, save for any profit relating to the provision of the DH Support Services.

2.6 In the event of any conflict between the terms of this Deed and the MSA, the terms of this Deed shall prevail.

2.7 Insofar as the current agreed manner of operation of the Agreement is not wholly reflected by the text of the Agreement as at the date of this Deed, the Parties shall agree where appropriate and implement a smooth transition process from such current manner of operation of the Agreement to a manner of operation which reflects the Agreement as amended by this Deed with effect from the Variation Date.

3 Guarantee

3.1 The Service Provider warrants that the Guarantor consents to the Service Provider entering into this Deed.

3.2 The Service Provider shall procure that the Guarantor re-issues the Guarantee in the form attached at Schedule 20 to this Deed, such that its guarantee and other obligations under the Guarantee remain fully effective and:

3.2.1 apply to the MSA as varied by this Deed; and

3.2.2 are not released or diminished by any provision of this Deed.

4 Warranties

4.1 Each of the Parties warrants that:

4.1.1 this Deed constitutes a valid and binding agreement on it;

4.1.2 all acts, conditions and things required to be done, fulfilled and performed in order:

(i) to enable it to enter into and perform its obligations under this Deed (including its obligations under the MSA as amended by this Deed);

(ii) to enable each member of the RO Group (in the case of the Retained Organisation) and the SP Group (in the case of the

Service Provider) to perform its obligations under this Deed (including its obligations under the MSA as amended by this Deed); and

- (iii) to ensure that the obligations expressed to be assumed by it under and as a consequence of this Deed are valid, legal and binding,

have been duly done, performed and fulfilled.

5 General

5.1 This Deed 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 interpreted in accordance with the law of England and Wales.

5.2 The Parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Deed or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS of which each of the Parties has executed this Deed of Variation on the date stated at the beginning of this Deed of Variation.

Schedule 1

Part A: Supplemental Agreements

1. Supplemental Agreement to the Master Services Agreement for the provision of storage and emergency transport between (i) NHS Business Services Authority; and (ii) Exel Europe Limited, dated July 2011
2. Supplemental Agreement to the Master Services Agreement for the provision of pandemic influenza preparedness services between (i) NHS Business Services Authority; and (ii) Exel Europe Limited, dated 1 October 2009, as amended in writing by agreement between the parties dated 1 October 2013
3. Supplemental Agreement to the Master Services Agreement for the provision of funds to finance the purchase of capital equipment between (i) NHS Business Services Authority; and (ii) Exel Europe Limited, dated 29 March 2012
4. Supplemental Agreement to the Master Services Agreement for the provision of Additional Working Capital between (i) the Secretary of State for Health; (ii) NHS Business Services Authority; and (iii) DHL Supply Chain Limited, dated 6 August 2014 varied by way of the Variation Agreement to direct funds to support the procurement of approved products to support the response to the potential outbreak of the ebola virus between (i) the Secretary of State for Health; (ii) NHS Business Services Authority; and (iii) DHL Supply Chain Limited dated November 2015, effective as from 20 October 2014
5. Agreement for the provision of the storage and distribution of vitamin tablets and drops to support the healthy start campaign between (i) DHL Supply Chain Limited trading as NHS Supply Chain as agent of NHS Business Services Authority; and (ii) Department of Health, dated 1 April 2015
6. Service Level Agreement for the procurement, supply, distribution and operational management of the school fruit and vegetable scheme between (i) the Department of Health; and (ii) DHL Supply Chain Limited, to take effect as from 1 September 2015
7. Supplemental Agreement to the Master Services Agreement for the provision of services to facilitate the leasing of capital equipment and related maintenance services between (i) NHS Business Services Authority; and (ii) DHL Supply Chain Limited, dated 14 July 2015

Part B: Side Agreements

1. Side Agreement expanding the activities within the NHS Supply Chain capital business unit and amending the annual allowable profit, dated 15 May 2014
2. Side Agreement to allow the supply of non-CE marked products to customers for a three month period, dated 20 April 2015
3. Side Agreement of tender award in relation to mini-competition following an E-Auction for commitment of 250,000,000 single gloves, dated 7 January 2015
4. Side Agreement of tender award in relation to mini-competition following an E-Auction for commitment of 2,523,100 patient dry wipes, dated 7 January 2015
5. Side Agreement limiting the scope of the services provided in respect of bifurcated needles, dated 9 March 2015
6. Letter from the Retained Organisation to the Service Provider dated 13 July 2015 relating to the Supplemental Agreement referred to in paragraph 7 of Part A of this Schedule.

Part C: Amendment Agreements

Amendment Agreement to the Master Services Agreement Schedule 5 Part C – Disposals and Acquisitions, and Part D – Options between (i) NHS Business Services Authority; and (ii) Exel Europe Limited, dated 6 August 2009

Schedule 2 – Variations to main body of the MSA

[] 2006

(the Retained Organisation)

(the Service Provider)

MASTER SERVICES AGREEMENT



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MASTER SERVICES AGREEMENT

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THIS MASTER SERVICES AGREEMENT (the "**Agreement**") is made on September 2006

BETWEEN:

- (1) NHS Business Services Authority whose registered office is at Bridge House, 152 Pilgrim Street, Newcastle Upon Tyne, NE1 6SN (the "**Retained Organisation**");
- (2) Exel Europe Limited CRN 528867; a company incorporated in England whose registered office is at Solstice House, 251 Midsummer Boulevard Central Milton Keynes MK9 1EQ (the "**Service Provider**"),

each a "**Party**" and together the "**Parties**".

WHEREAS:

- (A) The Government of the United Kingdom intends to achieve better value for the considerable expenditure incurred in providing public services across all departments, including the Department of Health ("**DH**") which has a large annual expenditure in the provision of healthcare services.
- (B) On 1 April 2006 as part of an inter-departmental restructuring, the former NHS Logistics Authority ("**NHS Logistics**") was absorbed into the Retained Organisation.
- (C) The DH has taken the decision to outsource the activities of the former NHS Logistics and certain procurement activities of the NHS Purchasing and Supply Agency ("**PASA**").
- (D) In accordance with its decision, the DH invited tenders on 25th July 2005 from interested persons for the transfer of certain assets and contracts which were then vested in NHS Logistics and in PASA, the transfer of the employment of certain employees who were then employed by NHS Logistics and PASA, the granting of the right to use certain intellectual property, including the NHS Marks, together with the provision of procurement, relationship management, marketing and business development, IT provision, transaction management, warehouse, transport, human resource management, change management, inventory management and accounting expertise services in connection with the procurement and delivery of certain products to, *inter alia*, NHS organisations.
- (E) Proposals were submitted on behalf of the Service Provider in response to the DH's invitation. Following negotiations, the Retained Organisation and the Service Provider have decided to enter into this Agreement, which sets out the terms and conditions upon which the Service Provider will carry out the Services.

(F) The Parties recognise that the long-term relationship established by entering into this Agreement involves close co-operation and liaison and this Agreement is intended to reflect that need.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Agreement, the words and expressions defined in Schedule 1 shall, except where the context otherwise requires, have the meaning set out opposite them in such schedule.

Interpretation

1.2 In construing this Agreement, unless the context otherwise requires:

- (a) a reference to a person includes, as appropriate, its successors, permitted assignees or transferees;
- (b) references to Clauses and Schedules are references to, respectively, clauses of and schedules to this Agreement and references to this Agreement include its Schedules;
- (c) a reference to any agreement shall be construed as a reference to that agreement as it may from time to time be amended without giving rise to a breach of this Agreement;
- (d) a provision of law is a reference to that provision as extended, applied or amended from time to time and includes any subordinate legislation;
- (e) the index to and the headings in this Agreement are inserted for convenience only and are to be ignored in construing this Agreement;
- (f) words importing the plural include the singular and vice versa;
- (g) where a term is defined in this Agreement in plural form to mean persons or things a reference to that term in singular form shall be construed as meaning any such person or thing;
- (h) references to days and months are to be construed as references to calendar days and calendar months;
- (i) the *contra preferentem* rule shall not apply to the interpretation of this Agreement; and
- (j) rights and obligations shall be construed as applying from time to time.

2. COMMENCEMENT AND TERM

Commencement

2.1 The following Clauses and the provisions of the Schedules referred to in such Clauses shall take effect and be binding upon each of the Retained Organisation and the Service Provider immediately upon signature of this Agreement:

- (a) Clause 1 (Definitions and Interpretation);
- (b) this Clause 2 (Commencement and Term);
- (c) the transfer provisions in Clauses 4 (Transfer) to 12 (Transfer Contracts and Transfer Assets) inclusive;
- (d) the provisions of Clause 13.2 and 13.3 (Employees);
- (e) the provisions of Clauses 14.1 to 14.5 inclusive (Pension Matters);
- (f) the provisions of Clause 36 (Tax);
- (g) the provisions of Clause 51 (Confidentiality);
- (h) the provisions of Clause 52 (Freedom of Information);
- (i) the provisions of Clause 55 (Assignment, Novations and Transfers);
- (j) the Dispute Resolution Procedure;
- (k) the provisions Clauses 58 (Further Assurance) to 66 (Obligation of Good Faith) inclusive;
- (l) Schedule 1 (Definitions);
- (m) Schedule 3 (Conditions Precedent);
- (n) Schedule 4 (Pre-Completion Undertakings);
- (o) Schedule 5 (Transfer Property and New Property) Parts A and B and Appendices 1 to 4 inclusive;
- (p) Schedule 7 (Completion);
- (q) Schedule 8 (Transfer Assets);
- (r) Schedule 9 (Transfer Employees);
- (s) Schedule 22 (Due Diligence Discussions);
- (t) Schedule 27 (Transfer Contracts);

- (u) Schedule 28 (IT Projects, Programmes or Initiatives);
- (v) Schedule 29 (Commercially Sensitive Information);
- (w) Schedule 34 (Notices);
- (x) Schedule 36 (Supply Chain Consultancy Projects);
- (y) Schedule 38 (Completion Accounts);
- (z) Schedule 39 (Transfer Property); and
- (aa) the Schedules referred to in the above provisions.

2.2 The other provisions of this Agreement shall take effect and become binding upon the Parties on the Effective Date.

Term

2.3 This Agreement shall terminate on the earlier of the Expiry Date and the Termination Date.

3. APPOINTMENT

The Retained Organisation hereby appoints the Service Provider, and the Service Provider accepts such appointment, to perform the Services from the Effective Date in return for the Remuneration, in accordance with the terms and conditions of this Agreement.

4. TRANSFER

4.1 The Retained Organisation undertakes to the Service Provider that it shall, and shall procure that each relevant member of the RO Group shall, ensure that:

- (a) the Transfer Assets and the Transfer Contracts are transferred from the RO Group to the Service Provider and the employment of the Transfer Employees are transferred from the RO Group to the SP Employer in accordance with the general terms and subject to the conditions set out in this Agreement together with the benefit (so far as the same can be assigned or transferred or held in trust for the Service Provider and/or the SP Employer as the case may be) of all rights and claims of the Retained Organisation or any member of the RO Group under any warranties, conditions, representations, guarantees or indemnities in favour of the Retained Organisation or any member of the RO Group to the extent they relate to the Transfer Business and are subsisting at the Effective Date.
- (b) all other property, rights and assets of the Retained Organisation, in particular, the property, rights and assets of PASA prior to the Effective Date, used, enjoyed or exercised solely in connection with

the Transfer Business to the extent necessary or required by the Service Provider to operate the Transfer Business and not otherwise specified in this Clause 4 or specifically excluded.

5. CONDITIONS TO COMPLETION

5.1 Completion of this Agreement shall be conditional on:

- (a) the RO Conditions and the SP Conditions (as may be applicable) for the Transfer set out in Schedule 3 (Conditions Precedent) having been fulfilled or waived in accordance with this Agreement; and
- (b) all of the Property Conditions having been fulfilled in accordance with this Agreement. For the avoidance of doubt, no party may waive any Property Conditions.

5.2(a) The Retained Organisation shall use all reasonable endeavours to ensure that the RO Conditions for the Transfer are fulfilled as soon as possible after the date of this Agreement and in any event on or prior to the Longstop Date.

(b) The Service Provider shall use all reasonable endeavours to ensure that the SP Conditions for the Transfer are fulfilled as soon as possible after the date of this Agreement and in any event on or prior to the Longstop Date.

(c) The Service Provider shall use all reasonable endeavours (but this shall not oblige the Service Provider to pay any fine or premium) to ensure that the Property Condition described in Paragraph 1 of Schedule 3 Part C (Conditions Precedent) is fulfilled as soon as possible after the date of this Agreement.

(d) Such reasonable endeavours as referred to in paragraphs (a), (b) and (c) above shall include the relevant party, as promptly as practicable, taking all steps reasonably necessary or advisable (including making filings and notifications) to obtain all Consents of any Relevant Authority and/or third party which are required in order for the Transfer to occur including those required to satisfy the relevant Condition Precedent.

5.3(a) The Service Provider shall notify the Retained Organisation in writing as soon as all SP Conditions have been fulfilled to the reasonable satisfaction of the Service Provider.

(b) The Retained Organisation shall notify the Service Provider in writing as soon as all RO Conditions have been fulfilled to the reasonable satisfaction of the Retained Organisation.

6. RETAINED ORGANISATION PRE-COMPLETION UNDERTAKINGS

6.1 In respect of the Transfer the Retained Organisation shall, and shall procure that, where applicable, each member of the RO Group shall, perform the undertakings set out in Schedule 4 (Pre-Completion Undertakings).

7. SALE AND PURCHASE

7.1 In respect of each Transfer and subject to and in accordance with the terms of this Agreement, the Retained Organisation shall sell and transfer or procure the sale and transfer by the relevant member of the RO Group and the Service Provider shall purchase the Transfer Business with effect from the Effective Date.

7.2 Nothing in this Agreement shall transfer any of the Approved Products Contracts or Relevant Products to the Service Provider.

7.3 Save as otherwise set out in this Agreement, ownership and risk in the relevant Transfer Assets and Transfer Contracts shall pass to the Service Provider on the Effective Date. Pursuant to Clause 13.1 (Employees), the contract of employment of each Transfer Employee will have effect from the Effective Date as if originally made between the SP Employer and the Transfer Employee.

7.4 The provisions of Schedule 5 (Transfer Property and New Property) and Clause 36 (Tax) shall apply to the Transfer Properties and any New Property and in the event of any inconsistency between the provisions of Schedule 5 (Transfer Property and New Property) and any other part of this Agreement the provisions of Schedule 5 (Transfer Property and New Property) shall prevail.

8. CONSIDERATION

Purchase Price

8.1 The consideration for the Transfer Business shall be the aggregate of:

- (a) the Property Proceeds as determined by Schedule 5 Part B paragraphs 15.4, 15.5, 15.6 and 15.7 (Transfer Property and New Property); and
- (b) the amounts specified in Schedule 6, paragraphs 2 and 3 (Purchase Price),

(exclusive of VAT) (the "**Purchase Price**").

Effective Date payments

8.2 The provisions of Schedule 5 (Transfer Property and New Property) together with Clauses 36.1, 36.3 and 36.8 (Tax) regulate the payment of the Property Proceeds.

8.3 On the Effective Date:

- (a) the Service Provider shall pay the balance of the Purchase Price not paid pursuant to Clause 8.2 to the Retained Organisation;
- (b) the Service Provider shall pay to the DH a non-refundable licence fee for use of the NHS Marks for the Service Period of £30,000,000 (thirty million pounds) exclusive of VAT; and
- (c) the Retained Organisation shall procure that the DH shall pay to the Service Provider the First Instalment of the Start-Up Costs; and
- (d) in relation to the PASA Employees Payment Amount, the Retained Organisation shall pay to the Service Provider £3,700,000 (three million, seven hundred thousand pounds).

8.4 The amounts payable by the Service Provider pursuant to Clauses 8.3(a) and 8.3(b) shall be paid by direct credit and remitted from an account in the name of the Service Provider's solicitors with a clearing bank which is a shareholder in CHAPS Clearing Company Limited.

8.5 The amount payable by the DH and the Retained Organisation pursuant to Clauses 8.3(c) and 8.3(d) shall be paid by direct credit and remitted from an account in the name of the Retained Organisation's solicitors with a clearing bank which is a shareholder in CHAPS Clearing Company Limited.

8.6 For the avoidance of doubt, as the Effective Date is to occur on a day that is not a Business Day and despite that each Party's entitlement to the sums specified in this Clause 8 (Consideration) will not occur until the Transfer occurs on the Effective Date, each Party undertakes that:

- (a) in respect of the amounts payable by the Service Provider pursuant to Clauses 8.3(a) and 8.3(b), the Service Provider shall:
 - (i) ensure that those amounts are deposited into the account nominated pursuant to Clause 8.4 on the Completion Date;
 - (ii) procure that a screen print statement showing those amounts are in the account nominated pursuant to Clause 8.4 be given to the Retained Organisation at the Completion Date; and
 - (iii) procure that those amounts be irrevocably released to the Retained Organisation and the DH on the Business Day immediately following the Effective Date subject to the Transfer occurring. If the Transfer does not occur on the Effective Date, the Service Provider shall be entitled to the return of those amounts;

- (b) in respect of the amounts payable by the DH and the Retained Organisation pursuant to Clauses 8.3(c) and 8.3(d) and, if applicable, the amounts payable pursuant to Clause 15.7 of Schedule 5 Part B (Transfer Property and New Property), Retained Organisation shall:
 - (i) ensure that those amounts are deposited into the account nominated pursuant to Clause 8.5 on the Completion Date;
 - (ii) procure that a screen print statement showing those amounts are in the account nominated pursuant to Clause 8.5 be given to the Retained Organisation at the Completion Date; and
 - (iii) procure that those amounts be irrevocably released to the Service Provider on the Business Day immediately following the Effective Date subject to the Transfer occurring. If the Transfer does not occur on the Effective Date, the Returned Organisation shall be entitled to the return of those amounts

9. COMPLETION

Satisfaction of Conditions Precedent

9.1 (a) Provided:

- (i) all RO Conditions and the SP Conditions have been satisfied or validly waived in accordance with this Agreement; and
- (ii) all Property Conditions have been satisfied in accordance with this Agreement,

the Transfer shall take place on the Effective Date.

- (b) Not less than five (5) Business Days prior to the Completion Date, the Retained Organisation shall notify the Service Provider the location for where the Parties shall meet on the Completion Date to deliver those documents or to perform those tasks identified in Schedule 7 (Completion).

9.2 Each of the Retained Organisation and the Service Provider shall do, or shall procure the doing of, all those things respectively listed in relation to them in Schedule 7 (Completion) on or prior to the Effective Date.

9.3 Subject to Clause 9.6, if any of the SP Conditions Precedent has not been fulfilled (or waived) on or before the Longstop Date then the Retained Organisation (acting in good faith) may, by giving written notice to the Service Provider at any time before the proposed Effective Date, but no later than the proposed Completion Date, identify the SP Condition that has not been so fulfilled (or waived) and require the Service Provider to fulfil the same within a period that shall not be less than 20 Business Days. In the event that the Service Provider shall not within such period have fulfilled the then

outstanding SP Condition, the Retained Organisation may by further written notice terminate this Agreement, in which case no party shall have any claim of any nature whatsoever against the other party under this Agreement in respect of the Transfer (save in respect of any rights and liabilities of the Parties which have accrued before termination or in relation to any of the Surviving Provisions).

9.4 Subject to the provisions of Clause 9.5, if any of the RO Conditions has not been fulfilled (or waived) on or before the Longstop Date then the Service Provider (acting in good faith) may, by giving written notice to the Retained Organisation at any time before the proposed Effective Date, but no later than the proposed Completion Date, identify the RO Condition that has not been so fulfilled (or waived) and require the Retained Organisation to fulfil the same within a period that shall not be less than 20 Business Days. In the event that the Retained Organisation shall not within such period have fulfilled the then outstanding RO Condition, the Service Provider may by further written notice terminate this Agreement, in which case no party shall have any claim of any nature whatsoever against the other party under this Agreement in respect of the Transfer (save in respect of any rights and liabilities of the Parties which have accrued before termination or in relation to any of the Surviving Provisions).

9.5 In the event that the Retained Organisation (or any member of the RO Group) shall have wilfully, deliberately or negligently failed to fulfil the RO Conditions on or before the Longstop Date or failed to act in good faith so as to enable the Service Provider to fulfil the SP Conditions (or to give a waiver in respect thereof), then in the absence of justification on its part pursuant to the provisions of this Agreement lawfully entitling it to take such a step, if this Agreement has consequently been terminated under Clauses 9.3 or 9.4, the Retained Organisation shall be responsible for and shall reimburse the Service Provider for all Costs properly and reasonably incurred by or on behalf of the Service Provider in preparation for the Transfer and the provisions of the Services contemplated by this Agreement.

9.6 In the event that the Service Provider (or any member of the SP Group) shall have wilfully, deliberately or negligently failed to fulfil the SP Conditions on or before the Longstop Date or failed to act in good faith so as to enable the Retained Organisation to fulfil the RO Conditions (or to give a waiver in respect thereof), then in the absence of justification on its part pursuant to the provisions of this Agreement lawfully entitling it to take such a step, if this Agreement has consequently been terminated under Clauses 9.3 or 9.4, the Service Provider shall be responsible for and shall reimburse the Retained Organisation for all Costs properly and reasonably incurred by or on behalf of the Retained Organisation in preparation for the Transfer and for the implementation of the arrangements contemplated in this Agreement. Any liability of the Service Provider under this Clause 9.6 shall fall outside the cap on the Service Provider's liability contemplated in Clause 42 (Indemnity and Liabilities).

9.7 The provisions of Clause 9.5 and 9.6 shall survive any termination of this Agreement pursuant to this Clause 9 and shall be without prejudice to any other rights or remedies of the Parties in such circumstances.

9.8 If all of the Property Conditions have not been satisfied prior to or by the Longstop Date, then either the Service Provider or the Retained Organisation may at any time thereafter by written notice terminate this Agreement in which case no party shall have any claim of any nature whatsoever against the other Party in respect of the Transfer (save in respect of any rights and liabilities of the Parties which have accrued before termination or in relation to any of the Surviving Provisions).

Completion Accounts

9.9 The Completion Accounts shall determine the following balances:

- (a) the Closing Net Working Capital Position as at the Effective Date calculated in accordance with Schedule 38 (Completion Accounts); and
- (b) amounts due to the Retained Organisation in relation to other balances to be transferred as at the Effective Date as set out in Schedule 38 (Completion Accounts) (the "**Transfer Balances**"). For the avoidance of doubt, these balances shall not form part of the Closing Net Working Capital Position and shall be treated in accordance with Clause 9.15.

9.10 The Completion Accounts will be prepared in accordance with Schedule 38 (Completion Accounts).

9.11 As soon as practicable following the Effective Date, but in any event within 20 Business Days after the Effective Date, the Service Provider shall procure the preparation of the draft Completion Accounts.

9.12 When the draft Completion Accounts have been prepared, the Service Provider shall deliver a copy to the Retained Organisation. The Retained Organisation shall then have a period of 10 Business Days after the date on which the Service Provider delivers the draft Completion Accounts to the Retained Organisation within which to review the draft Completion Accounts and to satisfy itself that the draft Completion Accounts have been duly prepared in accordance with this Agreement and that the value of the Closing Net Working Capital Position and value of the Transfer Balances as at the Effective Date have been correctly stated in accordance with this Agreement (the "**Review Period**"). During the Review Period the Retained Organisation shall be granted access to the records used by the Service Provider in its preparation of the Completion Accounts as well as to the personnel involved in their preparation. The Retained Organisation shall, before the expiry of the Review Period, either:

- (a) confirm in writing to the Service Provider that it agrees that the draft Completion Accounts have been prepared in accordance with this Agreement; or
- (b) give notice in writing to the Service Provider explaining why it is unable so to confirm and setting out details of its proposed adjustments to the draft Completion Accounts in order for them to be in accordance with this Agreement.

9.13 If the Retained Organisation fails so to confirm or to give such notice in accordance with Clause 9.12, the draft Completion Accounts and the Closing Net Working Capital Position and value of Transfer Balances therein shall, upon expiry of the Review Period, be deemed to have been finally accepted and agreed by the Retained Organisation and the Service Provider.

9.14 If the Retained Organisation serves a valid notice in accordance with Clause 9.12, the Retained Organisation and the Service Provider shall endeavour to resolve all matters in dispute as soon as practicable. If they fail to resolve such matters within 10 Business Days of the date on which the Service Provider received such notice from the Retained Organisation (the "**Resolution Period**"), either the Retained Organisation or the Service Provider may refer the matter to the Dispute Resolution Procedure.

9.15 No later than ten (10) Business Days following the agreement or determination (in accordance with the Dispute Resolution Procedure) of the Transfer Balances:

- (a) the Retained Organisation shall invoice the Service Provider the net value of the Transfer Balances; and
- (b) no later than ten (10) Business Days following the receipt of the invoice referred to in paragraph (a), the Service Provider shall pay to the Retained Organisation the net value of the Transfer Balances by depositing the relevant amount into the bank account nominated by the Retained Organisation.

Transfer of cash balances

9.16 As at the Completion Date the relevant cash balances (as set out at Schedule 38 (Completion Accounts)) will be transferred to the ROARP Account by the Retained Organisation.

10. RO WARRANTIES

10.1 The Retained Organisation warrants to the Service Provider as at the date of this Agreement and on the Effective Date that:

- (a) this Agreement constitutes a valid and binding agreement on the Retained Organisation;

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- (b) all acts, conditions and things required to be done, fulfilled and performed in order:
 - (i) to enable the Retained Organisation to enter into, and perform its obligations under, this Agreement;
 - (ii) to enable each relevant member of the RO Group to perform the obligations under this Agreement contemplated to be performed by it;
 - (iii) to ensure that the obligations expressed to be assumed by the Retained Organisation under this Agreement are valid, legal and binding,

shall have been duly, done, fulfilled and performed by the Effective Date;

- (c) no security interest has been created, or has been agreed to create, any security interest over any of the Transfer Properties, the Transfer Assets or the Transfer Contracts;
- (d) the Retained Organisation has made available to the Service Provider or its advisers full, complete and accurate copies of the Transfer Contracts and the Transfer Contracts have not been terminated or varied in any material respect since such copies were so made available;
- (e) the Retained Organisation has made available to the Service Provider or its advisers full, complete and accurate copies of the Approved Products Contracts and the Approved Products Contracts have not been terminated or varied in any material respect since such copies were so made available;
- (f) the Retained Organisation or the relevant member of the RO Group has complied in all material respects with its obligations under the Transfer Contracts and has not received notification of any material claim for breach of contract in respect of the Transfer Contracts and no material litigation or similar proceedings have been instituted;
- (g) all material terms and conditions of employment and a summary of all material benefits applicable to the Transfer Employees have been disclosed to the Service Provider or the SP Employer;
- (h) the information provided in relation to each of the Transfer Employees in Schedule 9 Transfer Employees) is true, complete and accurate;
- (i) UNISON, Departmental Trade Union Side and the Public and Commercial Services Union are the only Employee Representative Bodies in respect of the Transfer Employees; and

- (j) the information in respect of the Transfer Property provided for the purposes of preparation of the Certificates of Title is true, complete and accurate and not misleading in any material respect.

10.2 The Service Provider acknowledges and agrees that:

- (a) the RO Warranties are the only warranties of any kind given by or on behalf of the Retained Organisation on which the Service Provider may rely in entering into this Agreement;
- (b) any claim by the Service Provider in connection with the RO Warranties shall be subject to the provisions of this Clause 10.2;
- (c) no other statement, promise or forecast made by or on behalf of the Retained Organisation or any member of the RO Group may form the basis of, or be pleaded in connection with, any claim by the Service Provider under or in connection with Clause 10.2;
- (d) save as otherwise identified in this Agreement, at the time of entering into this Agreement, the Service Provider is not actually aware of any circumstances which are likely to lead to a claim being made against the Retained Organisation pursuant to this Clause 10.2;
- (e) each of the RO Warranties is given to the best of the Retained Organisation's knowledge, after making due inquiry of the individuals as set out in Schedule 22 (Due Diligence Discussions);
- (f) subject to the RO Warranties, each of the Transfer Assets, the Transfer Contracts and the employment of the Transfer Employees shall be transferred on the Effective Date in their respective "as is" condition and the Retained Organisation does not give any warranty or representation, express or implied, as to the adequacy, condition, quality or fitness for purpose of any of the Transfer Assets, the Transfer Contracts or the employment of the Transfer Employees. The Service Provider hereby confirms its acceptance of the Transfer Assets, the Transfer Contracts (and in the case of the transfer of the employment of the Transfer Employees to the SP Employer) in their "as is" condition on the Effective Date; and
- (g) subject to the RO Warranties, the Retained Organisation shall not have any liability for any deficiencies or defects of whatever nature in the Transfer Assets, the Transfer Contracts or, subject to Clause 13 (Employees), the employment of the Transfer Employees on or after the Effective Date.

10.3 The Service Provider agrees and undertakes to the Retained Organisation that except in the case of fraud it has no rights against and hereby waives and shall not make any claim against, any employee, director, agent or officer of the Retained Organisation or of the RO Group on whom it may have relied before agreeing any term of this Agreement, or before

entering into this Agreement and, without limitation, in relation to any information supplied or omitted to be supplied by any such persons in connection with the RO Warranties or this Agreement. This Clause 10.3 shall not affect the liability of the Retained Organisation itself in respect of the inaccuracy of any RO Warranty.

10.4 The Retained Organisation acknowledges that the Service Provider has entered, or will enter, into this Agreement in reliance on the RO Warranties.

Claims on RO Warranties

10.5 The Service Provider may make a claim against the Retained Organisation for a breach of an RO Warranty if:

- (a) an individual claim or series of claims related to the same issue is or exceeds £50,000 (fifty thousand pounds) (for the avoidance of doubt in such circumstances the Retained Organisation shall be responsible for all of the Costs associated with such breaches and not limited to Costs exceeding such threshold level); or
- (b) when the aggregate of the Costs for one or more breaches of the RO Warranties is equal to or greater than £500,000 (five hundred thousand pounds) (for the avoidance of doubt in such circumstances the Retained Organisation shall be responsible for all of the Costs associated with such breaches and not limited to Costs exceeding such threshold level); and
- (c) the claim is brought prior to the first anniversary of the Effective Date.

11. SP WARRANTIES

11.1 The Service Provider warrants to the Retained Organisation as at the date of this Agreement that:

- (a) it is validly incorporated, in existence and duly registered under the laws of its jurisdiction of incorporation and has full power to conduct its business as conducted at the date of this Agreement;
- (b) it has obtained all corporate authorisations and (other than to the extent relevant to the Conditions Precedent) all other applicable governmental, statutory, regulatory or other consents, licences, authorisations, waivers or exemptions required to empower it to enter into and perform its obligations under this Agreement and the Trade Mark Licence;
- (c) this Agreement and the Trade Mark Licence (when executed) constitute valid and legally binding obligations of the Service Provider in accordance with their respective terms; and

- (d) unconditional merger control clearances have been granted in respect of the transaction contemplated by this Agreement from all merger control authorities that are competent to review it, including, if applicable, written confirmation from the United Kingdom Office of Fair Trading (the "**OFT**"), that the OFT does not intend to seek undertakings from the Parties to address competition concerns or to refer the transaction contemplated by this Agreement or any matters arising therefrom to the United Kingdom Competition Commission.

11.2 The Service Provider acknowledges that the Retained Organisation has entered, or will enter, into this Agreement in reliance on the SP Warranties.

11.3 The Retained Organisation agrees and undertakes to the Service Provider that, except in the case of fraud, it has no rights against and hereby waives and shall not make any claim against, any employee, director, agent or officer of the Service Provider or of the SP Group on whom it may have relied before agreeing any term of this Agreement, or before entering into this Agreement and, without limitation, in relation to any information supplied or omitted to be supplied by any such persons in connection with the SP Warranties or this Agreement. This Clause 11.3 shall not affect the liability of the Service Provider itself in respect of the inaccuracy of any SP Warranty or the ability of the Retained Organisation to make any claim under the Parent Company Guarantee.

11.4 The SP Warranties shall be deemed to be repeated immediately before the Effective Date with reference to the facts and circumstances then existing.

12. TRANSFER CONTRACTS AND TRANSFER ASSETS

Transfer Contracts

12.1 The Service Provider hereby confirms that it has familiarised itself to its satisfaction with the terms of the Transfer Contracts.

12.2 Prior to the Effective Date:

- (a) the Retained Organisation shall notify the Service Provider of those contracts which are used in the Retained Organisation's business prior to the Effective Date which the Retained Organisation (or relevant member of the RO Group) is not able to transfer to the Service Provider (such contracts, the "**RO Excluded Contracts**");
- (b) the Service Provider shall be entitled to notify the Retained Organisation if there are any Transfer Contracts which it wishes to exclude from the operation of Clauses 12.6 and 12.8 (such contracts, which for the avoidance of doubt shall cease to be Transfer Contracts, the "**SP Excluded Contracts**").

12.3 Prior to the Effective Date the Service Provider shall notify the Retained Organisation which of the SP Excluded Contracts it wishes to allow to expire as the cost of termination or repudiation of the relevant contracts will be greater than the cost of allowing the relevant contract to expire in accordance with its terms ("**Expired Contracts**").

12.4 The Retained Organisation shall, working with the Service Provider (and keeping the Service Provider reasonably informed), take necessary and reasonable steps to:

- (a) terminate or repudiate any SP Excluded Contracts with effect from the Effective Date;
- (b) terminate or repudiate any RO Excluded Contracts with effect from the Effective Date to the extent that those contracts apply to the Transfer Business; and
- (c) allow the Expired Contracts to expire in accordance with their terms.

12.5 The Service Provider undertakes to the Retained Organisation to indemnify the Retained Organisation (or the relevant member of the RO Group) against all Costs suffered or incurred as a result of its compliance with Clauses 12.4(a) and 12.4(c), together with:

- (a) any other monies payable under or in respect of any SP Excluded Contract in relation to the period after the Effective Date up to the date of termination or repudiation, save where such Costs have arisen in the circumstances described in Clause 12.7; and
- (b) any other monies payable under or in respect of any Expired Contract in relation to the period after the Effective Date up to the date of expiry save where such Costs have arisen in the circumstances described in Clause 12.7.

12.6 Subject to Clause 12.8 below, the Service Provider:

- (a) shall, from the Effective Date carry out, perform and discharge, all the obligations and liabilities created by or arising under the Transfer Contracts and undertakes to the Retained Organisation to indemnify the Retained Organisation and each member of the RO Group against all Costs suffered or incurred by the Retained Organisation or any member of the RO Group as a result of any failure on its part to carry out, perform and discharge those obligations and liabilities set out in this paragraph (a); and
- (b) shall, with effect from the Effective Date, at its discretion and where relevant and appropriate, enter into and effect appropriate alternative arrangements to those arrangements covered by the RO Excluded Contracts and the SP Excluded Contracts to ensure that the Service

Provider is able to perform the Services in accordance with this Agreement.

12.7 The Retained Organisation (on its own behalf and on behalf of each member of the RO Group):

- (a) except as otherwise required under the terms of the relevant contract shall not incur any Costs under any of the SP Excluded Contracts and the Expired Contracts; and
- (b) shall indemnify the Service Provider against all Costs suffered or incurred by the Service Provider as a result of any failure on its part to carry out, perform and discharge its obligations and liabilities under the Transfer Contracts, the SP Excluded Contracts, the RO Excluded Contracts and the Expired Contracts in the period prior to the Effective Date.

12.8 Insofar as the benefit or burden of any of the Transfer Contracts cannot be, or is not permitted to be, assigned or transferred to the SP Group, except by an agreement of novation or without obtaining a consent from a third party:

- (a) the Retained Organisation shall or shall procure that without the Service Provider's prior written consent (not to be unreasonably withheld or delayed) that from the Effective Date until the date of assignment, novation or termination (as the case may be):
 - (i) no Transfer Contract is terminated except in the ordinary and usual course or in response to a material breach of such Transfer Contract by another party to it, in each case, in accordance with the terms of such contract;
 - (ii) no material amendment is made to any Transfer Contract; and
 - (iii) except as otherwise required under the terms of the relevant Transfer Contract shall not incur any Costs;
- (b) the Retained Organisation shall at the Service Provider's request, use all reasonable endeavours with the co-operation of the Service Provider to procure a novation or consent with effect from the Effective Date. The Service Provider shall provide, or procure the provision of, any information or guarantees reasonably requested by the person, firm or company concerned. The Retained Organisation shall, as soon as possible after receipt, deliver such novation or consent to the Service Provider;
- (c) subject to paragraph (d), if a Transfer Contract has not been novated or assigned or the necessary consent has not been obtained on or before the Effective Date, the Retained Organisation shall hold the benefit of the relevant Transfer Contract as agent of and trustee for the Service Provider. The Service Provider undertakes to the

Retained Organisation to indemnify the Retained Organisation and each member of the RO Group against all Costs suffered or incurred as a result of the Retained Organisation holding the benefit of the relevant Transfer Contract as agent of and trustee for the Service Provider; and

- (d) if a Transfer Contract has not been novated or assigned or the necessary consent has not been obtained by the earlier of (i) 12 months after the Effective Date; and (ii) the end of the Transition Phase; the Retained Organisation shall be entitled to terminate or repudiate the relevant Transfer Contract provided that it shall first give the Service Provider not less than ten (10) Business Days' notice of its intention to do so and shall take all reasonable steps to terminate or repudiate the relevant Transfer Contract in such a manner so as to mitigate any liability of the Service Provider pursuant to this Clause 12.8. The Service Provider undertakes to the Retained Organisation to indemnify the Retained Organisation and each member of the RO Group against all Costs suffered or incurred as a result of such termination or repudiation.

Monies received under Transfer Contracts

- 12.9(a) Subject to paragraph (e), if and to the extent that the Retained Organisation or any other member of the RO Group has prior to the Effective Date received any deposit or payment in advance in respect of any of the Transfer Contracts (other than any SP Excluded Contracts or Expired Contracts), the Retained Organisation will account to the Service Provider for the same at the Effective Date if and to the extent that such deposit or payment in advance relates to the period after the Effective Date.
- (b) Subject to paragraph (e), to the extent that any payment is made to the Retained Organisation or any other member of the RO Group after the Effective Date in respect of the performance of any of the Transfer Contracts (other than any SP Excluded Contracts and Expired Contracts) after the Effective Date, the Retained Organisation or any other member of the RO Group will receive the same as trustee, will record such payment separately in its books and will account to the Service Provider for the same as soon as reasonably practicable.
- (c) Subject to paragraph (e), to the extent that any payment is made to the Service Provider after the Effective Date in respect of the performance of any of the Transfer Contracts before the Effective Date, the Service Provider will receive the same as trustee, will record such payment separately in its books and will account to the Retained Organisation or any other member of the RO Group for the same as soon as reasonably practicable.
- (d) Subject to paragraph (e), to the extent that any payment is made to the Service Provider in respect of any of the SP Excluded Contracts

and Expired Contracts, the Service Provider will receive the same as trustee, will record such payment separately in its books and will account to the Retained Organisation or any other member of the RO Group for the same as soon as reasonably practicable.

- (e) That part of any receipt falling within paragraphs (a) to (d) above which represents an amount in respect of VAT shall be apportioned to the party which is obliged to account for such VAT to H. M. Revenue and Customs.

Transfer Assets

12.10 Where any consent of any third party is required to the transfer of any of the Transfer Assets (other than in relation to the transfer of any Transfer Contract or Transfer Property or the performance of any Transfer Contract by the Service Provider) and such consent has not been obtained at or before the Effective Date, the transfer of the relevant Transfer Asset shall not take effect, notwithstanding the Effective Date, until that consent has been obtained and the Retained Organisation and the Service Provider shall use their respective reasonable endeavours after the Effective Date to obtain it as soon as possible and in the meantime shall hold such Transfer Asset as agent of and trustee for the Service Provider.

Third Party Consents

12.11 Where any permit, licence, authority, consent or approval ("**authority**") has been obtained by the Retained Organisation which relates partly to the Transfer Business and such authority is reasonably required by the Service Provider for the purposes of the Transfer Business, the Retained Organisation shall use all reasonable endeavours to enable the Service Provider to obtain or enjoy the benefit of such authority, or an appropriate replacement or alternative, at the Service Provider's cost and expense.

Debts

12.12 The Retained Organisation (or the relevant member of the RO Group) will discharge in accordance with its terms any debt owed by any member of the RO Group to a third party in respect of any Transfer Contract or Transfer Asset to the extent that such debt relates to the period prior to the Effective Date and will indemnify the Service Provider in full against any Costs which the Service Provider may suffer or incur, directly, or indirectly, as a result of the Retained Organisation's (or the relevant member of the RO Group's) failure so to discharge the same.

Liabilities

12.13 Nothing in this Agreement will make the Service Provider liable in respect of anything done or omitted to be done by the Retained Organisation or any member of the RO Group on or prior to the Effective Date or in relation to the use of the Transfer Properties, the Transfer Assets or the performance

of the Transfer Contracts on or prior to the Effective Date other than as may have been specifically assumed by the Service Provider under this Agreement or is the subject of any express obligation or liability of the Service Provider under this Agreement.

12.14 Nothing in this Agreement will make the Retained Organisation liable in respect of anything done or omitted to be done by the Service Provider after the Effective Date or in relation to the use of the Transfer Properties, the Transfer Assets or the performance of the Transfer Contracts by the Service Provider after the Effective Date other than as may have been specifically assumed by the Retained Organisation under this Agreement or is the subject of any express obligation or liability of the Retained Organisation under this Agreement.

13. EMPLOYEES

Transfer Employees

13.1 The Parties acknowledge and agree that the transfer of the Transfer Employees from the RO Group and of any employees of third parties currently performing services pursuant to any of the SP Excluded Contracts for the RO Group that will constitute one of the Services from the RO Group to the Service Provider or the SP Employer (as the case may be) is a "**relevant transfer**" or "**relevant transfers**" within the meaning of the Transfer Regulations. The Parties agree that the contract of employment of each Transfer Employee will have effect from the Effective Date as if originally made between the Service Provider or the SP Employer (as the case may be) and the Transfer Employee.

13.2 The Retained Organisation has supplied (or procured the supply) to the Service Provider of information as at the date of this Agreement regarding the identity of the Transfer Employees, as listed in Schedule 9 (Transfer Employees). In the event that any employees of third parties pursuant to any SP Excluded Contracts are to transfer to the Service Provider on the Effective Date pursuant to Clause 13.1, such persons shall be added to the list of Transfer Employees prior to the Effective Date. The Retained Organisation shall be under an obligation to keep the list in Schedule 9 (Transfer Employees) fully accurate and up to date until the Effective Date and to the extent that the list is amended by the Retained Organisation in accordance with this obligation, the Retained Organisation shall provide the Service Provider with a copy of the amended Schedule 9 (Transfer Employees) as soon as reasonably practicable thereafter.

13.3 The Service Provider has provided to the Retained Organisation details of its proposed communication exercise with the Transfer Employees and with the Employee Representative Bodies. The Service Provider agrees to liaise with the Retained Organisation to agree the information and consultation timetable which will be followed. The Retained Organisation and the Service Provider shall give each other such assistance and information as either may reasonably require to comply with their respective obligations to inform and

consult the Employee Representative Bodies in accordance with the Transfer Regulations in respect of the Transfer.

13.4 All amounts due and payable to or in relation to the Transfer Employees by the relevant member of the RO Group, including but not limited to wages and salaries and pay in respect of holiday entitlement, in relation to periods of employment prior to the Effective Date shall be discharged by the relevant member of the RO Group and the Retained Organisation undertakes to the Service Provider to procure that the relevant member of the RO Group indemnifies the Service Provider or the SP Employer (as the case may be) against any and all Costs arising out of or in connection with such amounts. All necessary apportionments shall be made to give effect to this clause.

13.5 The Service Provider undertakes that all amounts payable to or in relation to the Transfer Employees by the Service Provider or the SP Employer (as the case may be), including but not limited to wages, salaries and pay in respect of holiday entitlement, in relation to periods of employment on and after the Effective Date up to the Expiry Date or the Termination Date (as the case may be) shall be discharged by the Service Provider and the Service Provider undertakes to the Retained Organisation to indemnify the Retained Organisation and the RO Group against any and all Costs arising out of or in connection with such amounts. All necessary apportionments shall be made to give effect to this clause.

13.6 If any contract of employment of a person who is not a Transfer Employee but who at the relevant time is employed by a member of the RO Group to work wholly or mainly in the provision of the Services and therefore whose employment is intended to transfer to the Service Provider or the SP Employer (as the case may be) does not have effect as a result of the Parties entering into this Agreement as if originally made between the Service Provider or the SP Employer (as the case may be) and such person, then:

- (a) the Retained Organisation shall with 10 Business Days of being made aware of the existence of such a person notify the Service Provider of their existence and shall provide the Service Provider with the identity of that persons, details of that person's job description and material terms and conditions of employment, which shall include details of whether such person was employed in the former NHS Logistics part of the Retained Organisation's business (being a **"Relevant NHSLA Employee"**) or in PASA (being a **"Relevant PASA Employee"**);
- (b) in respect of any Relevant NHSLA Employees, the following provisions shall apply:
 - (i) the Service Provider shall within 20 Business Days of being so notified make reasonable endeavours to find such Relevant NHSLA Employee suitable alternative employment within the SP Group;

- (ii) if no such alternative employment is available, or if an offer of suitable alternative employment has been made by the Service Provider to such Relevant NHSLA Employee and has either (i) been accepted; or (ii) not been accepted; or (iii) been rejected by such Relevant NHSLA Employee, then the Service Provider shall notify the Retained Organisation in writing on the expiry of the 20 Business Day notice period referred to in sub-clause (i) above (or at the end of the period for acceptance of any offer of suitable alternative employment made as the case may be) of the relevant outcome and;
 - (iii) the Retained Organisation may then terminate the employment of such person; and provided that the Retained Organisation complies with any applicable statutory and contractual obligations for terminating the employment of such Relevant NHSLA Employee, the Service Provider shall indemnify the Retained Organisation from and against all and any Costs incurred by the Retained Organisation arising out of or in connection with such termination and from and against any sums payable to or in relation to such Relevant NHSLA Employee under that Relevant NHSLA Employee's contract of employment to the date of such termination.
- (c) in respect of any Relevant PASA Employees, the following provisions shall apply:
 - (i) the Service Provider shall within 20 Business Days of being so notified use reasonable endeavours (although shall not be obliged) to offer employment to such Relevant PASA Employee within the Services on terms and conditions which are the same as those which applied to such Relevant PASA Employee immediately prior to the Effective Date;
 - (ii) if no such offer of employment is made, or if an offer of employment has been made by the Service Provider to such Relevant PASA Employee and has either (i) been accepted; or (ii) not been accepted; or (iii) been rejected by such Relevant PASA Employee, then the Service Provider shall notify the Retained Organisation in writing on the expiry of the 20 Business Day notice period referred to in sub-clause (i) above (or at the end of the period for acceptance of any offer of employment made as the case may be) of the relevant outcome and;
 - (iii) the Retained Organisation may then terminate the employment of such person; and shall indemnify the Service Provider from and against all and any Costs incurred by the Service Provider or the SP Employer (as the case may be) arising out of or in connection with such termination and from and against any

sums payable to or in relation to such Relevant PASA Employee under that Relevant PASA Employee's contract of employment to the date of such termination.

- (iv) For the avoidance of doubt, if the Retained Organisation does not notify the Service Provider of the existence of any such person as contemplated by sub-clause (i) above, then the indemnity in sub-clause (iii) shall nevertheless apply.

13.7 The Service Provider undertakes to the Retained Organisation that it or the SP Employer (as the case may be) will continue to recognise all Employee Representative Bodies for the duration of the provision of the Services to the same extent as recognised by the Retained Organisation immediately prior to the Effective Date.

13.8 The Retained Organisation undertakes to indemnify the Service Provider or the SP Employer (as the case may be) against any Costs which are attributable to any act or omission by the Retained Organisation or the relevant member of the RO Group prior to the Effective Date in respect of any of its or their obligations or duties (in either case, whether arising under common law, statute, custom or otherwise) to or in relation to any of the Transfer Employees (including but not limited to any liability arising out of the termination or dismissal of any of the Transfer Employees and any failure to comply with its legal requirements whether statutory or pursuant to any written agreement with, or the constitution of, any Employee Representative Body, to inform and consult with the Transfer Employees or any Employee Representative Body) and which the Service Provider or the SP Employer (as the case may be) incurs pursuant to the Transfer Regulations, save where such failure is attributable to any failure by the Service Provider or the SP Employer to provide such information as is required by Regulation 13(4) of the Transfer Regulations.

13.9 The Service Provider undertakes to indemnify the Retained Organisation and the RO Group against any Costs which any of them incurs and which are attributable to any act or omission by the Service Provider or the SP Employer after the Effective Date in respect of any of its or their obligations or duties (in either case, whether arising under common law, statute, custom or otherwise) to or in relation to any of the Transfer Employees (including but not limited to any liability arising out of the termination or dismissal of any Transfer Employee or out of any claim that the change in identity of the employer of any Transfer Employee as a result of the Transfer would be a substantial change in working conditions to his detriment or out of any actual or proposed substantial changes to the working conditions or the terms of employment of any of the Transfer Employees occurring or proposed to occur after the Effective Date.

13.10 The Service Provider undertakes to indemnify the Retained Organisation and the RO Group against any Costs which any of them incurs and which are attributable to any failure by the Service Provider or SP

Employer (as the case may be) to comply with its legal requirements to provide information or to consult with the Transfer Employees as required by the Transfer Regulations.

Two-Tier Workforce code

13.11 The Service Provider undertakes during the Service Period that it or the SP Employer (as the case may be) will:

- (a) comply with the Two-Tier Workforce Code in recruiting any individual to work in the provision of the Services for as long as the Two-Tier Workforce code applies to the Service Provider; and
- (b) will continue to comply with "Agenda for Change" in respect of the Transfer Employees.

14. PENSION MATTERS

14.1 The Service Provider shall:

- (a) procure that each Pensionable Employee shall be offered membership of a SP Pension Scheme with effect on and from the Effective Date, which has been certified by the Government Actuary's Department as broadly comparable to the Relevant Pension Scheme assessed following the principles set out in the Statement of Practice issued by the Government Actuary's Department;
- (b) procure that each Pensionable Employee shall be given the opportunity to transfer his accrued benefits from the Relevant Pension Scheme to the SP Pension Scheme and to take a transfer amount between the schemes and shall be offered equivalent value service credits in the SP Pension Scheme as determined by the actuary to the Relevant Pension Scheme, such transfer amount to be calculated on the terms set out in Part 1 of Annex 1 ;

(c)



(d)



SP Pension Scheme and Initial Transfer of Pensionable Employees from the Relevant Pension Schemes

14.2 The transfer amount for each Pensionable Employee who elects to transfer his accrued benefits from the Relevant Pension Scheme (the "**Transferring Pension Employees**") shall be calculated both in accordance with the terms set out in Part 1 of Annex 1 and the terms set out in Part 2 of Annex 1. The difference between the calculation of the transfer amount for the Transferring Pension Employees under Part 2 and Part 1 of Annex 1 shall be an "**Initial Shortfall**".

14.3 The Service Provider shall ensure that, for each SP Pension Scheme the final certificate from the Government Actuary's Department referred to in Clause 14.1, or if the governing documentation of the SP Pension Scheme is not yet available, an interim certificate from the Government Actuary's Department shall be delivered to the Retained Organisation before the Effective Date in respect of each Pensionable Employee who is to be offered membership of the SP Pension Scheme to which the certificate relates.

14.4 The Retained Organisation shall provide the Service Provider with such information as it may reasonably require in relation to the Relevant Pension Scheme to enable the Service Provider to submit a proposal to the Government Actuary's Department to assess the comparability of the SP Pension Scheme. The Retained Organisation may (at its option) provide such information directly to the Government Actuary's Department. The Service Provider shall provide such documentation as is required by the Government Actuary's Department to enable it to consider the question of comparability including, but not necessarily limited to, the trust deed and rules, the latest actuarial valuation report, the latest trustees' report and accounts of the SP Pension Scheme, together with a statement giving details of the increases in pensions in payment and deferred pensions in each of the last ten (10) years and details of any discretionary benefits that have been provided under the SP Pension Scheme.

14.5 All costs incurred in obtaining any certificate of broad comparability from the Government Actuary's Department shall be borne by the Service Provider.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14.8 The Retained Organisation shall have the right, but not the obligation, on any second or subsequent transfer, to request the Government Actuary's Department to certify, in respect of any SP Pension Scheme, that the requirements of Clauses 14.6 and 14.7 have been met. The Service Provider shall (and it shall procure that any Sub-Contractors shall) provide all such documentation as is required to enable the Government Actuary's Department to make the necessary assessment.

[REDACTED]

[REDACTED]

Premature Retirement Rights

14.10 The Service Provider shall (and/or shall procure that any relevant Sub-Contractor shall) procure that there shall be provided for each Pensionable Employee, as far as practicable, on termination of employment before the final day of the Service Period rights which replicate those to which the employee would have been entitled under the NHS Pension Scheme Regulations 1995 and the NHS (Compensation for Premature Retirement) Regulations 2002, each as in force at the Effective Date or, if the NHS Pension Scheme Regulations 1995 or the NHS (Compensation for Premature Retirement) Regulations 2002 (as applicable) are amended after the Effective Date to provide lower benefits for future service, in accordance with those Regulations, had he remained in the employment of the Retained Organisation or if the Service Provider determines that it is not practicable for any such Pensionable Employee to be given such equivalent rights he shall be provided with compensation which is broadly comparable or of equivalent value to the lost entitlement, as reasonably determined by the Service Provider.

[REDACTED]

[REDACTED]

[REDACTED] then following the end of the Service Period, the Service Provider agrees that it will offer any Pensionable Employee who is a member in pensionable service of an SP Pension Scheme, the opportunity to transfer their benefits under bulk transfer terms. In respect of Pensionable Employees who consent to such a transfer, a transfer will be made from the SP Pension Scheme which shall be calculated on terms which are no less favourable than the terms of the transfer to the SP Pension Scheme from the Relevant Pension Scheme (or, where appropriate, another SP Pension Scheme), as set out in Part 1 of Annex 1. The Retained Organisation shall or shall procure that any Incoming Service Provider will ensure that the Pensionable Employees shall receive service credits of equivalent value to their service in the SP Pension Scheme immediately before the date of cessation of membership. Where Pensionable Employees do not consent to transfer their benefits under bulk transfer terms, such members will be offered preserved benefits in the SP Pension Scheme in accordance with the trust deed and rules of the SP Pension Scheme.

14.12 If the aggregate of the amounts actually paid by a SP Pension Scheme in respect of the Pensionable Employees is an amount which is less than the amount determined in accordance with Clause 14.11 (the amount of the difference being referred to in this paragraph as the "**Shortfall**"), then the

Service Provider shall pay to the Retained Organisation within 10 Business Days of the later of (i) the date on which a payment is made from the SP Pension Scheme in respect of the Pensionable Employees and (ii) the date the Shortfall is calculated a sum in cash equal to the Shortfall. The Retained Organisation shall pay to the Service Provider an amount equal to the amount by which the liability of the Retained Organisation or the Incoming Service Provider to pay corporation tax is reduced or to which the Retained Organisation or the Incoming Service Provider becomes entitled for repayment of corporation tax as a result of the payment of the amount equal to the Shortfall to a pension scheme in respect of the Pensionable Employees. The Retained Organisation shall forthwith pay or procure the payment by the Incoming Service Provider of the amount of the Shortfall to a pension scheme for the benefit of the Pensionable Employees.

14.13 All transfer amounts which are to be calculated pursuant to Clause 14.11 shall be calculated by the Service Provider's actuary and agreed with the Government's Actuary's Department as soon as reasonably practicable or in default of agreement shall be determined by an independent actuary. The independent actuary shall be agreed between the Parties, or if not agreed, shall be nominated by the President of the Institute and Faculty of Actuaries for the time being and shall act as an expert and not an arbitrator. His costs shall be borne equally between the Parties unless he shall otherwise determine.

Funding of Initial Shortfall and early retirement/termination payments

14.14

- (a) From the Effective Date, the Retained Organisation shall procure that £10,000,000 (ten million pounds) is available to the Service Provider for the purposes of satisfying the following costs:
 - (i) the Initial Shortfall for the purposes of Clause 14.2; and
 - (ii) any sums that may be referable to early retirement payments and any other benefit entitlements properly payable on termination of employment or accrued up to termination of employment in respect of those Transfer Employees who were members of the board of NHS Logistics and PASA respectively prior to the Effective Date and whose employment is terminated by the SP Employer by reason of redundancy within the meaning of Section 139 of the Employment Rights Act 1996, up to a maximum of £1,500,000 (one million, five hundred thousand pounds).
- (b) The amount referred to in paragraph (a) shall be paid in the following order of priority:
 - (i) when the sums described in paragraph (a)(ii) have been determined and invoiced by the Service Provider, the Retained

Organisation shall procure that an amount equivalent to that amount, shall be paid to the Service Provider;

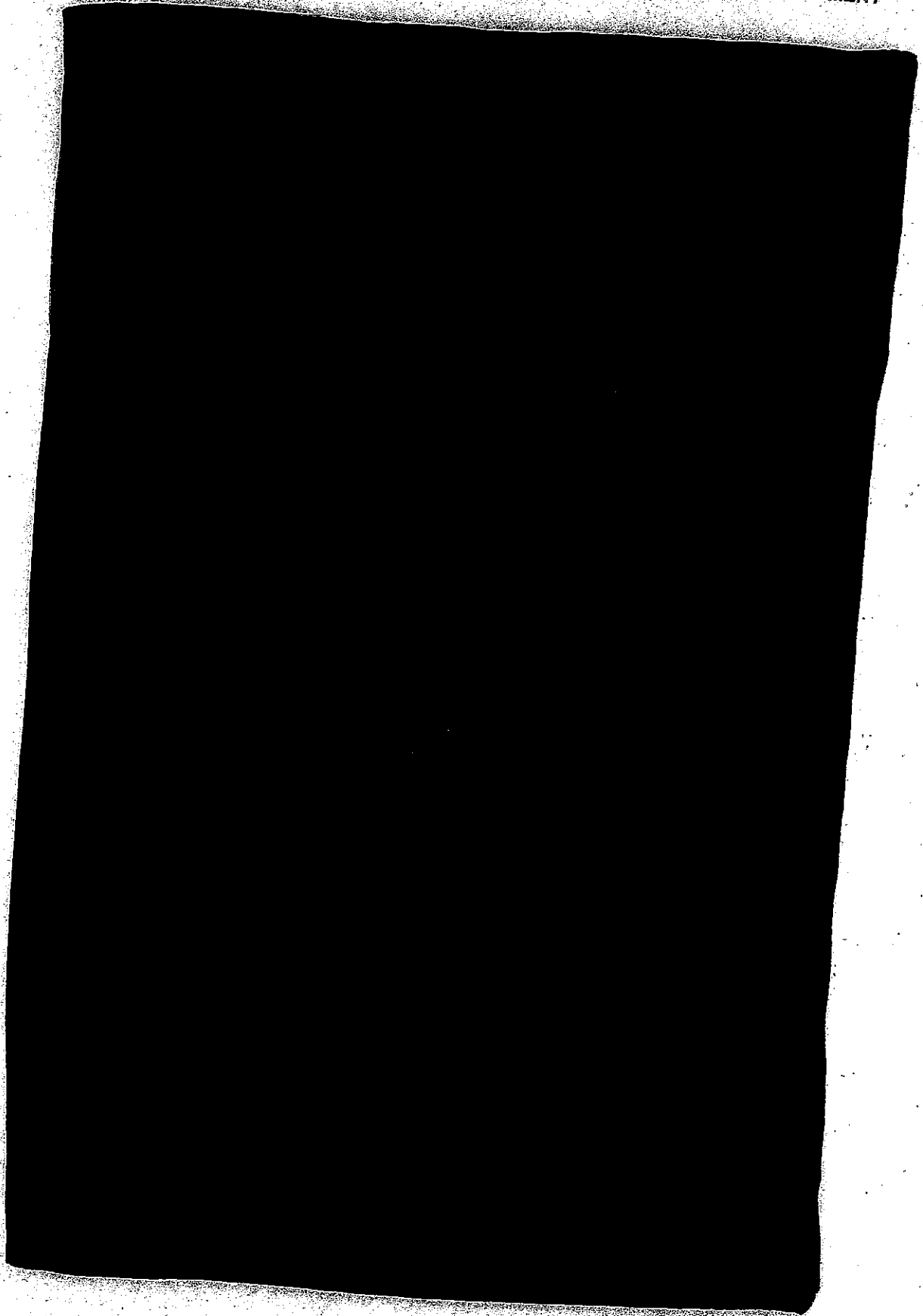
- (ii) when the Initial Shortfall for the purposes of Clause 14.2 has been determined, the Retained Organisation shall procure that, an amount of the Initial Shortfall less the amount by which the liability of the Service Provider to pay corporation tax is likely to be reduced or to which the Service Provider is likely to be entitled for repayment of corporation tax if the Initial Shortfall was paid into the SP Pension Scheme, shall be paid to the Service Provider within five (5) Business Days of receipt of an invoice;
- (iii) when the Initial Shortfall has been paid into the SP Pension Scheme, the Retained Organisation shall procure that any difference between the tax relief assumed in paragraph (ii) and tax relief actually obtained in respect of the payment shall be paid to the Service Provider within five (5) Business Days of receipt of an invoice; and
- (c) the Service Provider shall not be entitled to invoice the Retained Organisation for any amounts specified in this Clause 14.14 from the later of (i) 15 months after the Effective Date; and (ii) 20 Business Days after the calculation of the Initial Shortfall.

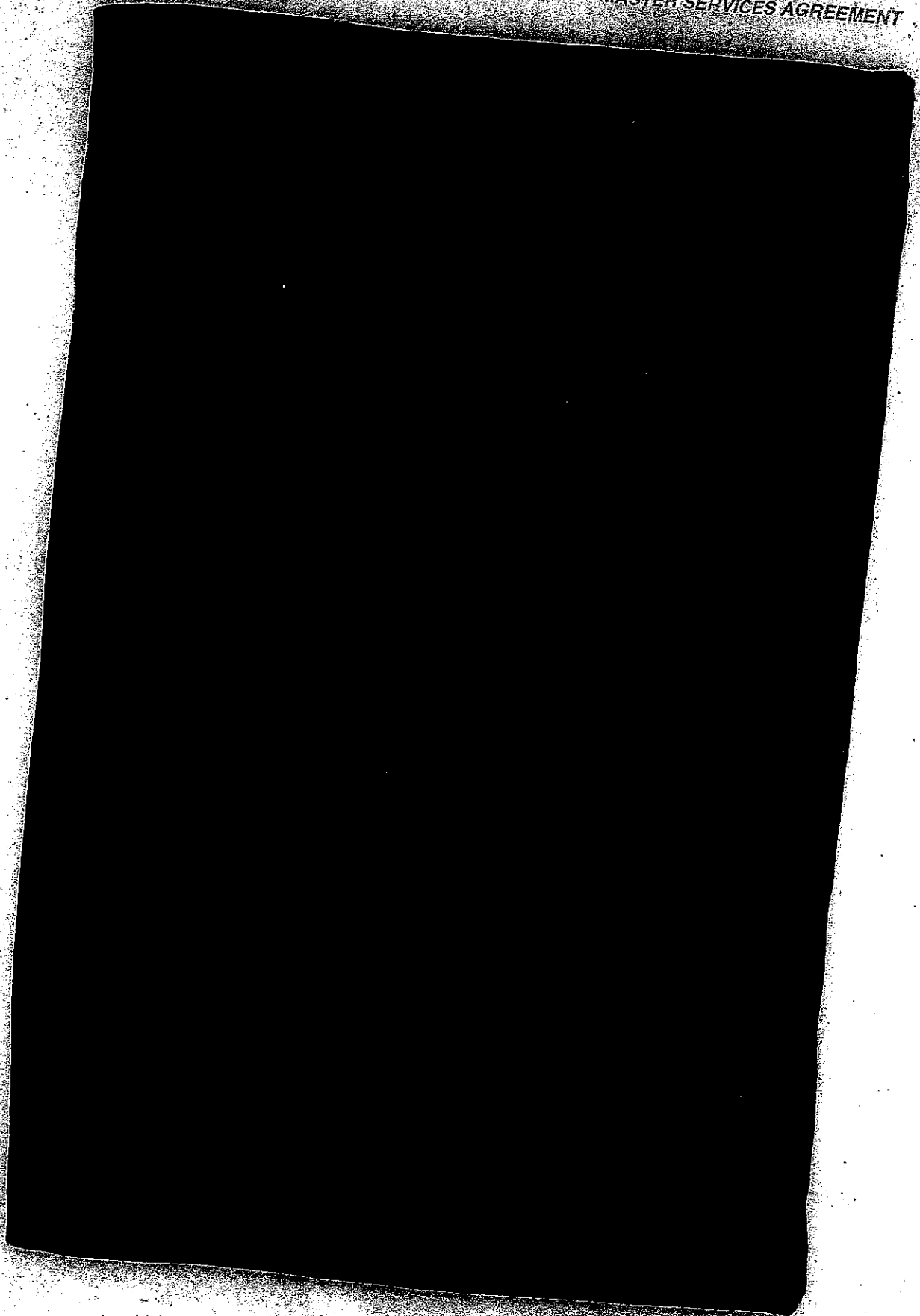
14.15 After the Service Provider has been paid the amounts in accordance with Clauses 14.14(b)(i) and 14.14(b)(ii), the Service Provider shall forthwith pay or procure payment of an amount equal to the amount of the Initial Shortfall into the SP Pension Scheme.

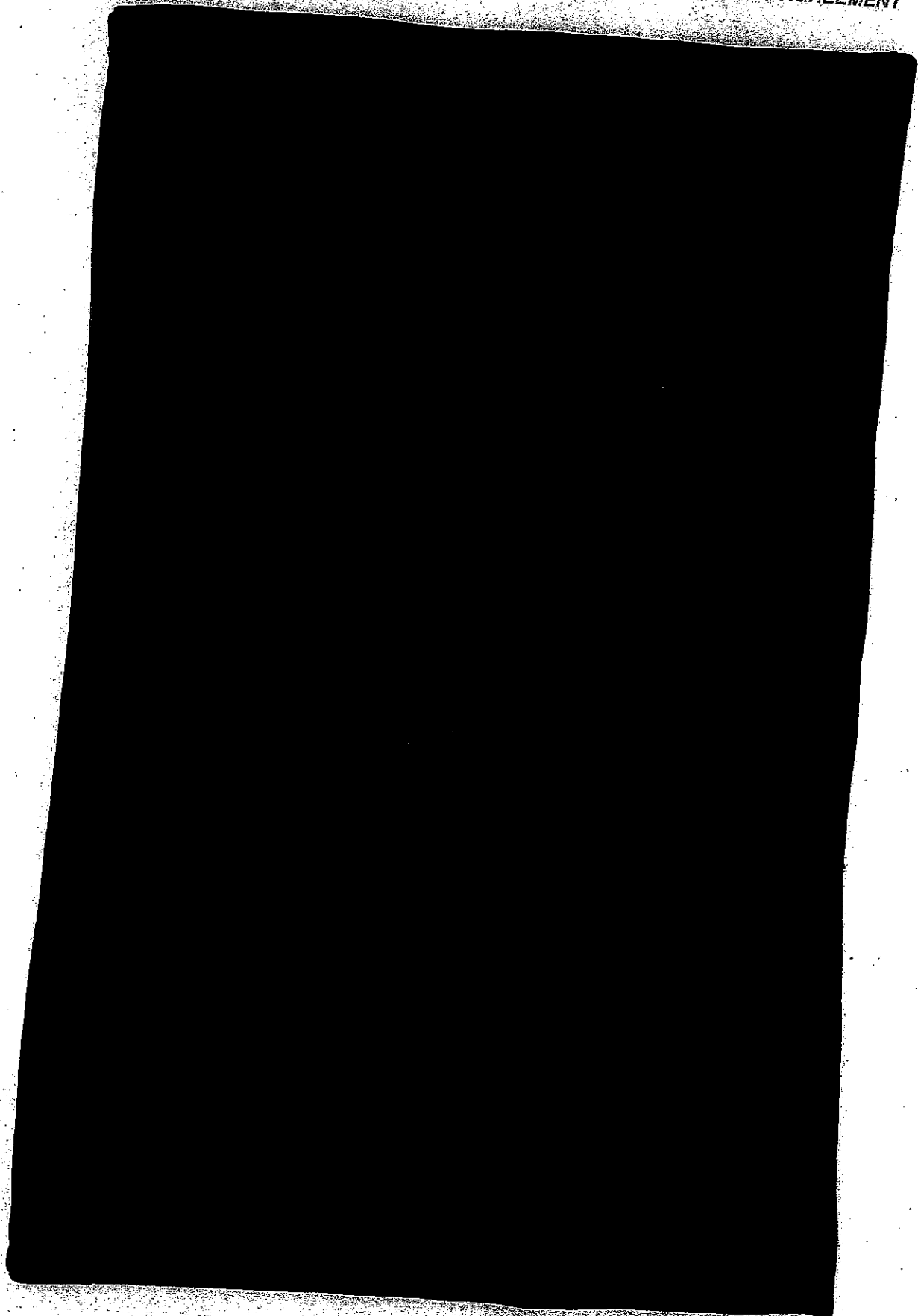
Application of amounts under Clause 14.14

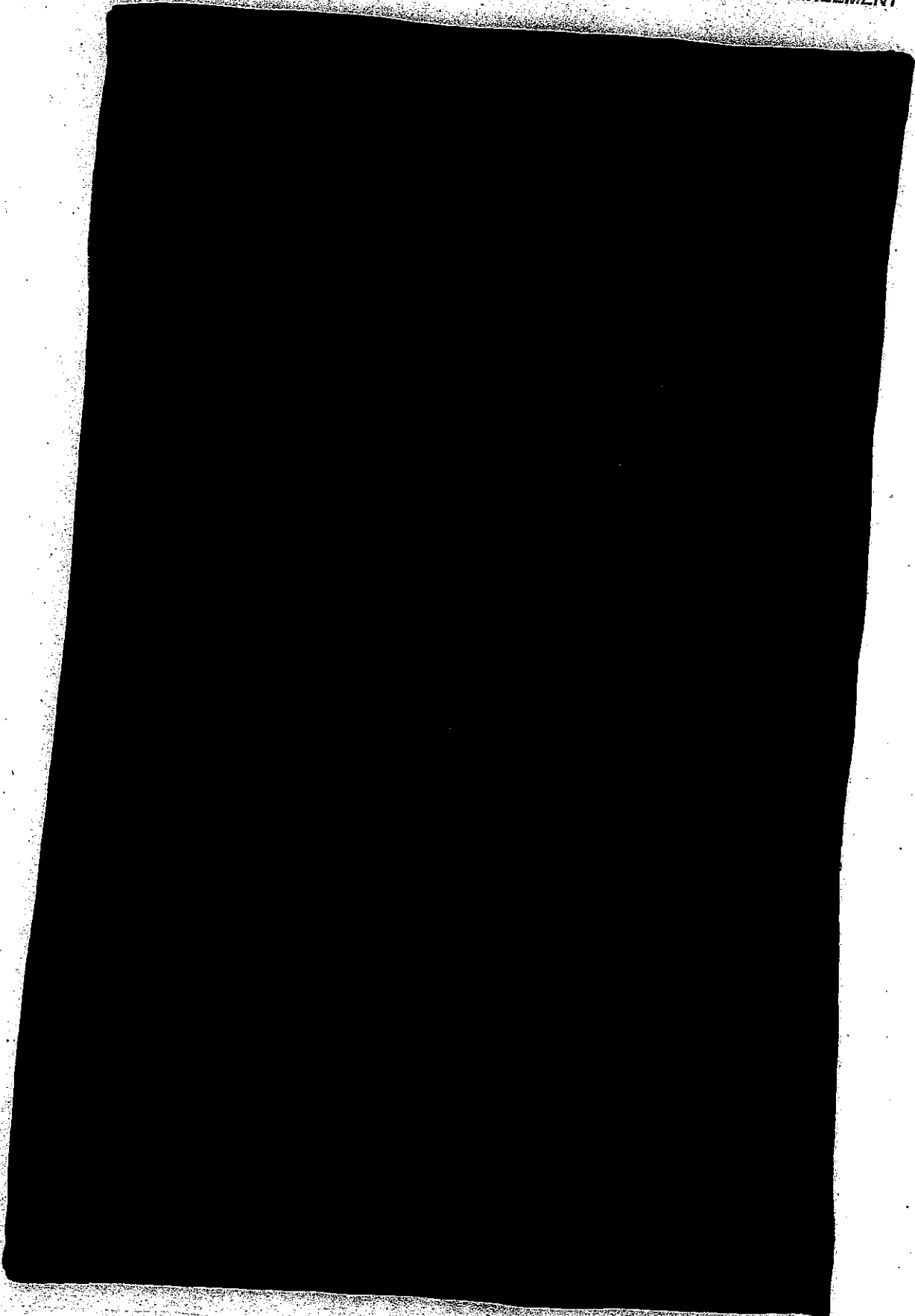
14.16 The following provisions shall apply in relation to the application of amounts under Clause 14.14:

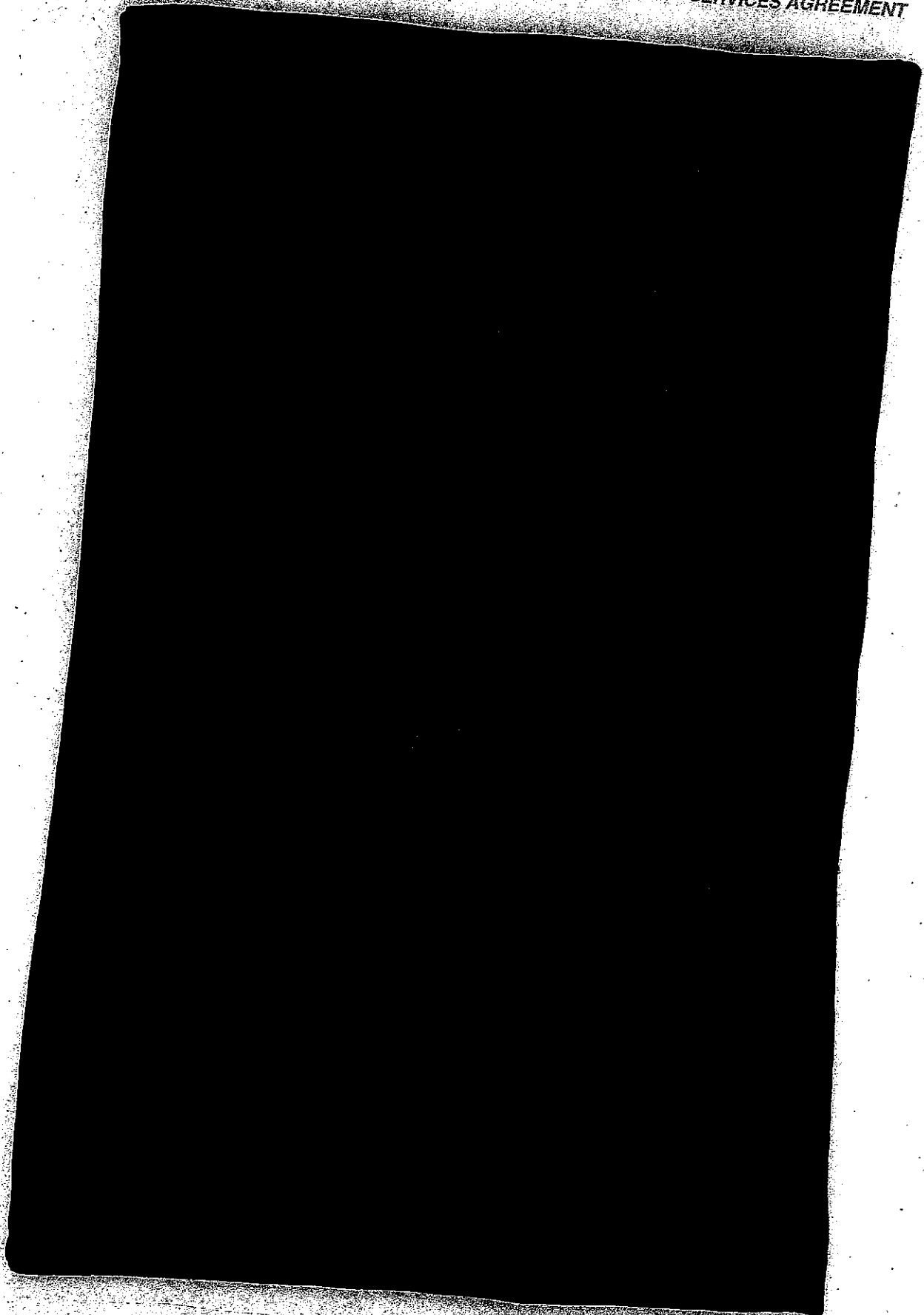
- (a) The Retained Organisation shall have the responsibility to procure the payments as described in Clause 14.14(a).
- (b) The Service Provider shall only be entitled to call on a maximum of £10,000,000 (ten million pounds) for the amounts set out in Clause 14.14(a).
- (c) The Service Provider shall meet any shortfall over and above the capped amount of £10,000,000 (ten million pounds) as described under Clause 14.14(a).

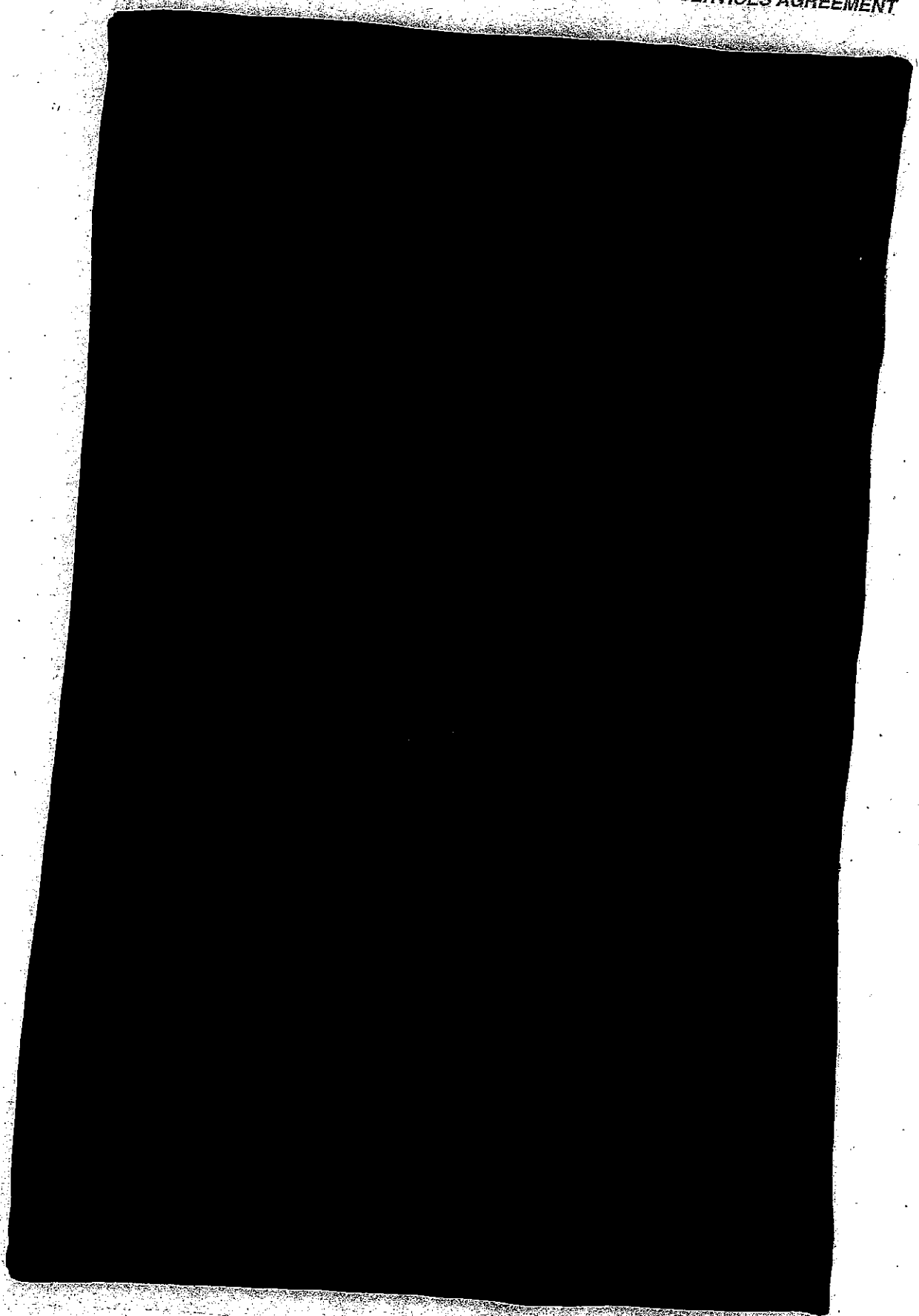


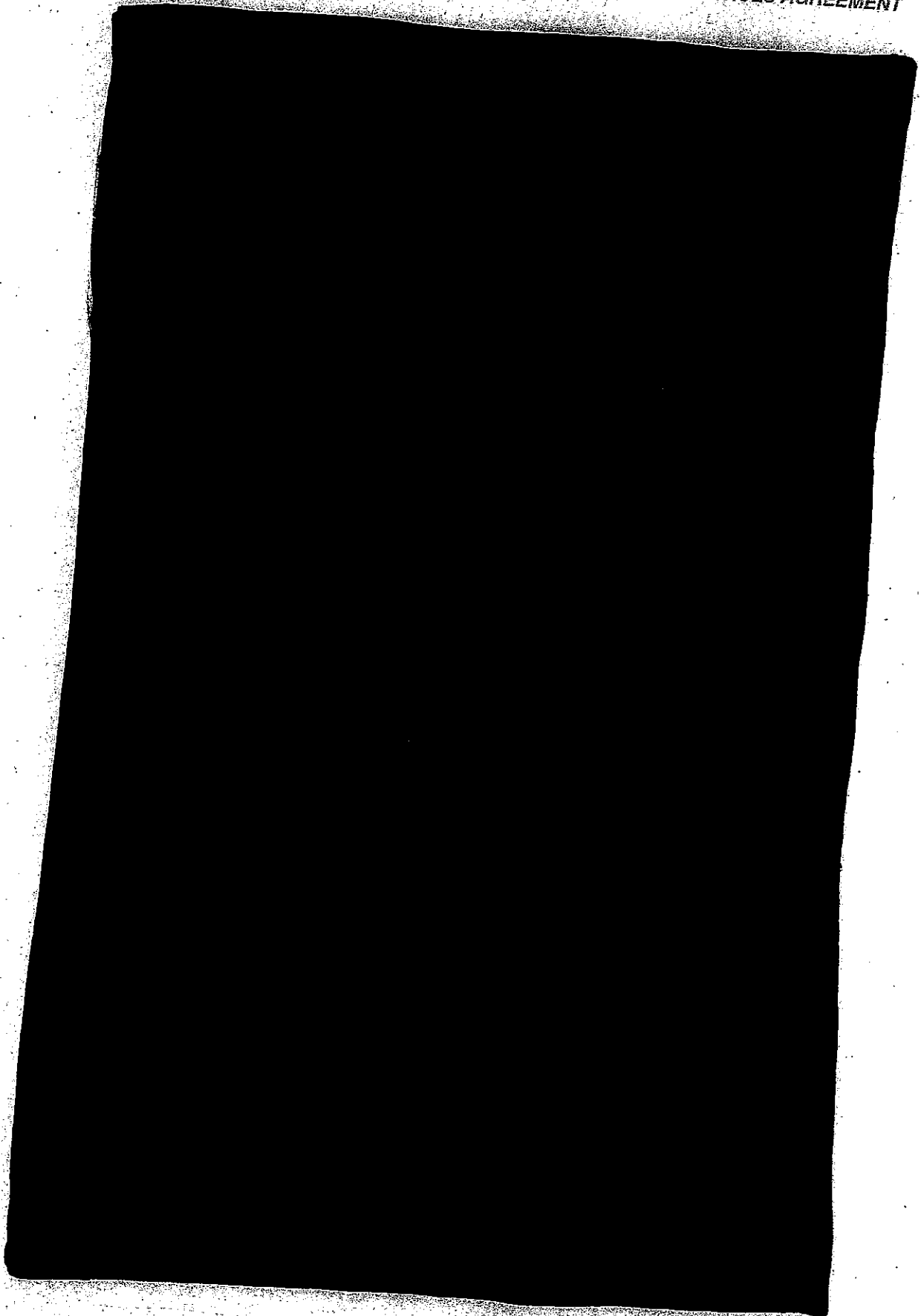


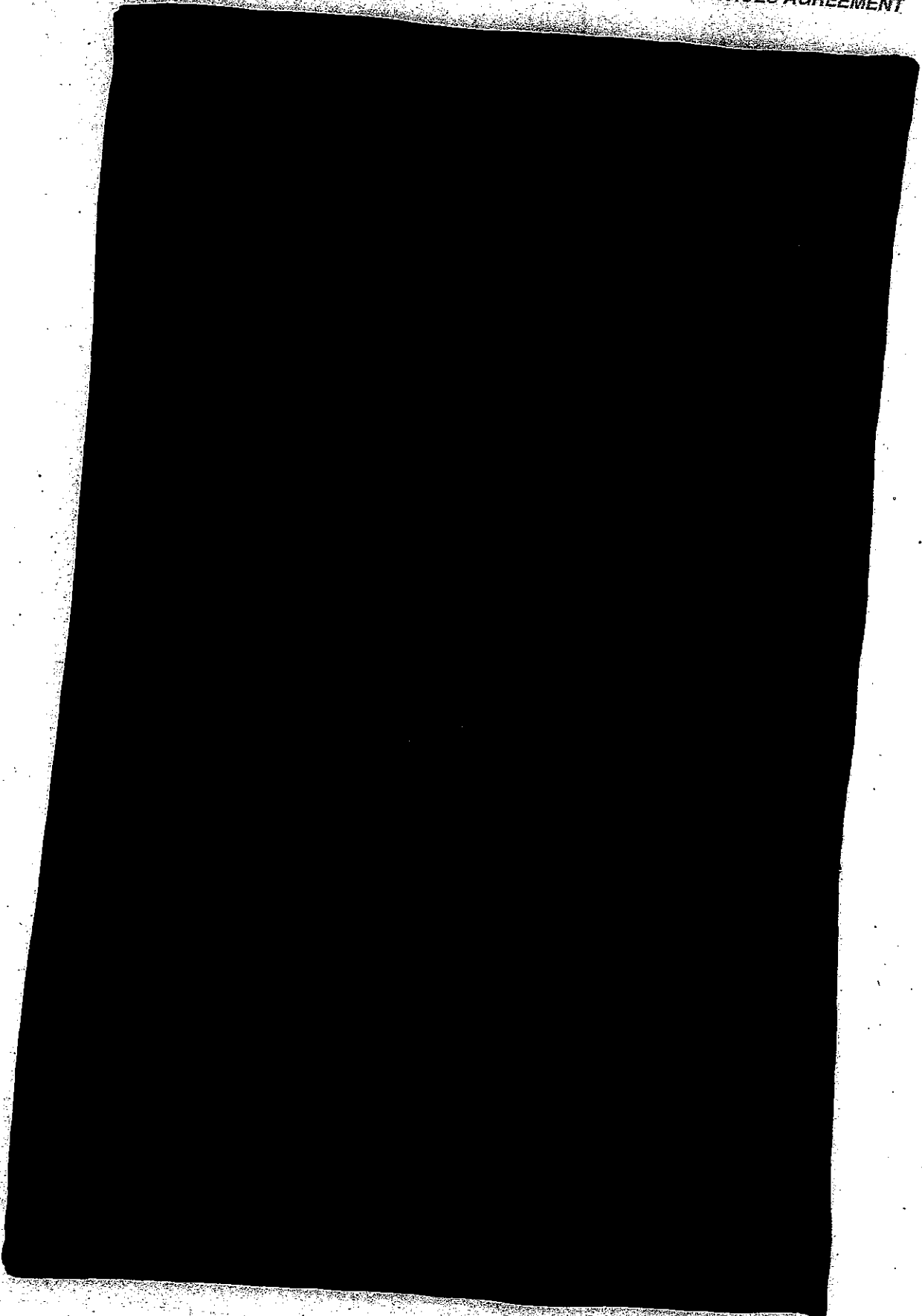


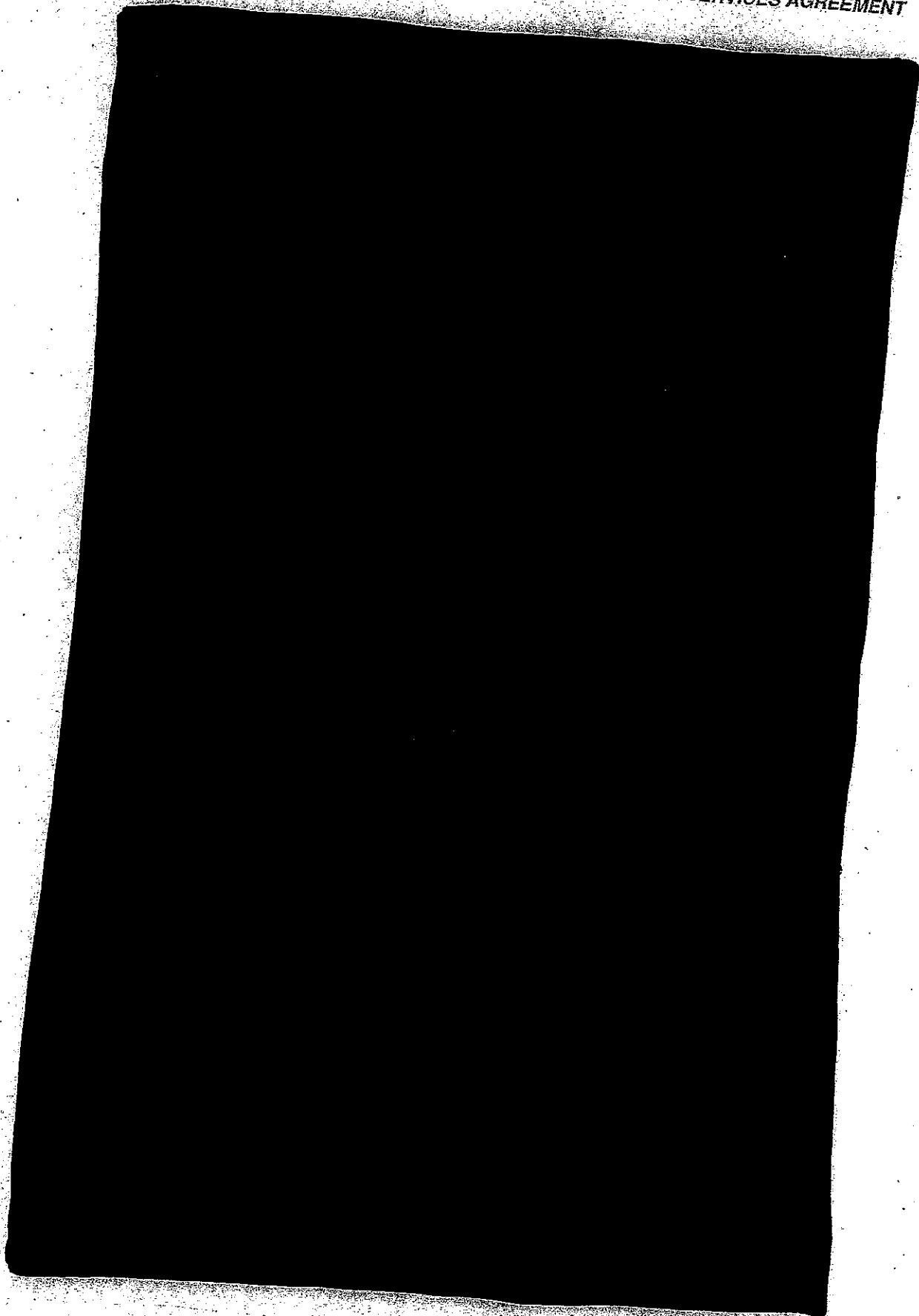


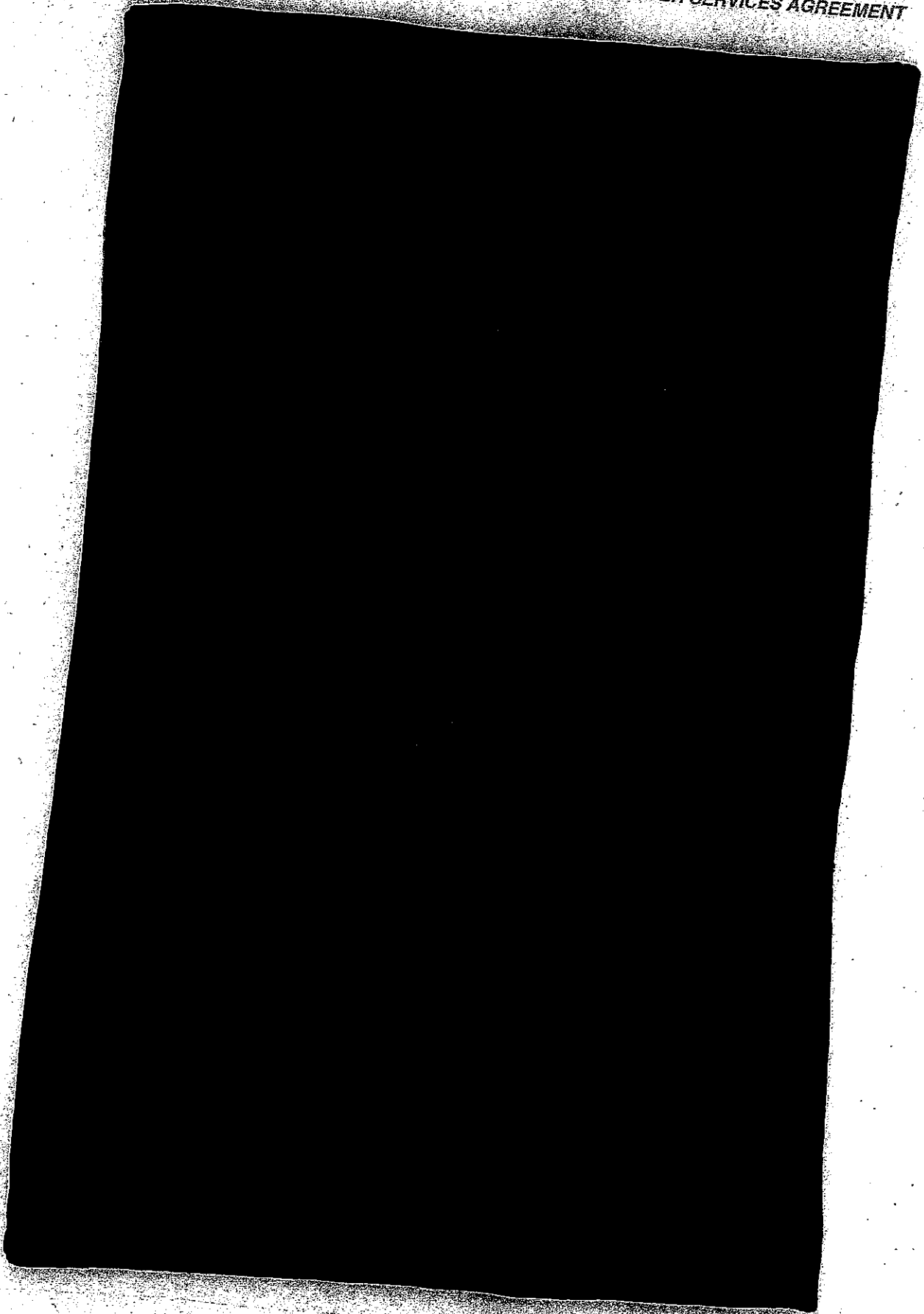












15. REPRESENTATIVES

Ratification of RO Representative and SP Representative

15.1 The Joint Board must ratify the appointment of the RO Representative and the SP Representative.

RO Representative

15.2 Subject to Clause 15.1, the Retained Organisation shall, by notice to the Service Provider, appoint a RO Representative. The RO Representative shall be the sole authorised representative of the Retained Organisation in respect of this Agreement. The Retained Organisation may by notice to the Service Provider change the RO Representative. Such change shall have effect on the date specified in the notice.

15.3 The RO Representative shall exercise the functions and the powers which are identified expressly or impliedly in this Agreement as functions and powers of the Retained Organisation to be carried out by the RO Representative. The Retained Organisation may by notice to the Service Provider confer upon the RO Representative other functions and powers of the Retained Organisation under this Agreement. Such change shall have effect on the date specified in the notice.

15.4 The RO Representative shall be entitled at any time, by notice to the Service Provider, to authorise any other person to exercise the functions and powers of the Retained Organisation delegated to him pursuant to Clause 15.2, either generally in respect of the Operations or specifically in respect of a specified part of the Operations. Any act of any such person within the scope of his apparent authority shall for the purposes of this Agreement constitute an act of the RO Representative and all references to the "RO Representative" in this Agreement (apart from this Clause 15.4) shall be taken as references to such person so far as they concern matters within the scope of his authority.

15.5 During any period when the position of RO Representative is vacant, the Retained Organisation shall carry out or exercise the relevant functions.

SP Representative

15.6 Subject to Clause 15.1, the Service Provider shall, by notice to the Retained Organisation, appoint a SP Representative. Subject to Clause 15.7, the SP Representative shall be the sole authorised representative of the Service Provider in respect of this Agreement. The Service Provider may by notice to the Retained Organisation change the SP Representative. Such change shall have effect on the date specified in the notice.

15.7 Subject to Clause 15.8, the SP Representative shall be entitled at any time, by notice to the Retained Organisation, to authorise any other person to exercise the functions and powers of the Service Provider delegated to him pursuant to Clause 15.6, either generally in respect of the Operations or specifically in respect of a specified part of the Operations. Any act of any such person within the scope of his apparent authority shall for the purposes of this Agreement constitute an act of the SP Representative and all references to the "SP Representative" in this Agreement (apart from this Clause 15.7) shall be taken as references to such person so far as they concern matters within the scope of his authority.

15.8 The Service Provider shall consult with the Retained Organisation prior to the appointment of any delegate under Clause 15.7. The Retained Organisation may by written notice to the Service Provider require the Service Provider to remove from the Services the SP Representative or any delegate appointed under Clause 15.7 setting out the reasons, which must be valid and reasonable, for the required removal of the relevant person.

16. JOINT BOARD AND JOINT TEAMS

16.1 The Retained Organisation shall establish and shall maintain until the Expiry Date or the Termination Date a working committee consisting of representatives of the Retained Organisation and the DH (the "**Joint Board**") to consider issues relating to the Services and associated issues which are outside the scope of this Agreement. The Service Provider shall attend such Joint Board meetings solely to the extent that the Joint Board is considering issues relevant to this Agreement. The Joint Board will work together with, and seek input from the Performance and Relationship Review and relevant Performance and Insight Meetings (consisting of representatives of the Parties and as further defined in Schedule 10 to this Agreement) relating to the Services and the performance of this Agreement (such Performance and Insight Meetings being the "**Joint Teams**").

Joint Board

16.2 The composition of the Joint Board shall be at the discretion of the Retained Organisation and the DH but the SP Representative and the RO Representative shall each be consulting members of the Joint Board.

16.3 The functions of the Joint Board shall be:

- (a) to ratify proposed decisions:
 - (i) in respect of proposed Changes and their implementation; and
 - (ii) without prejudice to Clause 29.2 (Performance Measuring System), in respect of proposals submitted by Performance and Relationship Review in respect of the performance targets to apply under the Performance Measuring System and any changes to such system;

- (b) to approve the appointment of the SP Representative and, subject to Clause 15.1 (Ratification of RO Representative and SP Representative), to approve the appointment of the RO Representative;
- (c) to review whether the Annual Allowable Profit has been reached or exceeded as set out in Clause 34 (Anti-Embarrassment Cap);
- (d) to provide a forum for joint discussions including the following:
 - (i) the Retained Organisation's business strategy;
 - (ii) the overall performance of this Agreement; and
 - (iii) strategic discussion considering government policy issues which would affect the performance of this Agreement; and
- (e) carrying out any other functions deemed appropriate by the Retained Organisation and notified to the Service Provider from time to time.

16.4 The Joint Board shall meet at least once every three months and/or from time to time as necessary (in the sole opinion of the Retained Organisation).

Joint Teams

16.5 The members and functions of the Performance and Relationship Review and each of the Joint Teams and the frequency of their meetings shall be as set out in Schedule 10.

Appointment of Representatives

- 16.6(a) The Retained Organisation and the Service Provider shall appoint their representatives on the the Performance and Relationship Review and Joint Teams and remove those representatives and appoint replacements, by written notice delivered to the other at any time. If a representative is unavailable that representative may appoint an alternate to attend the meeting on their behalf. Consulting members may not appoint alternates.
- (b) The consulting members of the the Performance and Relationship Review and Joint Teams shall be selected by a process to be determined by Retained Organisation. Any consulting member who is not an employee or a director of the Service Provider or the Retained Organisation shall sign a confidentiality undertaking before attending any meeting or receiving any documentation in connection with the business of the Performance and Relationship Review and/or any Joint Team.

Procedures and practices

16.7 Subject to the provisions of this Agreement, the Joint Board, the Performance and Relationship Review and each Joint Team may adopt such procedures and practices for the conduct of the activities of the Joint Board, the Performance and Relationship Review or Joint Team as they consider appropriate, from time to time.

16.8 The role of the Performance and Relationship Review and each Joint Team is to allow a forum for discussions between representatives of both parties and to enable the Retained Organisation to have oversight of the performance of the Agreement and to make informed decisions in respect of its operation.

16.9 The consulting members of the Joint Board shall be invited (at the discretion and direction of the Retained Organisation) to each meeting of the Joint Board which is relevant to their role and expertise in order to make representations and to add their input and insight into the review and progression of this Agreement. The consulting members of any Joint Team shall only be invited to attend Joint Team meetings if the Retained Organisation so decides.

16.10 Meetings of the Joint Board, the Performance and Relationship Review and any Joint Team should normally involve the attendance (in person or by alternate) of representatives at the meeting. Where the Joint Board or, as applicable, the Performance and Relationship Review or the relevant Joint Team, decides it is appropriate, meetings may also be held by telephone or another form of telecommunication by which each participant can hear and speak to all other participants at the same time.

16.11 Minutes of all decisions (including those made by telephone or other form of telecommunication) and meetings of the Joint Board, the Performance and Relationship Review and each Joint Team shall be kept by a representative of the Retained Organisation. The Retained Organisation shall, as soon as reasonably practicable after the making of the decision or the holding of the meeting, provide the Service Provider with extracts of those parts of the minutes which: (i) relate to the Service Provider and its performance of this Agreement; (ii) relate to the parts of the meeting at which the Service Provider was in attendance; and/or (iii) relate a decision taken in a meeting which has an impact on the Service Provider and its performance of this Agreement.

17. SERVICES AND PERFORMANCE STANDARDS

Performance of the Services

17.1 As from the Effective Date, the Service Provider shall provide the Services in accordance with:

- (a) the Service Objective;

- (b) the terms of the relevant Service Level Agreement;
- (c) Good Industry Practice;
- (d) the requirements of the General Medical Council in respect of the storage and transport of Relevant Products and any other Approved Products;
- (e) the Medicines and Healthcare products Regulatory Agency (MHRA);
- (f) all Statutory Requirements;
- (g) the terms of the Trade Mark Licence; and
- (h) the other terms of this Agreement.

17.2 In the course of providing the Services, the Service Provider shall not engage in any conduct that would give rise to a breach by it or by the Retained Organisation of any competition laws and, in particular, Articles 81 and 82 of the European Commission Treaty and Chapters I and II of the Competition Act 1998, to the extent such laws are applicable.

17.3 The Service Provider acknowledges the importance of being able to ensure continuity of service and undertakes that throughout the Service Period it will comply in full with the terms of Clause 39 (Disaster Recovery) and shall periodically review its Operations with a view to improving its contingency plans.

17.4 The Service Provider acknowledges the importance of maintaining high standards of cleanliness in its handling, storage and transport of Relevant Products and any other Approved Products destined to be delivered to Trusts or to a hospital environment. The Service Provider shall:

- (a) establish and maintain appropriate procedures to ensure cleanliness and minimise infections in respect of each stage of the receipt, storage and delivery of Relevant Products and any other Approved Products;
- (b) have in place a suitable testing process for infection, and a "recovery plan" should an infection occur. Both the testing process and "recovery plan" will be subject to an annual audit by the Retained Organisation and the results of the testing process audit will be discussed by the relevant Joint Team; and
- (c) ensure that its staff are aware of and recognise the importance of complying with such procedures.

17.5 The Service Provider warrants that all assets and equipment, including without limitation the Transfer Properties and the New Properties, employed by it in the performance of the Services will be fit for purpose and that it will

maintain the operations as a going concern and will comply in particular with the provisions of Clause 40 (Information Technology) provided that this warranty shall not apply to the extent that any breach of this warranty arises as a result of the Retained Organisation refusing to consent to expenditure which the Service Provider has notified the Retained Organisation is necessary in order for it to continue to meet this warranty.

17.6 The Service Provider shall not, without the prior written consent of the Retained Organisation (which may be given or refused in its absolute discretion) offshore the performance of a significant part of any Service save to the extent that this is a consequence of any consent granted under Clause 21 (Sub-Contracting).

17.7 The Parties agree that to the extent that a matter is not specifically regulated by this Agreement or the other standards with which the Service Provider is obliged to comply pursuant to Clause 17.1, the Service Provider shall be entitled to determine its own methods of operation.

17.8 The Parties acknowledge that requests may be made by the Retained Organisation, a member of the RO Group or the Service Provider which may have an impact on the performance of the Services and/or require the utilisation of Service Employees in the conduct of unplanned activities. To the extent that the request does not: (i) require any additional resource to perform; and (ii) does not impact on the performance of a Party's obligations under this Agreement, the Parties will agree in good faith any re-prioritisation of the tasks to be undertaken by Service Employees and the activities (including their timetable for performance) to be undertaken by the Service Provider. If this decision cannot be reached at an operational level, it shall be escalated to the RO Representative and the SP Representative for agreement.

17.9 The Parties agree that, provided that the Service Provider is complying with Clause 12.6(a) (Transfer Contracts and Transfer Assets) and acting in accordance with Good Industry Practice, it shall not be deemed to have failed to meet a standard otherwise required under this Agreement where such failure results from the standard imposed on a Transfer Contract counterparty under that contract being lower than that required under this Agreement.

17A NEUTRAL LOGISTICS SOLUTIONS

17A.1 The Parties acknowledge the importance for the Retained Organisation to ensure that the methodology and solutions by which the Service Provider delivers the Services (or any part of them) are set up such that the Retained Organisation may require the performance of any of the components of the Services for use in relation to: (i) the purchase and delivery of third party product; and/or (ii) in conjunction with third party procurement, logistics and fulfilment services.

17A.2 To achieve this aim, the Parties agree to comply with the provisions set out in Schedule 43 (Neutral Logistics Solution).

18. TRANSITION PHASE

18.1 During the Transition Phase, the Service Provider (and in the case of paragraphs (a) and (b) below, procure that the SP Employer) shall not take any of the following action without the prior written consent of the Retained Organisation (which may be given or refused in its absolute discretion):

- (a) make any material changes to the terms and conditions of employment of any Transfer Employees except where necessary to comply with Statutory Requirements;
- (b) dismiss any Transfer Employee by reason of redundancy within the meaning of s.139 Employment Rights Act 1996, other than those redundancies identified in the first Annual Business Plan;
- (c) sub-contract the performance of any of its obligations under this Agreement except as permitted under Clause 21 (Sub-Contracting);
- (d) delist any Relevant Product from the Catalogue;
- (e) make any change to the manner in which Trust Contracts are concluded as at the date of this Agreement and in particular shall not introduce any changes to the commercial terms of such contracts or introduce any requirement that they be concluded in a more formal manner than the current practice, except to the extent necessary to comply with any requirements to contract with Foundation Trusts;
- (f) increase the price for which any Relevant Product is available for purchase to any Trust by more than 10% above the price applicable at the Effective Date, as listed in the Catalogue, except where a Supplier increases its sale price by an amount which results in the price of the Relevant Product as listed in the Catalogue being less than the price paid for the Relevant Product by the Service Provider in which case the Service Provider may increase the price by the amount equivalent to the amount increased by the relevant Supplier; and
- (g) terminate any Non-Trust Customer Contract without due cause prior to its expiry (the consent of the Retained Organisation in these circumstances not to be unreasonably withheld or delayed); and
- (h) make any structural change to the Transfer Property.

Suppliers

18.2 During the Transition Phase, and subject always to complying with all Statutory Requirements relating to procurement, the Service Provider shall follow any reasonable instruction of the RO Representative in respect of any tender for any Supplier Contract, including without limitation the specification

of pre-qualification criteria and the abandonment of a particular tender process.

Frequency of Joint Board and Joint Team Meetings

18.3 During the Transition Phase, the maximum time between meetings of the Joint Board and each Joint Team shall be half that stated in Clause 16 (Joint Board and Joint Teams) and Schedule 10 (Joint Teams).

Service Level Agreements

18.4(a) Subject to paragraph (b), the Service Provider shall comply with the SLAs contained in Schedule 30 (Service Level Agreements) during the Transition Phase.

(b) In the event that any SLAs were not being complied with by the relevant member of the RO Group in the Accounting Period immediately preceding the Effective Date, the Retained Organisation and the Service Provider shall agree a rectification plan to bring compliance up to a level set out in the relevant SLAs, and the Service Provider's compliance with its obligations under this Clause 18.4 shall be determined in accordance with such rectification plan. For the avoidance of doubt, no member of the RO Group will bear any costs in relation to the rectification plan or the relevant member of the RO Group's non-compliance with any SLA.

(c) Following the Transition Phase, the Service Provider shall comply with the SLAs contained in Schedule 30 (Service Level Agreements).

Supplier Contracts

18.5 During the Transition Phase, the Service Provider shall not, without the prior written consent of the Retained Organisation (which may be withheld at its absolute discretion) be authorised to terminate a Supplier Contract prior to its expiry date unless it is permitted under the terms of the relevant Supplier Contract to terminate that Supplier Contract.

Range

18.6 Clause 19.4(b) (Trust Contracts) shall apply during the Transition Phase in respect of the range of products available to each Trust.

Definition of Transition Phase

18.7 (a) The "**Transition Phase**" shall commence on the Effective Date and shall continue until the earlier of (i) the first anniversary of the Effective Date; and, subject to paragraph (c); (ii) the date on which the Service Provider satisfies the Retained Organisation (acting reasonably and in good faith) that the following conditions have been fulfilled:

MASTER SERVICES AGREEMENT

- (i) the new SP Representative and his direct reports as set out in Schedule 24 (SP Management Structure) have been in place for a period of four (4) Accounting Periods;
 - (ii) performance of Services is consistently at or above the Targets for a period of three (3) Accounting Periods;
 - (iii) the Service Provider's operating expenditures are no more than within 5% above of the forecast budget in the first Annual Business Plan for a period of three (3) Accounting Periods; and
 - (iv) in at least four (4) Accounting Periods, the number of justified and material complaints from Customers received by the Service Provider and/or the Retained Organisation does not significantly exceed the number of justified and material complaints from Customers received by the Retained Organisation in the four (4) Accounting Periods immediately preceding the Effective Date.
- (b) In the event that the Service Provider has not fulfilled the conditions set out in paragraph (a) above on or before the first anniversary of the Effective Date:
- (i) the Service Provider shall pay the Retained Organisation from such first anniversary until the date on which the conditions are satisfied:
 - (A) liquidated damages in an amount equal to £1,000 (one thousand pounds) per week; and
 - (B) £200,000 (two-hundred thousand pounds) per Accounting Period in respect of the costs of the Retained Organisation for each Accounting Period (or part thereof); and
 - (ii) the Service Provider shall continue to comply with the conditions attached to its performance of the Services as set out in this Clause 18.
- (c) For the avoidance of doubt, if the Service Provider fulfils the conditions set out in paragraph (a) after the first anniversary of the Effective Date and the date of satisfaction falls on a day after the first of an Accounting Period, the Transition Phase will not end until the beginning of the following Accounting Period.

Setting of KPI's after the Transition Phase

18.8 No later than five (5) Business Days after the end of the Transition Phase the Joint Board shall approve the KPI's that shall apply to the provision

of the Services for the period commencing the date after the end of the Transition Phase.

19. APPROVED PRODUCTS CONTRACTS

Agency

19.1 The Service Provider will act as the exclusive agent of the Retained Organisation in respect of the execution, amendment and performance of Approved Products Contracts and will disclose its role as such. To the extent that the Commercial Agents (Council Directive) Regulations 1993 may be applicable to the Parties' relationship under this Agreement, the Parties hereby exclude their applicability to the fullest extent permitted by the Statutory Requirements.

Existing Approved Products Contracts

19.2 In respect of Approved Products Contracts which remain to be performed at the Effective Date the Service Provider shall perform the obligations and exercise the rights of the Retained Organisation under such contracts in accordance with this Agreement provided that:

- (a) if the Service Provider amends the terms of any such contract it shall inform the Retained Organisation and shall exclude from all calculations of the Costs Payment (as calculated in accordance with Schedule 15 (Remuneration, Rebasing and Adjusting)) the amount of any additional Costs incurred as a result of such amendment; and
- (b) the Service Provider may designate the Supplier under any such contract as a preferred Supplier provided always that it does so in accordance with Statutory Requirements relating to procurement.

Supplier Contracts

19.3 The Service Provider shall tender, negotiate, conclude, amend and perform Supplier Contracts on behalf of the Retained Organisation in accordance with the following:

- (a) the Service Provider shall take such steps as are necessary to ensure compliance by the Retained Organisation with all Statutory Requirements relating to procurement, in particular, the Service Provider must contract in such a way that will not reasonably cause the Retained Organisation to contravene competition rules and laws;
- (b) the Service Provider shall allow the RO Representative full access to all information and documentation relating to transactions undertaken on the Retained Organisation's behalf including the value at which a Relevant Product has been purchased and sold;

- (c) the Service Provider shall comply with the provisions of Clause 18.2 (Transition Phase) during the Transition Phase;
- (d) the Service Provider shall only conclude Supplier Contracts on behalf of the Retained Organisation with Suppliers who would reasonably be regarded as generally reputable and reliable;
- (e) unless the Retained Organisation otherwise consents in writing in advance (such consent not to be unreasonably withheld or delayed), the Service Provider will only conclude Supplier Contracts that:
 - (i) are for the supply solely of Relevant Products and not any other products;
 - (ii) are for the supply solely to the Retained Organisation for onward supply to Customers;
 - (iii) do not include any minimum volume commitment by the Retained Organisation provided that the Retained Organisation shall not unreasonably withhold its consent to the inclusion of a minimum volume commitment where the Service Provider has agreed to indemnify the Retained Organisation in respect of any Costs the Retained Organisation may suffer should it not achieve the relevant minimum volume proposed to be agreed with a Supplier. The Parties agree that any liability of the Service Provider under any such indemnity shall fall outside the cap on the Service Provider's liability contemplated in Clause 42 (Indemnity and Liabilities);
 - (iv) in respect of the form of contract and terms and conditions use:
 - (A) the standard DH form of contract and terms and conditions set out at Part A of Schedule 11 (Supplier Contract Standard Forms) as updated by agreement between the parties; or
 - (B) those standard form of contract and terms and conditions whose amendments have been approved by the Retained Organisation as set out in Part B of Schedule 11 (Supplier Contract Standard Forms); or
 - (C) the standard DH form of contract and terms and conditions set out at Part A or Part B of Schedule 11 (Supplier Contract Standard Forms) as amended by the Service Provider provided that:
 - (i) the Service Provider submits the amended terms and conditions for the approval of the Performance and Relationship Review at the Performance and Relationship Review meeting

immediately following the amendment made by the Service Provider; and

- (II) the Service Provider shall be liable for any costs (and such costs shall be excluded from the calculation of the Costs Payment) that the Retained Organisation incurs from the date that the amended terms and conditions to the standard DH form of contract and terms and conditions takes effect up to the date on which those amendments are approved pursuant to paragraph (I); and
- (III) if the Performance and Relationship Review does not give its consent pursuant to paragraph (I), the Service Provider shall remain liable for any costs (and such costs shall be excluded from the calculation of the Costs Payment) that the Retained Organisation incurs from the date that the amended terms and conditions to the standard DH form of contract and terms and conditions takes effect up to the earlier of the date that:
 - (aa) they are terminated or replaced; and
 - (bb) they are accepted by the Retained Organisation through ratification via the Joint Board, the RO Representative or pursuant to the Dispute Resolution Procedure.
- (v) provide that the Supplier shall bear all Costs in respect of the recall of any product supplied by it under the relevant Supplier Contract; and
- (vi) comply with any other reasonable stipulations made by the Retained Organisation from time to time;
- (f) subject always to paragraph (e) above, the Service Provider shall use reasonable endeavours in negotiating prices and other terms and conditions with Suppliers to obtain reduced prices (and/or more favourable terms and conditions) by conducting negotiations in parallel with any negotiations for the purchase from that Supplier of products for other entities; and
- (g) the Service Provider shall not, without the prior written consent of the Retained Organisation, be authorised to terminate a Supplier Contract without cause prior to its expiry date, where such termination would cause the Service Provider to be unable to comply with its other obligations under this Clause 19.

Pricing and Approved Product Terms

19.3A The Parties wish to ensure that the number and type of Approved Products, and the different variations and specifications of such Approved Products are kept to a minimum, creating a Core Range for supply to the Customers via the Services. To this end, the Service Provider shall comply with the provisions of Schedule 44 (Pricing and Approved Product Terms).

Trust Contracts

19.4 The Service Provider shall transact with Trusts on behalf of the Retained Organisation in accordance with the following:

- (a) where required by the Trusts, the Service Provider shall negotiate and amend Trust Contracts;
- (b) except as may otherwise be agreed in writing in advance by the Retained Organisation (acting reasonably) and subject to Clause 18.1(d) (Transition Phase), during the Transition Phase the Service Provider must, as agent for the Retained Organisation, accept every order received from a Trust for any Relevant Product listed in the Catalogue (subject to (i) remaining stock levels in the case of a Relevant Product which is to be delisted in accordance with Clause 19.13, and (ii) such Relevant Product continuing to be made available by the relevant Supplier);
- (c) except as may otherwise be agreed in writing in advance by the Retained Organisation (acting reasonably) and subject to Clause 18.1(d) (Transition Phase), and without prejudice to Clause 19.13(c) and (d) and Schedule 44 (Pricing and Approved Product Terms), the Service Provider shall continue to make available to all Trusts who are customers of the Retained Organisation at the Effective Date all Relevant Products and services which were available to them from the Retained Organisation immediately before the Effective Date;
- (d) the Service Provider may propose additional services to a selection of Trusts (including without limitation a fast track delivery service, and volume discounts);
- (e) the Service Provider shall be entitled, subject to obtaining any consents required under Clause 21 (Sub-Contracting), to sub-contract the collection from Suppliers and/or the delivery of Approved Products ordered by Trusts provided that no consent shall be required from the Retained Organisation under Clause 21 (Sub-Contracting) where a Trust has requested the Service Provider to use a particular third party to deliver the Approved Products ordered;

- (f) the terms of the Trust Contracts must reflect the minimum service levels set out in the SLAs unless otherwise agreed with a Trust Customer;
- (g) except as may otherwise be agreed in writing in advance by the Retained Organisation acting reasonably, the Service Provider will only conclude Trust Contracts that:
 - (i) provide for payment no earlier than 30 days after the date of an invoice unless an earlier date is agreed with a Trust;
 - (ii) may provide for default interest to be payable in respect of any amounts which are more than 20 Business Days overdue;
 - (iii) provide that any disputes under the Trust Contract shall be submitted to an independent arbitrator appointed in accordance with the rules attached at Schedule 20 (Dispute Resolution Procedure);
 - (iv) reflect the relevant purchase to pay arrangements in place as at the Effective Date or as updated from time to time by agreement with a Trust;
 - (v) provide that all monies paid by the Trust shall be paid directly into the ROARP Account;
 - (vi) provide that an invoice will only be sent on or after delivery of the goods; and
 - (vii) comply with any other reasonable stipulations made by the Retained Organisation from time to time;
- (h) subject to Clause 18.1(f) (Transition Phase) which applies during the Transition Phase and the provisions of Clause 19A (Service Fee) and Schedule 44 (Pricing and Approved Product Terms), the Service Provider shall determine based on commercial considerations the unit price at which each Approved Product is available to each individual Trust, provided that:
 - (i) throughout the Service Period such unit price (including delivery charges and any discounts) is not more than 10% higher than the list price specified in the Catalogue in force at the relevant time at which that Approved Product is available for sale to all the Trusts; except where a Supplier increases its sale price by an amount which results in the price of the Relevant Product as listed in the Catalogue being less than the price paid for the Relevant Product by the Service Provider in which case the Service Provider may increase the price by the amount equivalent to the amount increased by the relevant Supplier; and