

DATED: 18 JULY 2012

LIBRARY SERVICES CONTRACT

between

SUFFOLK COUNTY COUNCIL

and

SUFFOLK'S LIBRARIES INDUSTRIAL AND PROVIDENT SOCIETY

REDACTIONS FOR PRIVATE DATA AND COMMERCIAL REASONS

CONTENTS

CLAUSE

1.	Definitions and Interpretation.....	1
2.	Term.....	12
3.	Extending the initial term	12
4.	Asset Sale and Transfer of Authority Assets	13
5.	Properties	13
6.	Tupe and Pensions.....	14
7.	Warranties	14
8.	Authority Consents and Necessary Consents.....	15
9.	Support Services	16
10.	Supply of services and service levels.....	16
11.	Service Standards	17
12.	Service Failures	18
13.	Relief Events.....	18
14.	Library Management System.....	20
15.	Stock.....	20
16.	General Obligations of the IPS	22
17.	Mobile Library Vehciles.....	22
18.	Damage to Authority Assets	24
19.	Business Plan	24
20.	Health and Safety	25
21.	transition costs and library services reserve fund	25
22.	Payments.....	26
23.	Disputed Amounts	26
24.	Library Charges and Collection Fee	27
25.	Capital Funding.....	28
26.	IPS General Obligations regarding Personnel	29
27.	Safeguarding Children and Vulnerable Adults	30
28.	Reporting and Meetings.....	30
29.	Monitoring	30
30.	Change Control.....	31
31.	change in law	31
32.	Dispute Resolution.....	32
33.	Sub-Contracting and Assignment.....	32
34.	Supplier Contracts for the Provision of the Services	33
35.	Indemnities	35
36.	Limitation of Liability	38
37.	Insurance	39
38.	Freedom of Information	40
39.	Data protection	42
40.	Confidentiality	43
41.	Audit.....	44
42.	Intellectual Property	46
43.	Termination for IPS Default	47
44.	Termination by the IPS on 31 st March 2013 and for Authority Default	47

45.	Termination for IPS.....	48
46.	Termination for Failure to Agree Contract Sum.....	48
47.	Voluntary Termination on Notice	49
48.	Consequences of Termination.....	49
49.	Force Majeure.....	50
50.	Prevention of Bribery	51
51.	Non-Solicitation.....	53
52.	Waiver.....	54
53.	Cumulation of Remedies	54
54.	Severability	54
55.	Partnership or Agency	54
56.	Third Party Rights	54
57.	Publicity	54
58.	Notices.....	55
59.	Entire Agreement.....	55
60.	Counterparts	55
61.	Local Government (Contracts) Act 1997	56
62.	Further Assurance	56
63.	Governing Law and Jurisdiction	56

SCHEDULE

SCHEDULE 1	SPECIFICATION OF THE LIBRARY SERVICES
SCHEDULE 2	SERVICE LEVELS.....
SCHEDULE 3	CHARGES AND PAYMENT OF THE CONTRACT SUM.....
SCHEDULE 4	CONTRACT MANAGEMENT
SCHEDULE 5	DISPUTE RESOLUTION
SCHEDULE 6	CHANGE CONTROL PROCESS
SCHEDULE 7	LIST OF LIBRARIES.....
SCHEDULE 8	LIBRARY CHARGES
SCHEDULE 9	TUPE
SCHEDULE 10	COMMERCIALLY SENSITIVE INFORMATION
SCHEDULE 11	THE AUTHORITY'S PREMISES
SCHEDULE 12	THE AUTHORITY'S ASSETS.....
SCHEDULE 13	THE AUTHORITY CONTRACTS.....
SCHEDULE 14	WARRANTIES
SCHEDULE 15	MOBILE LIBRARY VEHICLES

SCHEDULE 16 STOCK POLICY

SCHEDULE 17 SUPPORT SERVICES POLICY

SCHEDULE 18 TRANSFER AND RETURN OF AUTHORITY ASSETS

SCHEDULE 19 AUTHORITIES POLICIES

APPENDIX 1 2011 REVIEW OF LIBRARY SERVICES

APPENDIX 2 TRANSITION COSTS

APPENDIX 3 CONSULTATION WITH CUSTOMER GROUPS REPORT

APPENDIX 4 MENTAL HEALTH AND WELLBEING INFORMATION SERVICE AGREEMENT 2012

APPENDIX 5 SPINE DRAFT INFORMATION SERVICES V2

APPENDIX 6 COMMUNITY CONSULTATION PROCESS DRAFT v1

APPENDIX 7 SPYDUS DEVELOPMENT PLAN

APPENDIX 8 LEAP POINT SERVICE STANDARD V1

APPENDIX 8A LEAP 2010 GUIDES

ANNEX 1 2012.03.27 SUFFOLK LIBRARY SERVICE STOCK MANAGEMENT POLICY

ANNEX 2 SPECIFICATION FOR SUPPLIER SELECTION OF ANF V.01

ANNEX 3 2011.08.08 FICTION SUPPLIER SELECTION

ANNEX 4 2012.01.20 ASKEWS HOLTS JUNIOR SUPPLIER SELECTION

ANNEX 5 2012.01.25 AUTHOR AND SERIES LIST

ANNEX 6 2012.03.20 WITHDRAWAL POLICY

ANNEX 7 2011.08.01 TRAVEL GUIDES STANDING ORDER UPDATE

ANNEX 8 2012 SUPPLIER SELECTION MASTER LIST V.1.0

ANNEX 9 BERTRAMS SUPPLIER SELECTION

ANNEX 10 SPOKEN WORD STANDING ORDERS 2012/13

THIS AGREEMENT is dated 18 July 2012.

PARTIES

- (1) **Suffolk County Council** of Endeavour House, Russell Road, Ipswich, Suffolk IP1 2BX (the “**Authority**”).
- (2) **Suffolk’s Libraries Industrial and Provident Society** incorporated and registered in England and Wales (Registration Number 31542R) whose registered office is at County Library, Northgate Street, Ipswich, Suffolk IP1 3DE (the “**IPS**”).

BACKGROUND

- (A) The Authority sought proposals for the enabling and provision of certain library services using the book, stock and assets used in whole or in part by the Authority in connection with library services in Suffolk and which are owned and/or otherwise under the control of the Authority immediately before the Commencement Date.
- (B) The Authority sought the proposals set out in paragraph (A) above in order to achieve, as far as possible, a framework within which further one-off structural savings to those already being achieved by the Authority in its provision of library services may be more easily found than if the provision of the Library Services (as defined below) continued to be provided by the Authority.
- (C) The Authority has selected the IPS to provide these library services and the IPS is willing and able to provide those library services in accordance with the terms and conditions of this Agreement.
- (D) The Authority has agreed to enter into this Agreement pursuant to its powers contained in Section 1(1) of the Localism Act 2011 in order to better enable it to secure the ongoing provision of library services and facilities in Suffolk for which it is responsible as a library authority under the Public Libraries and Museums Act 1964.
- (E) The parties intend that this Agreement be a certified contract for the purposes of the Local Government (Contracts) Act 1997.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause 1 apply in this Agreement (including its recitals and Schedules):

Achieved Service Levels: in respect of any relevant part of the Library Services the standard of performance actually achieved by the IPS in the provision of that part of the Library Services in the Measurement Period in question (calculated and expressed in the same way as the Service Level for that part of the Library Services is calculated and expressed in Schedule 2).

ACS: Adult and Community Services Directorate

Additional Services: any services to be provided from time to time by the IPS other than the Library Services.

Agreement: this library services agreement.

Alternative Premises: any premises which shall be in substitution for any of the Libraries pursuant to paragraph 3.2.13 of Schedule 11

Additional Premises: any premises which shall be in addition to any of the Libraries and/or any Alternative Premises.

Annual Report: has the meaning given to that expression in Part 1 in Schedule 2.

Annual Stock Fund: the annual stock fund to be paid to the IPS for a Contract Year as determined in accordance with the annual Budget Process as set out in paragraph 4 of Schedule 3.

Assets: any materials, plant or equipment owned or held and used by the Authority up to the Commencement Date in its provision of the Library Services and to be provided to the IPS by the Authority for use in the provision by the IPS of all or any of the Library Services and for any Additional Services and/or other use as may be reasonably required from time to time by the IPS, including those assets listed in Schedule 12.

Authorised Representatives: the persons respectively designated as such by the Authority and the IPS, the first such persons being those whose details are set out in Schedule 4.

Authority Default: (i) the non-payment of any part of the Contract Sum or other payment required to be made by the Authority under the terms of this Agreement, (ii) the failure by the Authority to provide any of the Support Services as set out in Schedule 17, (iii) any breach by the Authority of any of the Warranties, (iv) any other act or omission carried out by the Authority which may reasonably be expected to have a materially adverse impact on the IPS' provision of the Library Services and/or Additional Services;

Authority Party: an officer, agent, contractor, employee or sub-contractor (of any tier) of the Authority acting in the course of his office or employment or appointment (as appropriate).

Authority Policy: has the meaning given in clause 11.1.(b).

Authority Assets: the IT Equipment and any other materials, plant or equipment, other than the Assets, which are owned or held by the Authority at the Commencement Date and which are to be provided to the IPS on loan by the Authority for use in the provision of all or any of the Library Services and for any Additional Services and/or other use as may be reasonably required from time to time by the IPS, including the Mobile Library Vehicles and those assets listed in Schedule 12.

Authority Consents: those approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the observance and performance by the Authority of its obligations under this Agreement (including any Third Party Consent).

Authority Contracts: those contracts, engagements or orders listed in Schedule 13 entered into by or with the Authority before the Commencement Date in connection with the provision of the Library Services and which remain to be performed in whole or in part at the Commencement Date.

Authority Premises: any premises owned or occupied by the Authority from time to time other than any of the Properties.

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning that legislation.

Budget Process: the process described in Schedule 3.

Business Plan: a costed business plan to be prepared and submitted in accordance with clause 19 and Schedule 3.

Certification Requirements: the requirements which must be satisfied for a contract to be a certified contract for the purposes of the Local Government (Contracts) Act 1997.

Change: any change to this Agreement including to any of the Library Services.

Change Control Procedure: the procedure for changing this Agreement, as set out in Schedule 6.

Change in Law: the coming into effect after the date of this Agreement of:

- (a) Legislation, other than any Legislation which on the date of this Agreement has been published:
 - (i) in a draft Bill as part of a Government Departmental Consultation Paper;

- (ii) in a Bill;
 - (iii) in a draft statutory instrument; or
 - (iv) as a proposal in the Official Journal of the European Communities;
- (b) any Guidance; or
- (c) any applicable judgment of a relevant court of law which changes a binding precedent.

Change Notice: has the meaning given in Schedule 6.

Charges: the charges which shall become due and payable by the Authority to the IPS in respect of the provision of the Library Services in accordance with the provisions of this Agreement, and as set out in Schedule 3.

CILIP: the Chartered Institute of Library and Information Professionals or its successor professional body.

Collection Fee: an amount equal to 100% of the Library Charges collected by the IPS on behalf of the Authority together with VAT.

Commencement Date: 1st August 2012.

Commercially Sensitive Information: the information listed in Schedule 10 comprising the information of a commercially sensitive nature relating to the IPS, that, if disclosed by the Authority, would cause the IPS significant commercial disadvantage or material financial loss.

Contract Sum: means the amount payable by the Authority to the IPS in each Contract Year, as determined in accordance with Schedule 3.

Contract Year: a period of twelve (12) months commencing on 1 April, provided that:

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

Crown: the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales) including government ministers and

government departments and particular bodies, persons and government agencies.

Crown Body: any department, office or agency of the Crown.

Data Processor: shall have the same meaning as set out in the Data Protection Act 1998.

Data Protection Legislation: the Data Protection Act 1998 (“**DPA**”), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Default Notice: shall have the meaning given to that expression in clause 12.1.

Development Plan: the contract relating to the provision of a library management system (Spydus) between the Authority and Civica UK Limited. set out in Appendix 7.

Dispute Resolution Procedure: the procedure set out in Schedule 5.

Domain Names: www.suffolklibraries.co.uk, www.sundaylibraries.co.uk and www.suffolkreads.co.uk.

Effective Date: the date(s) on which the Library Services (or any part of the Library Services) transfer from the Authority to the IPS or Sub-contractor, and a reference to “**Effective Date**” shall be deemed to be the date on which the employees in question transferred or will transfer to the IPS or the relevant Sub-Contractor.

Employees: Transferring Employees or Relevant Employees (as the context shall require).

Encumbrances: any mortgage, charge (fixed or floating), pledge, lien, hypothecation, guarantee, trust, right of set-off or other third party right or interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of any kind, howsoever created or arising, or any other agreement or arrangement having similar effect.

Environmental Information Regulations: the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations.

Exit Management Plan: the exit management plan to be drawn up and agreed between the parties within 6 months of the Commencement Date.

Fees Regulations: the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure: any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions or non-events in each case beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute between the IPS and the IPS Personnel.

Guidance: any applicable guidance or directions with which the IPS is bound to comply.

Information: has the meaning given under section 84 of FOIA.

Initial Term: the period of five years commencing on the Commencement Date.

Intellectual Property: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

IPS Party: any agent or contractor (including any Sub-Contractor) appointed directly by the IPS.

IPS Personnel: all employees, staff, other workers (including unremunerated volunteers), agents and consultants engaged or appointed (as the context shall require) by the IPS in the provision of the Library Services from time to time.

IT Equipment: all IT equipment used in connection with the provision of the Library Services, including for the avoidance of doubt, all computer hardware,

software, servers, cabling, terminals, printers, network and telecommunications equipment and third party connections;

IT Support Services: the IT support services as defined and detailed in paragraph 3 of Schedule 17.

Legislation: any one or more of the following:

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

in each case in the United Kingdom;

Libraries: those premises listed in Schedules 7 and 11.

Library Charges: those hire charges and the library fines to be levied by the IPS as agent for the Authority from time to time including the charges to be levied on library users for the hire of any “out of Suffolk” books, CDs, DVDs and/or other Stock and/or fines to be levied for the late return of any books, CDs, DVDs and/or other Stock. At the Commencement Date the library charges to apply for the first Contract Year, are as set out in Schedule 8.

Library Management System or “LMS”: the library management computer system jointly owned and/or operated by the Authority and Cambridgeshire County Council at the date of this Agreement.

Library Services: the library services to be delivered by or on behalf of the IPS under this Agreement, as set out in Schedule 1 (**Specification**).

Management Reports: the reports to be prepared and presented by the IPS in accordance with clause 28 to include a comparison of Achieved Service Levels against the corresponding applicable Service Levels for the Measurement Period in question and any measures proposed to be taken to remedy any deficiency in the IPS’ failure to achieve any of the applicable Service Levels in the Measurement Period in question.

Measurement Period: in respect of an individual Service Level the period specified in the fifth column of Part 2 of Schedule 2 (frequency of reporting).

Mobile Library Vehicles: the mobile library vehicles owned and registered in the name of the Authority at the date of this Agreement and listed in Schedule 15.

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Library Services (including membership of CILIP) other than the Authority Consents.

Payment Plan: the plan for payment of the Charges as set out in Schedule 3.

Personal Data: shall have the same meaning as set out in the DPA.

Planning Agreement: means any obligation entered into with any local planning authority whether by agreement or unilaterally under s 106 Town and Country Planning Act 1990 and/or s 111 Local Government Act 1972 and/or any other enabling legislation and/or any statutory modification or re-enactment thereof as a precondition to or in connection with any planning permission granted for development in Suffolk.

Properties: any of the Libraries, Alternative Premises and/or Additional Premises.

Prohibited Act: the following shall constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Authority; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Authority.

Rate Indemnity Period: has the meaning given to that expression in clause 35.2.

Regulated Activity: in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Regulated Activity Provider: shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

Relevant Employees: those employees whose contracts of employment transfer with effect from the Services Transfer Date to the Authority or a Replacement Service Provider by virtue of the application of TUPE.

Relief Event: has the meaning given in clause 13.2.

Remediation Notice: has that meaning given to that expression in clause 43.1.

Replacement Services: any services that are identical or substantially similar to any of the Library Services and which the Authority receives in substitution for all or any of the Library Services following the termination or expiry of this Agreement, whether those services are provided by the Authority internally or by any Replacement Service Provider.

Replacement Service Provider: any third party supplier of Replacement Services appointed by the Authority upon the termination or expiry (as the case may be) of this Agreement.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

Reserve Fund: has the meaning in clause 21.2.

Service Failure: a material failure or failures by the IPS in one or more Measurement Periods during any quarter to provide the Library Services in accordance with the Service Levels such that the aggregate of the points attributable to such failures (calculated by reference to the Performance Management Framework included as Part 4 of Schedule 2) is greater than 4 in such quarter.

Service Levels: the service levels to which the Library Services are to be provided as specified in the performance framework set out in Schedule 2.

Service Transfer Date: the date on which the Library Services (or any part of the Library Services), transfer from the IPS or a Sub-Contractor to the Authority or any Replacement Service Provider.

Specification: the specification of the Library Services, as set out in Schedule 1.

SPINE: the partnership between the Authority and Cambridgeshire County Council to develop and commission library management systems and standards.

Stakeholders: has the meaning given to that term in paragraph 3.1 of Schedule 6.

Stock: all those initial books and media materials as listed in the Libraries stock catalogue at Part 3 of Schedule 2, together with any additions to or replacements of any of the same pursuant to clause 15.

Stock Policy: the stock policy of the Authority entitled “Stewardship of Suffolk Library Stock Policy” set out at Schedule 16.

Sub-Contract: any contract between the IPS and a third party, including without limitation volunteers and local community groups assisting the IPS in its provision of the Library Services and the Additional Services, pursuant to which the IPS agrees to source the provision of any of the Library Services from that third party.

Sub-Contractor: any contractors or service providers (including any volunteers or community interest groups engaged by them) that enter into a Sub-Contract with the IPS.

Support Services: those support services to be provided by the Authority to the IPS described in clause 9 and Schedule 17.

Term: the period of the Initial Term as may be varied by:

- (a) any extensions to this Agreement which are agreed pursuant to clause 3; or
- (b) the earlier termination of this Agreement in accordance with its terms.

Termination Date: the date of expiry or earlier termination of this Agreement.

Termination Notice: has the meaning given to such expression in clause 44.2.

Transferring Employees: employees of the Authority whose contracts of employment transfer with effect from the Effective Date to the IPS by virtue of the application of TUPE whose details are listed in Part 2 of Schedule 9.

Transition Costs: the transition costs, payable by the Authority to the IPS up to and including 31st July 2014, (save for restructuring costs in connection with the stock unit where the period is to 31 July 2015) as set out or described in paragraph 2 of Schedule 3.

Third Party Consent: a consent, licence, approval, authorisation or waiver required from a third party for the conveyance, transfer, assignment or

novation in favour of the IPS of any of the Assets and/or the loan of and/or other means of transfer of any of the Authority Assets to the IPS (and/or any Sub-Contractor) in each case in terms acceptable to the IPS.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

Warranties: the warranties and representations set out in clause 7 and Schedule 14 and "**Warranty**" shall mean any one of such warranties and/or representations.

Working Day: Monday to Friday, excluding any public holidays in England and Wales.

- 1.2 Clause, Schedule, appendix, annexures and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules, appendices and annexures form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules, appendices and annexures.
- 1.5 A reference to a "company" shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to "writing" or "written" includes faxes but not e-mail.
- 1.10 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.12 References to clauses, Schedules, appendices and annexures are to the clauses, schedules, appendices and annexures of this Agreement;

references to paragraphs are to paragraphs of the relevant Schedule, appendices or annexures.

- 1.13 Where any statement is qualified by the expression “so far as [PARTY] is aware” or “to [PARTY]'s knowledge” or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.14 Words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words;
- 1.15 Where there is any conflict or inconsistency between the provisions of this Agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of this Agreement;
 - (b) Schedule 1, Appendices 1 – 8a (inclusive) and annexures 1-9- (inclusive) to this Agreement; and
 - (c) the remaining Schedules to this Agreement.

COMMENCEMENT AND DURATION

2. TERM

This Agreement shall take effect on the Commencement Date and shall continue for the Term.

3. EXTENDING THE INITIAL TERM

- 3.1 The IPS may, at its absolute discretion, extend this Agreement beyond the Initial Term by such further period as it shall notify the Authority in accordance with clause 3.2, provided that such further period shall not exceed 5 years.
- 3.2 If the IPS wishes to extend this Agreement pursuant to clause 3.1, it shall give the Authority not less than 6 months' prior notice of such extension (the “**Extension Notice**”) before the expiry of the Initial Term.
- 3.3 If the IPS shall give an Extension Notice to the Authority pursuant to this clause 3, the Term shall be extended by the period of extension set out in the Extension Notice (the “**Extension Period**”).

3.4 If the IPS does not wish to extend this Agreement beyond the Initial Term this Agreement shall expire on the expiry of the Initial Term and the provisions of clause 48 shall apply.

3.5 Upon the expiry of the Extension Period, this Agreement shall terminate automatically.

4. ASSET SALE AND TRANSFER OF AUTHORITY ASSETS

4.1 In consideration of the payment of one pound (£1.00) by the IPS to the Authority (receipt of which sum is hereby acknowledged by the Authority) the Authority shall sell with full title guarantee free from Encumbrances all of the Assets to the IPS and the IPS agrees to purchase such Assets upon the Commencement Date upon the terms and conditions set out in Part 1 of Schedule 18.

4.2 The Authority Assets shall be transferred and/or otherwise made available to the IPS by the Authority in accordance with Schedule 18 and the Authority Assets shall be held by the IPS (or by any of its Sub-Contractors as the IPS shall determine (acting in its absolute discretion)) upon the terms set out in Schedule 18 and as otherwise provided in this Agreement.

4.3 If any Assets or Authority Assets are notified to the IPS prior to the Commencement Date as being not fit for purpose on the Commencement Date, then subject to the IPS' consent, such Assets / Authority Assets may be replaced by the Authority within 7 Working Days of the Commencement Date without the Authority being in breach of the terms of this Agreement and the warranties listed at paragraph 3 of Schedule 14.

5. PROPERTIES

5.1 The provisions of Schedule 11 shall have effect in relation to the Properties and the parties shall observe and perform their respective obligations set out in that Schedule.

5.2 The parties agree that during the Term of this Agreement, the Authority may locate the IT Equipment within certain Libraries, at its sole risk. Where this is the case, the IPS shall not be responsible for the IT Equipment in any respect, including but not limited to insuring the same, the security of the IT Equipment or any loss or damage caused by the IT Equipment, whether to a Library building, any person or otherwise. Further any right of the Authority's insurer(s) to bring a subrogated claim against the IPS where any claim arises in connection with the IT Equipment, is expressly excluded.

- 5.3 The IPS expressly excludes all liability for loss however arising in connection with the presence of the IT Equipment on a Library's premises.

6. TUPE AND PENSIONS

- 6.1 The provisions of Schedule 9 shall apply in relation to the Employees and the parties shall observe and perform their respective obligations set out in that Schedule.

7. WARRANTIES

- 7.1 The IPS enters into this Agreement on the basis of and reliance on the Warranties set out in this Agreement and Schedule 14.

- 7.2 The Authority warrants and represents to the IPS that each Warranty is true, accurate and not misleading.

- 7.3 Without prejudice to the rights of the IPS to claim on any other basis or take advantage of any other remedies available to it, if any Warranty is breached or proves to be untrue or misleading, the Authority undertakes to pay the IPS on demand:

- (a) the amount necessary to put the IPS into the position it would have been in if the Warranty not been breached and had been true and not misleading; and
- (b) all costs and expenses (including, in particular, damages, legal and other professional fees and consequential losses) incurred by the IPS (whether directly or indirectly) or in its provision of the Library Services as a result of the breach or of the Warranty not being true or being misleading (including a reasonable amount in respect of management time).

- 7.4 If at any time before or after the Commencement Date the Authority becomes aware that a Warranty has been breached, is untrue or is misleading, or has a reasonable expectation that any of those things might occur, it shall immediately:

- (a) notify the IPS in sufficient detail to enable the IPS to make an accurate assessment of the situation; and
- (b) if requested by the IPS, use its best endeavours to prevent or remedy the notified occurrence.

- 7.5 If at any time before or after the Commencement Date it becomes apparent that a Warranty has been breached, is untrue or misleading, or that the Authority has breached any other term of this Agreement that, in either case, is material to the provision of the Library Services, any of the Libraries, any of the Assets and/or the Authority Assets, the IPS may (without prejudice to any other rights it may have in relation to the breach) rescind this Agreement by notice to the Authority.
- 7.6 Warranties given **so far as the Authority is aware** are deemed to be given to the best of the knowledge, information and belief of the Authority after it has made all reasonable and due and careful enquiries.
- 7.7 Each of the Warranties is separate and, unless expressly provided to the contrary, is not limited by reference to any other Warranty or anything in this Agreement.
- 7.8 No information of which the IPS and/or its agents and/or advisers has knowledge (actual, constructive or imputed), or which could have been discovered (whether by investigation made by the IPS or made on its behalf), shall prejudice or prevent any claim or reduce any amount recoverable by the IPS under and/or pursuant to this clause 7 or otherwise.
- 7.9 Without prejudice to clauses 7.1 to 7.8 (inclusive) and Schedule 14, the Authority represents and warrants that all information provided to the IPS in connection with the Library Services is accurate and not misleading in any respect.
- 7.10 Nothing in this clause 7 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

8. AUTHORITY CONSENTS AND NECESSARY CONSENTS

- 8.1 The Authority shall procure (at its cost) that all Authority Consents shall be in place throughout the Term so as to enable the IPS to observe and perform its obligations under this Agreement and to exercise all rights and to enjoy all benefits under or referred to in this Agreement.
- 8.2 The IPS shall ensure that all Necessary Consents are in place from time to time to provide the Library Services in accordance with this Agreement, provided that the Authority shall be responsible for all costs reasonably incurred by the IPS in obtaining, maintaining or complying with the same.

- 8.3 Where there is any conflict or inconsistency between the provisions of this Agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the IPS has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Library Services.

9. SUPPORT SERVICES

- 9.1 From the Commencement Date and until 31st March 2013, (the “**Minimum Support Services Period**”), the Authority shall provide to the IPS the Support Services, in consideration of the charges set out in Schedule 17. All of the Support Services, shall continue to be provided by the Authority to the IPS after the Minimum Support Services Period until either party gives to the other party not less than 3 months’ prior notice to terminate the Support Services (save for the IT Support Services which can only be terminated in accordance with clause 9.2), such notice expiring on or after 31st March 2013.
- 9.2 Notwithstanding clause 9.1 above, the IPS shall be entitled at any time and for any reason to serve notice on the Authority to terminate any element of or all of the IT Support Services on the provision of not less than 3 months prior notice expiring on or after 31st July 2013.
- 9.3 In the event that any of the Support Services are not provided in accordance with Schedule 17 and/or not remedied within the time periods required by the service level agreements which the Authority has in place with third party support providers, the IPS shall have the right to instruct contractors to undertake any required repairs or maintenance and shall recharge the Authority directly for the cost of the service.

THE SERVICES

10. SUPPLY OF SERVICES AND SERVICE LEVELS

- 10.1 Subject to clause 10.6 and clause 13, the IPS shall provide the Library Services for the benefit of those in accordance with the Public Libraries and Museums Act 1964 with effect from 1 August 2012 for the Term in accordance with the provisions of this Agreement.
- 10.2 Where any part of the Library Services is expressly stated in Schedule 2 to be subject to a specific Service Level, the IPS shall use reasonable endeavours to provide that part of the Library Services in such a manner as will ensure

that the Achieved Service Level in respect of that part of the Library Services is equal to or higher than such specific Service Level.

- 10.3 If the Library Services shall be varied in accordance with the terms of this Agreement, the Service Levels for the same will be determined as may be applicable and included within Schedule 2 subject to the prior agreement of the parties.
- 10.4 If in any Measurement Period there is a Service Failure, without prejudice to any other rights the Authority may have under this Agreement, the provisions of clause 12 shall apply.
- 10.5 The IPS shall provide records of and Management Reports summarising the Achieved Service Levels for a Measurement Period as provided for in clause 28 and other reports as specified in Part 2 of Schedule 2 and Schedule 4.
- 10.6 Notwithstanding any other provision of this Agreement, the Authority acknowledges and agrees that it shall not be entitled to give any Default Notice and/or exercise any other right or remedy under this Agreement and/or under any of the Leases or otherwise in respect of any failure on the part of the IPS to observe or perform any of its obligations under this Agreement and/or under any of the Leases (as the case may be) (including in respect of any Service Failure);-
 - (a) during any part of the period commencing on the Commencement Date and expiring at midnight on 31st March 2013 so to provide the IPS with a period of time during which it shall become accustomed to the provision of the Library Services; or
 - (b) as a result of the Authority failing to transfer over or to provide the IPS with all the Assets, Authority Assets, Authority Contracts, Support Services and/or other assets and/or services which the IPS requires in order to carry out the Library Services in the same manner and to the same standards they are provided by the Authority up to the Commencement Date.

11. SERVICE STANDARDS

- 11.1 Without prejudice to clause 10, the IPS shall provide the Library Services, or procure that they are provided:
 - (a) with reasonable skill and care;
 - (b) in all respects in accordance with the Authority's Equality and Diversity policy (the "**Authority Policy**") set out in Schedule 19; and

(c) subject to clause 31 in accordance with all applicable laws.

11.2 Without limiting the general obligation set out in clause 11.1, the IPS shall (and shall procure that the IPS Personnel shall):

- (a) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement;
- (b) not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment; and
- (c) (subject to the Authority providing details of the same within a reasonable period before the IPS is required to comply with this obligation), adopt policies at least equivalent to those required of the Authority in respect of equality and freedom of information matters in respect of its own employees and operations.

11.3 The IPS shall, at the cost of the Authority, undertake, or refrain from undertaking, such reasonable acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

12. SERVICE FAILURES

12.1 Where a Service Failure shall occur in any Measurement Period the Authority shall be entitled to give a notice in writing to the IPS in the immediately following Measurement Period setting out the details of the Service Failure in question (a “**Default Notice**”).

12.2 On receipt by the IPS of a Default Notice the parties shall meet to discuss the nature of the Service Failure in question and shall use their respective reasonable endeavours to work together so that the IPS shall be able to rectify any matter that led to that Service Failure as quickly as possible.

13. RELIEF EVENTS

13.1 If a Relief Event interferes adversely with, or causes a failure of, the performance of all or any the Library Services (including the occurrence of a Service Failure) and/or any breach by the IPS of this Agreement, then (subject to clause 13.3) to the extent such failure or interference (or occurrence of a Service Failure) or breach of this Agreement arises as a result of such Relief Event:

- (a) such failure by the IPS to perform, and any poor performance of, all or any part of the Library Services (including any Service Failure) or breach of this Agreement shall be deemed not to constitute a breach of the provisions of this Agreement by the IPS;
- (b) such interference shall be taken account of in measuring the performance of all or any part of the Library Service in accordance with Schedule 2, which shall be operated as though the Library Services and/or all other provisions of this Agreement had been performed free from such adverse interference; and
- (c) any such failure in performance, (including any Service Failure) and/or breach of this Agreement shall be deemed not to have occurred,

so that the IPS shall be entitled to payment under this Agreement as if there had been no such interference with all or any part of the Library Services and/or no breach of this Agreement.

13.2 For the purpose of clause 13.1, a Relief Event means:

- (a) any breach of any express provision of this Agreement by the Authority or any Authority Party;
- (b) any deliberate act or omission of the Authority or of any Authority Party or any failure by the Authority or Authority Party to carry out any of its activities (including any of the Support Services) in a manner which shall not interfere with the IPS' performance of all or any part of the Library Services and/or observance and/or performance of this Agreement;
- (c) the Contract Sum and/or Annual Stock Fund or Support Services proving to be inadequate for the purposes of the observance and/or performance by the IPS of its obligations under this Agreement, including the provision of the Library Services;
- (d) any failure by the Authority to provide the IPS at all times with sufficient IT software, hardware and equipment at each of the Libraries in order for the IPS to provide from the Commencement Date and thereafter those aspects of the Library Services which are dependent on the IT software, hardware and equipment;
- (e) any failure by the IPS to provide the Mobile Library Vehicle aspects of the Library Services to the required Service Levels as a result of the IPS being unable to run not less than 3 Mobile Library Vehicles at any time as a result of one or more of the Mobile Library Vehicles being inspected, repaired or maintained in accordance with clause 17;

- (f) any breach of the Service Levels and/or a Service Failure arising as a result of any health and safety issues arising;
- (g) failure by the Authority to upgrade the IT hardware, software and equipment at the Libraries in order for all the Libraries to be able to provide the digital aspect of the Library Services in accordance with the Specification and to the required Service Levels.

13.3 The IPS shall take all reasonable steps to mitigate the consequences of a Relief Event on the IPS' ability to perform its obligations under this Agreement.

14. LIBRARY MANAGEMENT SYSTEM

14.1 On and from the Commencement Date and for the Term, the Authority hereby grants to the IPS (or shall procure the direct grant to the IPS) of a royalty-free licence (including an unrestricted right to grant sub-licences to any Sub-Contractors) to use any and all Intellectual Property Rights in and/or relating to the Library Management System and the Authority shall maintain (and upgrade as required in order for the IPS to continue at all times to provide the Library Services in accordance with the Service Levels)) the Library Management System and provide to the IPS and each of its nominated Sub-Contractors full and unrestricted access to the Library Management System together with all materials, manuals and documentation as shall be required by the IPS from time to time only to the extent necessary to enable the IPS to deliver the Library Service.

14.2 For the Term of this Agreement, the IPS shall have the right to appoint such number of directors to the SPINE board so that it is at all times represented by the same number of directors as the Authority has on the SPINE board.

14.3 The Authority shall be solely responsible for paying the LMS, ICON and Crystal Reporting licence fees for the Term of this Agreement.

14.4 The Authority agrees to fund (via ACS) and will complete the Library Management System development (including add-ons), in accordance with the Development Plan.

15. STOCK

15.1 On and from the Commencement Date and throughout the Term the Authority shall make available to the IPS, free of charge, all of the Stock.

- 15.2 At the date of this Agreement the Stock shall be delivered by the Authority at the respective Libraries at which each item forming part of such Stock was located immediately before the Commencement Date. Where any Stock items are on loan at the date of this Agreement, for example, to another Library, a library outside Suffolk or to a Library user, these will be deemed to have been delivered by the Authority to the IPS subject to that item of Stock thereafter being returned to the relevant Library it was borrowed from during the Term of this Agreement.
- 15.3 The IPS shall be entitled to possession of the Stock throughout the Term without interference from the Authority.
- 15.4 The IPS will maintain (fair wear and tear excepted) and utilise the Stock as agent only of the Authority and shall not, for the avoidance of doubt, acquire any ownership rights in the Stock.
- 15.5 The Stock shall be sold and/or, subject to paragraph 7 of Schedule 3 and in accordance with Schedule 16, added to, maintained and/or replaced by the IPS in accordance with the Stock Policy as agent for the Authority, provided that the IPS shall not be obliged to fund any addition to and/or maintenance and/or replacement of any of the Stock other than by funds made available by the Authority in the Annual Stock Fund.
- 15.6 The IPS shall use reasonable endeavours (with due regard being given to the nature of a library being a facility open and available to the public) that, while any Stock is located within any of the Libraries, such Stock is kept reasonably secure and the IPS will, at the cost of the Authority, comply and cooperate with the Authority's Authorised Representative's reasonable directions regarding the security of the same. The IPS will not be under any obligation to insure or take out any insurance policy in respect of the Stock and shall not be liable in the event of any loss or damage (including theft by any members of the public) occurring to the Stock during the Term of this Agreement.
- 15.7 On termination of this Agreement, the IPS shall return to the Authority such Stock as is (i) listed as on loan on the date of termination on the Library Management Service (subject always to return of the same); and (ii) which is physically located in the Libraries on the date of termination.
- 15.8 Subject to the Authority providing full and unrestricted access to the Library Management System to the IPS and its Sub-Contractors pursuant to clause

14.1, the IPS shall provide the Authority with data regarding the use of the Stock from time to time in real time and in formats readily and reasonably available generated by the Library Management System.

15.9 The Stock includes three local studies collections known respectively as 1) The Fitzgerald, presently located at Woodbridge Library , 2) The Seckford Collection, presently located at Woodbridge Library and 3) The Racing Collection, presently located at Newmarket Library and these collections shall be subject to the following:-

- (a) the IPS shall offer the public access to such collections only within the relevant library premises upon receipt of a reasonable request and identification from the member of the public making the request;
- (b) the IPS shall not give permission for the reproduction of any material from the Seckford Collection without the specific written permission of the Seckford Foundation; and
- (c) the IPS shall not be required to put in place any security in addition to that in place on the Effective Date and, for the avoidance of doubt, the IPS shall not be responsible for insuring any of the said collections;

16. GENERAL OBLIGATIONS OF THE IPS

16.1 The IPS shall use all reasonable endeavours at the cost of the Authority to maintain corporate membership of CILIP during the Term.

16.2 The Authority shall provide the IPS with such reasonable assistance (including the provision of information and support) as may be required by the IPS in order for the IPS to comply with its obligation under clause 16.1.

16.3 During the Term, the IPS shall endeavour to seek, but shall not be contractually obliged to secure, funding in addition to the Contract Sum through, but not limited to:

- (a) community involvement;
- (b) the pursuit of applicable and available grants;
- (c) new and alternative income generation activities.

17. MOBILE LIBRARY VEHICLES

17.1 On and from the Commencement Date and throughout the Term the Authority shall make available to the IPS, free of charge, the Mobile Library Vehicles.

- 17.2 The Authority shall procure, at its cost, fully comprehensive insurance for each of the Mobile Library Vehicles (including with the IPS and the IPS Personnel being named as insured drivers and passengers for this purpose) and shall, also at its cost, maintain, repair and replace each of the Mobile Library Vehicles, provided that where any such repair arises directly from any default or negligence of the IPS or any IPS Personnel, the reasonable and proper costs incurred by the Authority in repairing the same shall be recoverable from the IPS as a debt.
- 17.3 In the event that any of the Mobile Library Vehicles becomes incapable of doing the work for which it was designed or requires unscheduled repair or maintenance during the Term, the IPS shall either deliver up the Mobile Library Vehicle to the Authority for repair, which shall be undertaken and completed as soon as is reasonable practicable, or shall at its option arrange for the repair or maintenance to be undertaken by a suitably qualified third party repairer. The IPS shall recharge the Authority directly for any such costs arising.
- 17.4 The IPS shall deliver the Mobile Library Vehicles to the Authority as requested on reasonable prior notice, in order for the Authority to undertake routine inspections. These inspections tend to take place every 8 weeks. The Authority agrees that in no event shall more than one Mobile Library Vehicle be retained for inspection at any one time. The Authority shall carry out each inspection thoroughly and as expediently as is reasonable possible to ensure that the inspected Mobile Library Vehicle is returned to the IPS as soon as is reasonably possible.
- 17.5 The Authority shall replace each of the Mobile Library Vehicles from time to time in accordance with prudent operating practice having regard to the requirements for and the use of those vehicles and any notice given by the IPS pursuant to clause 17.4. The designated "spare" Mobile Library Vehicle will always be replaced with the most recently replaced operational Mobile Library Vehicle unless the existing designated "spare" is judged to be in a better condition.
- 17.6 Notwithstanding clause 17.5, the Authority shall ensure that no Mobile Library Vehicle (other than the designated "spare") provided to the IPS during the Term of this Agreement is ever more than 12 years old.
- 17.7 The IPS shall notify the Authority when it reasonably believes that any of the Mobile Library Vehicles may require replacing (provided that the IPS

shall not be liable where any Mobile Library Vehicle shall be found to require replacement before any such notice is given).

17.8 The Authority shall pay the cost of obtaining new Operator's Licences, (both interim and full) in the name of the IPS for each of the Mobile Library Vehicles being provided to the IPS under the terms of this Agreement. The Authority shall provide the IPS with such assistance as it might reasonable require in order for the IPS to obtain the required Operator's Licences, prior to the commencement by the IPS of providing that part of the Library Services.

17.9 Notwithstanding clause 17.8, the IPS shall use all reasonable endeavours to procure that all new Operator's Licences for the Mobile Library Vehicles are obtained in the IPS' name no later than 31 October 2012.

18. DAMAGE TO AUTHORITY ASSETS

18.1 The IPS shall notify the Authority immediately on becoming aware of any material damage caused by the IPS, its agents, employees or Sub-Contractors to any property of the Authority including to any of the Stock and/or the Mobile Library Vehicles in the course of it providing the Library Services.

19. BUSINESS PLAN

19.1 The IPS shall prepare and shall submit to the Authority on or before 31st July in each Contract Year a Business Plan for the provision of the Library Services during the immediately following Contract Year.

19.2 The Business Plan shall include a proposed budget for the Library Services, details of relevant increases in costs underlying that budget and proposed revised Service Levels together with such other information as the IPS shall consider appropriate.

19.3 The Business Plan (including the proposed budget included within it) shall be discussed between the parties as part of the Budget Process for the immediately following Contract Year.

20. HEALTH AND SAFETY

- 20.1 The IPS shall promptly notify the Authority of any health and safety hazards, which may arise in connection with the performance of this Agreement and of which the IPS shall become aware.
- 20.2 The Authority shall promptly notify the IPS of any health and safety hazards that may exist or arise at any of the Properties and/or any Authority Premises and that may affect the IPS in the observance and performance of its obligations under this Agreement or at law.
- 20.3 While on any Authority Premises, the IPS shall comply with any health and safety measures implemented by the Authority and previously notified to the IPS in respect of staff and other persons working on those Authority Premises.
- 20.4 The IPS shall advise an officer or employee of the Authority who is present at the Authority Premises in question immediately in the event of any incident occurring in the performance of this Agreement on the Authority's Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 20.5 The IPS shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Authority's Premises in the performance of the Agreement.
- 20.6 The IPS shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

CHARGES, PAYMENTS AND CAPITAL FUNDING

21. TRANSITION COSTS AND LIBRARY SERVICES RESERVE FUND

- 21.1 The Authority shall pay the Transition Costs to the IPS in accordance with Schedule 3.
- 21.2 Over the years the Authority has built up, and at the date of this Agreement currently holds a ring fenced sum of £190,000 (the "**Reserve Fund**") to be

spent on library services in Suffolk. It is agreed that the Reserve Fund will not be applied by the Authority during the Term of this Agreement other than towards the improvement of the Library Services being run by the IPS subject to the Authority approving in its sole discretion applications for funds from this Reserve.

21.3 For the avoidance of doubt, the Reserve Fund shall not be used at any time by the Authority in upgrading or replacing any of the Mobile Library Vehicles. This shall be funded separately by the Authority.

21.4 The reserve held by the Authority and allocated to the School's Library Service and other funds allocated to this Service shall be dealt with in accordance with Part 2 of Schedule 18.

22. PAYMENTS

22.1 In consideration of the provision of the Library Services in a Contract Year by the IPS in accordance with the terms and conditions of this Agreement, the Authority shall pay the Contract Sum, in instalments, quarterly in advance to the IPS on the dates provided in and otherwise in accordance with the Payment Plan.

22.2 The IPS shall invoice the Authority for each quarterly instalment of the Contract Sum payable in advance or at the time that the instalment is expressed to be payable in accordance with the Payment Plan.

22.3 All invoices to be submitted by the IPS shall be directed to the Authority's Representative.

23. DISPUTED AMOUNTS

23.1 Where either party disputes any sum to be paid by it pursuant to this Agreement, then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 32. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 10 days after resolution of the dispute between the parties.

23.2 Subject to clause 23.1 interest shall be payable by the Authority on the late payment of any undisputed part of the Contract Sum due and payable in accordance with the Payment Plan or any Collection Fee or other amount properly invoiced under this Agreement at a rate of 4% above the base rate

of Barclay's Bank plc from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Authority shall pay the interest together with the overdue amount.

- 23.3 All sums payable under or pursuant to this Agreement are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. Subject always to clause 35.1(m) the IPS shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the IPS' failure to account for, or to pay, any VAT relating to payments made to the IPS under this Agreement.
- 23.4 The IPS shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable by it to the Authority pursuant to this Agreement. Such records shall be retained for inspection by the Authority for 6 years from the end of the Contract Year to which the records relate.
- 23.5 Where the IPS enters into a Sub-Contract with a supplier or contractor for the purpose of performing this Agreement, it shall, as far as reasonably practicable, cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the IPS to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 23.6 Each party (the **"Payer"**) shall make any payments due to the other party (the **"Payee"**) without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Payer has a valid court order requiring an amount equal to such deduction to be paid by the Payee to the Payer (whether under this Agreement or under any other agreement made between the parties).

24. LIBRARY CHARGES AND COLLECTION FEE

- 24.1 Subject to clause 24.2, prior to the commencement of each Contract Year, the IPS will recommend to the Authority the level of Library Charges that the Authority should adopt for that Contract Year and, unless the Authority has reasonable and proper grounds to reject that recommendation (which grounds shall be disclosed to the IPS which shall be entitled to refer the same to the Dispute Resolution Procedure), such recommended Library

Charges shall be the Library Charges that shall be applied by the IPS as agent on behalf of the Authority during that Contract Year.

- 24.2 The Library Charges for the first Contract Year shall be those set out in Schedule 8.
- 24.3 In consideration of the payment by the Authority of the Collection Fee in respect of each month, the IPS shall collect all Library Charges as agent of the Authority.
- 24.4 Within ten (10) Working Days after the end of each month, the IPS shall account for the amount of all Library Charges collected by it in that month pursuant to this clause 24 to the Authority and shall pay such amount so collected into the Authority's nominated bank account as previously notified to the IPS.
- 24.5 The IPS shall invoice the Authority monthly in arrears for the Collection Fee payable for the preceding month and the Authority shall pay the amount shown in that invoice (together with any applicable VAT thereon) within 10 Working Days after the date of the invoice.

25. CAPITAL FUNDING

- 25.1 The Authority acknowledges and agrees that the IPS shall be entitled to apply for funding from the Authority in addition to the Contract Sum and/or Collection Fees from time to time for capital expenditure in connection with the Library Services and/or the Libraries.
- 25.2 The Authority shall give reasonable prior notice to the IPS of the date by which any application for capital funding referred to in clause 25.1 must be submitted, which date shall be in accordance with the Authority's general policies and procedures in place from time to time relating to the applications for and provision of capital funding to its own departments, its subsidiary companies and other third party organisations who are entitled to submit any applications for capital funding from the Authority's revenues, grants, allocations or reserves.
- 25.3 The Authority undertakes to the IPS that any notice given pursuant to clause 25.2, the information requested to be provided by the IPS as part of its application and the timing and level of consideration of the application submitted by the IPS shall place the IPS in no worse a position than any other applicant (including any department of the Authority, any of its

subsidiary companies or other third party organisation) for capital funding by or within the Authority in general and in relation to the specific capital funding applied for by the IPS.

25.4 In connection with any application for capital funding submitted by the IPS pursuant to this clause 25, the Authority shall provide details of any final proposal and shall give the IPS the opportunity to comment upon these prior to the submission being made to those senior officers of the Authority and/or members of the Authority who shall be delegated with the responsibility of assessing and determining the allocation of all or part of the capital funding in question.

25.5 Without prejudice to clauses 25.1 to 25.3 (inclusive), the Authority undertakes that, whenever there shall be an opportunity for the Authority to enter into or influence a Planning Agreement under which a monetary payment and/or other benefit may be secured for the Authority or any community located within the administrative area for which the Authority is responsible and/or to secure a payment in respect of Community Infrastructure Levy, where it would not be unlawful or contrary to central government guidance for the Authority to secure such a payment and/or benefit for or in connection with the Library Services and/or any of the Libraries and/or for any Additional Premises, the Authority will:

- (a) notify the IPS of such opportunity in adequate time before it has agreed or influenced terms with the third party who shall make the proposed payment or deliver the proposed benefit for the IPS to make representations to the Authority in connection with the level or nature of any such payment or benefit and consider and have due regard to all such representations made by the IPS; and
- (b) use all reasonable endeavours to secure and maximise the amount or value of such payment and/or benefit (having had regard to the representations of the IPS) and to apply or make available the same to the IPS under this Agreement.

IPS PERSONNEL

26. IPS GENERAL OBLIGATIONS REGARDING PERSONNEL

26.1 Subject to paragraph 7 of Schedule 14, at all times, the IPS shall ensure that:

- (a) each of the IPS Personnel is suitably qualified, adequately trained and capable of providing the applicable Library Services in respect of which they are engaged;
- (b) there is an adequate number of the IPS Personnel to provide the Library Services in accordance with the Specification and Service Levels; and
- (c) all of the IPS Personnel comply with the Authority Policies.

26.2 Subject to paragraph 7 of Schedule 14, the IPS shall maintain up-to-date personnel records on the IPS Personnel engaged in the provision of the Library Services from time to time and, on request, provide reasonable information to the Authority on the IPS Personnel. The IPS shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

27. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

The parties acknowledge that the IPS is not a Regulated Activity Provider for the purposes of the Safeguarding Vulnerable Groups Act 2006.

CONTRACT MANAGEMENT

28. REPORTING AND MEETINGS

28.1 The IPS shall submit Management Reports to the Authority in the form and at the intervals set out in Schedules 2 and 4.

28.2 The Authorised Representatives of the parties shall meet at the intervals stated in and otherwise in accordance with the details set out in Schedule 4 and the IPS shall, at each such meeting, present its immediately previously submitted Management Report and financial reports in the format set out in that Schedule.

29. MONITORING

29.1 The Authority may undertake, at its own cost, reasonable monitoring of the performance of the Library Services by the IPS from time to time.

- 29.2 The IPS shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in it carrying out the monitoring referred to in clause 29.1, provided that any such co-operation shall not require the IPS and/or any of its Sub-Contractors to incur any material additional cost or expense or cost or material additional internal management time.

30. CHANGE CONTROL

- 30.1 Any requirement or proposal for a Change shall be subject to the Change Control Procedure as set out in Schedule 6.

31. CHANGE IN LAW

- 31.1 Subject to clause 31.4 and/or clause 31.5 (as the context shall require), the IPS shall take all reasonable steps to endeavour to ensure that the Library Services are performed in accordance with the terms of this Agreement following any Change in Law.

- 31.2 If a Change in Law occurs or is shortly to occur, then either party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

- (a) any necessary change to the Library Services;
- (b) whether any changes are required to the terms of this Agreement to deal with the Change in Law in question;
- (c) whether relief for the IPS from compliance with its obligations is required during and following the implementation of the Change in Law in question;
- (d) any loss of or increase in costs that will result from the Change in Law in question; and
- (e) any estimated increase in the amount of the Contract Sum and/or Collection Fee and/or Annual Stock Fund and / or capital funding that will be required to be paid by the Authority to the IPS that results from the Change in Law in question,

in each case giving in reasonable details of the procedure for implementing the change in the Library Services and any required resulting variation to the Contract Sum.

- 31.3 As soon as practicable after receipt of any notice from either party under clause 31.2, the parties shall discuss and agree the issues referred to in clause 31.2 and any ways in which the IPS can mitigate the effect of the Change in Law, including providing evidence that the IPS has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Sub-Contractors to minimise any increase in costs and maximise any reduction in costs.
- 31.4 The Contract Sum shall be increased to reflect any additional and/or increased costs incurred and/or to be incurred by the IPS as a result of a Change in Law no later than the date when the first steps in relation to that Change in Law are required to be implemented or (if earlier) the date when the IPS first incurs any such additional or increased costs in connection with the Library Services and/or any other aspect of this Agreement and/or any of the Properties.
- 31.5 The Authority shall pay to the IPS from time to time as the same is incurred by the IPS sums equal to any irrecoverable VAT to the extent that it arises as a result of a Change in Law. Any such payment shall be made within twenty (20) Business Days of the delivery by the IPS to the Authority of written details of the amount involved accompanied by details as to the grounds for and computation of the amount claimed. For the purposes of this clause 31.5, irrecoverable VAT means input VAT incurred by the IPS on any supply which is made to it which is used or to be used exclusively in performing the Library Services or any of the obligations or provisions under this Agreement (together with input VAT incurred as part of its overhead in relation to such activities) to the extent that the IPS is not entitled to repayment or credit from HM Revenue & Customs in respect of such input VAT.

32. DISPUTE RESOLUTION

- 32.1 Any dispute between the Parties shall be resolved in accordance with the Dispute Resolution Procedure, save for any dispute concerning agreement of the Business Plan which shall be resolved in accordance with paragraph 4 of Schedule 3.

33. SUB-CONTRACTING AND ASSIGNMENT

- 33.1 Subject to clauses 33.2 and 33.4, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under

this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

33.2 The IPS may sub-contract the whole or any part of its obligations under this Agreement subject to clause 33.3.

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

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

33.4 The Authority shall be entitled to novate this Agreement to any other body which subsequently assumes the functions of the library authority for Suffolk that had been performed previously by the Authority under the Public Libraries and Museums Act 1964.

34. SUPPLIER CONTRACTS FOR THE PROVISION OF THE SERVICES

34.1 Subject to clauses 4, 9 and 15 and any other express term of this Agreement, the IPS shall be responsible for procuring any goods and/or services which may be required by it from time to time to provide the Library Services in accordance with the Specification and the Service Levels.

34.2 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

LIABILITY

35. INDEMNITIES

35.1 Without prejudice to any other provision of this Agreement (including any other indemnity given by the Authority to the IPS under this Agreement), the Authority shall indemnify the IPS and its members, officers, employees and agents against any and all liabilities incurred, all damage and loss suffered, all claims, demands, actions and proceedings made or brought, and all costs (including, without limitation, all legal costs and disbursements incurred on a solicitor and client basis) and all disbursements and expenses reasonably and properly incurred in respect of:

- (a) any breach of the Authority's obligations in this Agreement;

- (b) death or personal injury arising out of any act, error or omission of the Authority (or any person for whom the Authority is responsible including, any Authority Party) or the presence at any of the Properties and/or on any Authority Premises of the Authority (or any person for whom the Authority is responsible including any Authority Party);
- (c) loss of or damage to property (including property belonging to the IPS or for which the IPS is responsible (including any Authority Assets)) arising out of any act, error or omission of the Authority (or any person for whom the Authority is responsible including any Authority Party) or the presence at any of the Properties and/or on any Authority Premises of the Authority (or any person for whom the Authority is responsible including any Authority Party);
- (d) any breach by the Authority (or any person for whom the Authority is responsible including any Authority Party) of any law or of any government circular or guidance note of which the Authority is aware, or of which a competent local authority (including in carrying out the functions of a library authority) ought reasonably to be aware, that is caused or contributed to by any act or omission of the Authority (or any person for whom the Authority is responsible including any Authority Party); and
- (e) any negligent act, error or omission of the Authority (or any person for whom the Authority is responsible including any Authority Party);
- (f) fraud on the part of the Authority or on the part of any person for whom the Authority is responsible (including any Authority Party);
- (g) any claim, challenge and/or legal proceedings brought by any person against the Authority and/or the IPS in respect of the process conducted by the Authority (or absence of process and/or incomplete process according to the claim, challenge and/or legal proceedings in question) which led to the award of the contract embodied in this Agreement to the IPS and/or in respect of the entry by the Authority into this Agreement and/or the performance by either party of any part of the same (including any claim, challenge and/or legal proceedings made or brought given under or pursuant to the Public Contracts Regulations 2006);
- (h) any breach by the Authority of any of the Authority's statutory duties and/or law;
- (i) any claim and/or legal proceedings alleging or pursuant to which a court of law or other regulatory authority having jurisdiction over the Authority finds that all or any payments made to the IPS under and/or pursuant to this Agreement constitute unlawful state aid;
- (j) without prejudice to clause 35.1(n), any inaccuracy in any of the information provided by the Authority to the IPS and/or any of its

officers, employees and/or advisers from time to time in connection with this Agreement, the Library Services, any of the Properties from time to time and/or in the course of any Budget Process and/or the development by the IPS of any Business Plan;

- (k) any liability and any claim and/or legal proceedings brought against the IPS arising as a result of any breach of any third parties Intellectual Property rights arising under an Authority Contract and/or any other contract for goods or services which the Authority sub-lets or otherwise provides to the IPS in breach of the terms of the Authority's agreement with that third party. This shall specifically cover, but shall not be limited to the IPS' use of any IT software on any IT equipment provided to the IPS on the Commencement Date in breach of the terms of any licence in place between the Authority and the software provider;
- (l) any liability arising in relation to the Authority's failure to comply with any health and safety requirements under law or otherwise in respect of the Properties;
- (m) the IPS being held liable by HMRC to pay any VAT, surcharges or penalties including but not limited to any in respect of VAT charged on the Collection Fees;
- (n) any breach of any of the Warranties;
- (o) all relocation costs connected with the relocation of a Library to new premises where the relocation of a Library's premises has been anticipated prior to the Commencement Date. This shall include, but shall not be limited to the following anticipated Library moves – Brandon, Mildenhall, Newmarket, Debenham, Eye, Stoke, Oulton Broad, Clare, Southwold and Needham Market;
- (p) all lease renewal costs in respect of any Library where the relevant lease has expired on or before the Commencement Date (including Clare, Elmswell, Ixworth, Southwold Ramp and Leiston).

- 35.3 During the Term of this Agreement, if the IPS is deemed at any time to not be an exempt charity, then provided that the IPS has undertaken all reasonable efforts to obtain charitable status, the Authority shall indemnify and keep indemnified the IPS against any additional costs or liabilities arising on the part of the IPS as a result of not being an exempt charity.

36. LIMITATION OF LIABILITY

- 36.1 Subject to clauses 36.3 and 36.4, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with this Agreement which shall include any loss of or damage to profit, revenue, contracts, anticipated savings or goodwill whether direct or indirect but shall exclude any of the same that relate to loss of business opportunity or loss of revenue or funding under this Agreement or loss of revenue in respect of any Additional Services.

- 36.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Agreement.

- 36.3 Subject to clause 36.5, the Authority's total aggregate liability:

- (a) in respect of the indemnities given by the Authority under clauses 34, 35, 48.3 and in Schedule 9 are unlimited; and
- (b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement (other than a failure to pay all or any part of the Contract Sum and/or any Collection Fee that is properly due and payable and for which the Authority shall remain fully liable), shall in no event exceed £10 million in each Contract Year or, if lower, 100% of the aggregate of the Contract Sum and the total Collection Fees paid by the Authority to the IPS under or pursuant to this Agreement in the Contract Year preceding that in respect of which the claim arises.

- 36.4 Subject to clause 36.5, the IPS' total aggregate liability:

- (a) in respect of the indemnities given by the IPS under the terms of this Agreement; and
- (b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement,

shall, in no event, exceed £10,000 in any Contract Year.

36.5 Notwithstanding any other provision of this Agreement neither party limits or excludes its liability for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by its negligence;
- (c) breach of any obligation as to title implied by statute; or
- (d) any other act or omission, liability for which may not be limited under any applicable law.

37. INSURANCE

37.1 Subject to the prior payment by the Authority to the IPS of an amount equal to the relevant insurance premiums payable and such amount being identified as being for this purpose (whether as part of the Contract Sum or otherwise), the IPS shall effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of not less than £5 million;

(the “**Required Insurances**”) the cover shall be in respect of all risks which may be incurred by the IPS, arising out of the IPS' performance of this Agreement, including death or personal injury, loss of or damage to property or any other loss.

37.2 The IPS shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

37.3 If, for whatever reason, the IPS fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the reasonable and proper costs of such arrangements from the IPS.

37.4 The terms of any insurance or the amount of cover shall not relieve the IPS of any liabilities under this Agreement.

37.5 The IPS shall have no responsibility to insure any of the Authority Assets, and in the event of the loss, damage or destruction of any such Authority Assets the Authority shall promptly replace the same with assets of the same type and a similar or better quality.

INFORMATION

38. FREEDOM OF INFORMATION

38.1 The IPS acknowledges that:

- (a) the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority (at the Authority's expense) to enable the Authority to comply with these information disclosure requirements in the manner provided for in this clause 38; and
- (b) the Service is of considerable public interest and that the presumption should be that, subject to clause 38.3, unless Information is Personal Data or Commercially Sensitive Information it should be made available to the public following a Request for Information concerning the same.

38.2 The IPS shall and shall procure that its Sub-Contractors shall:

- (a) transfer any Request for Information received directly by it or directly by them (as the case may be) to the Authority as soon as practicable after its receipt and, in any event, within two Working Days of such receipt;
- (b) subject to clause 38.3, provide the Authority with a copy of all Information relevant to any Request for Information received by the Authority (receipt of which has been previously notified by the Authority to the IPS) and which in its possession in such form that the Authority reasonably requires within five Working Days (or such other longer period as the Authority may specify) of the Authority requesting that Information; and
- (c) subject to clause 38.3, provide (at the Authority's cost) all reasonable and necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the

time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

- 38.3 Following notification by the Authority of the receipt of a Request for Information relating to any aspect of the matters contained or referred to in any part of this Agreement and/or any of the Leases and/or concerning library services in all or any part of Suffolk and/or regarding the IPS, the IPS shall be entitled to make representations to the Authority as to whether or not or on what basis any Information requested should be disclosed and whether further Information should be provided in order to identify and locate the Information requested, provided that the Authority shall be responsible for determining at its absolute discretion whether the Information in question (including any Commercially Sensitive Information):
- (a) is exempt from disclosure under clause 38.1 in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or
 - (b) is to be disclosed in response to a Request for Information.
- 38.4 Unless required by law, in no event shall the IPS respond directly to a Request for Information received by it unless expressly authorised to do so by the Authority.
- 38.5 Without prejudice to the Authority's liability to the IPS to pay the IPS' costs incurred in connection with providing Information and/or co-operating with the Authority in connection with any Request for Information, where the Authority shall request Information from the IPS pursuant to a Request for Information received by it (whether or not transferred to the Authority by the IPS and/or any Sub-Contractor), the IPS shall, as soon as is reasonably practicable and in any event within five Working Days after receipt of such request, inform the Authority of the IPS' estimated costs of compliance with the request to the extent that these would be recoverable by the Authority under section 12(1) of the FOIA and the Fees Regulations and, where such costs alone or in conjunction with the Authority's own costs in respect of the Request for Information in question, will exceed the appropriate limit referred to in section 12 of the FOIA and as set out in the Fees Regulations (the "**Appropriate Limit**"), the Authority shall inform the IPS in writing as soon as is reasonably practicable whether or not it still requires the IPS to comply with the request for Information in question and the five Working Days for the IPS' compliance shall be extended by a period equal to the number of additional days for compliance as the Authority shall be entitled to under section 10 of the FOIA and the Authority shall notify the IPS of the

length of such period of extension for compliance as soon as reasonably practicable after becoming aware of the same and shall, in any event, reimburse the IPS for all such costs as the IPS shall incur in completing with the request in question upon demand.

38.6 The IPS acknowledges that the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

- (a) in certain circumstances without consulting with the IPS; or
- (b) following consultation with the IPS and having taken its views into account,

provided always that where clause 38.6(b) applies, the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the IPS advance notice of any such disclosure.

38.7 The IPS shall ensure that all Information produced by it from time to time as required under this Agreement or relating to this Agreement is retained for disclosure and, subject to reasonable prior written notice, shall permit the Authority to inspect during normal working hours, such records as requested from time to time.

38.8 The IPS acknowledges that any lists or schedules provided by it outlining Commercially Sensitive Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Commercially Sensitive Information in accordance with clause 38.6.

39. DATA PROTECTION

39.1 The IPS shall (and shall procure that any of the IPS Personnel involved in the provision of the Library Services shall) comply with any notification requirements under the DPA and both parties shall duly observe all their obligations under the DPA, which arise in connection with this Agreement.

39.2 Notwithstanding the general obligation in clause 39.1, where the IPS is processing Personal Data as a Data Processor for the Authority, the IPS shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against

unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

- (a) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the IPS is complying with its obligations under the DPA;
- (b) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to clause 39.2; and
- (c) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the DPA.

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

40. CONFIDENTIALITY

40.1 Subject to clauses 38.1 and 40.2, the parties shall keep confidential all matters relating to this Agreement and shall use all reasonable endeavours to prevent their respective Authorised Representatives from making any disclosure to any person of any matters relating hereto.

40.2 Clause 40.1 shall not apply to any disclosure of information:

- (a) required by any applicable law, provided that clause 38.1 shall apply to any disclosures required under the FOIA or the Environment Information Regulations;
- (b) that is reasonably required by persons engaged by a party (including any Sub-Contractor) in the performance of such party's obligations under this Agreement;
- (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of this clause 40;
- (d) by the Authority of any document to which it is a party and which the parties to this Agreement have agreed contains no Commercially Sensitive Information;
- (e) to enable a determination to be made under clause 32;

- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (g) by the Authority to any other department, office or agency of the Government;
- (h) by the Authority relating to this Agreement and in respect of which the IPS has given its prior written consent to such disclosure; and
- (i) by the IPS relating to this Agreement and in respect of which the Authority has given its prior written consent to such disclosure.

40.3 On or before the Termination Date the IPS shall ensure that all documents and/or computer records in its possession, custody or control which contain confidential personal information belonging to the Authority and relating to the Authority's employees, rate-payers or service users, are delivered up to the Authority or are securely destroyed.

41. AUDIT

41.1 During the Term and for a period of 6 years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes:

- (a) to verify the accuracy of the Contract Sum and the Collection Fees (and proposed or actual variations to them in accordance with this Agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Library Services at the level of detail reasonably required;
- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
- (c) to review the IPS' compliance with the DPA, the FOIA, in accordance with clause 39 (Data Protection) and clause 38 (Freedom of Information) and any other legislation applicable to the Library Services;
- (d) to review any books of account kept by the IPS solely in connection with its provision of the Library Services;
- (e) to carry out the audit and certification of the Authority's accounts;
- (f) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (g) to verify the accuracy and completeness of the Management Reports delivered or required by this Agreement.

- 41.2 Except where an audit is imposed on the Authority by a regulatory body, the Authority may not conduct an audit under this clause 41 more than twice in any Contract Year.
- 41.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the IPS or delay the provision of all or any part of the Library Services. In the event of any delay in and/or disruption to and/or detraction from the provision of all or any of the Library Services as a result of an audit under this clause 41, the parties agree that the IPS shall be deemed not to be in breach for any failure to meet its obligations under the terms of this Agreement.
- 41.4 Subject to the Authority's obligations of confidentiality and the Authority paying to the IPS all costs incurred (including in respect of internal management time) in connection with the same, the IPS shall on reasonable demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;
 - (b) reasonable access to any premises controlled by the IPS and to any equipment used (whether exclusively or non-exclusively) in the performance of the Library Services; and
 - (c) reasonable access to the IPS Personnel to the extent that the IPS is reasonably able to procure the same.
- 41.5 The Authority shall use reasonable endeavours to provide at least 15 Working Days' prior notice of its or, where possible, any regulatory body's, intention to conduct an audit which shall involve the IPS and/or concern any aspect of the Library Services and/or this Agreement (whether under this Agreement or otherwise).
- 41.6 The Authority shall bear its own costs and expenses together with those of the IPS incurred in respect of compliance with their obligations under this clause 41, unless the audit identifies a material failure on the part of the IPS to perform the IPS' obligations under this Agreement in any material manner in which case the IPS shall reimburse the Authority for all of the reasonable and proper costs directly incurred by the Authority for the sole purposes of the audit.

41.7 If an audit carried out pursuant to this clause 41 identifies that:

- (a) the IPS has failed to perform its obligations under this Agreement in any material manner, the parties shall agree and implement a remedial plan. If the IPS' failure relates to a failure to provide any information to the Authority about any Contract Sum, Library Charges and/or Collection Fees, proposed Contract Sum, Library Charges and/or Collection Fees or the IPS' costs required to be disclosed to the Authority under this Agreement, then the remedial plan shall include a requirement for the provision of all such information;
- (b) the Authority has overpaid any Contract Sum and/or Collection Fees, the IPS shall pay to the Authority the amount overpaid within 20 days after the matter and amount in question has been agreed or determined pursuant to the Dispute Resolution Procedure; and
- (c) the Authority has underpaid any Contract Sum and/or Collection Fees, the Authority shall pay to the IPS the amount of the under-payment within 20 days after the matter and amount in question has been agreed or determined pursuant to the Dispute Resolution Procedure.

42. INTELLECTUAL PROPERTY

42.1 The Authority hereby grants to the IPS [(or shall procure the direct grant to the IPS) a free of charge, a non-exclusive, royalty-free irrevocable licence of all the Intellectual Property required by the IPS to perform the Library Services and/or for any Additional Services and observe and perform all of its other obligations under this Agreement during the Term, including the right to grant sub-licences to its Sub-Contractors

42.2 The licences granted pursuant to clauses 14.1 and 42.1 are granted solely to the extent necessary for performing the Library Services and for the provision of any Additional Services in accordance with this Agreement.

42.3 All original Intellectual Property created by the IPS or, to the extent that the terms of the contract or engagement between the IPS and any employee, agent or Sub-Contractor of the IPS permits the same, by any such employee, agent or Sub-Contractor of the IPS:

- (a) in the course of performing the Library Services; and
- (b) exclusively for the purpose of performing the Library Services,

shall vest in the IPS on creation.

- 42.4 The Authority shall indemnify the IPS against any and all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property rights as a result of and/or connected with the provision of the Library Services by the IPS, except to the extent that they have been caused by or contributed to knowingly by the IPS' acts or omissions.
- 42.5 The Authority shall transfer ownership and control of the Domain Names to the IPS with effect from the Commencement Date.
- 42.6 The Authority shall promptly following the Commencement Date execute all documents, papers, forms and authorisations and do whatever else is necessary to perfect the transfer of the Domain Names by registering them in the IPS' name.
- 42.7 The Authority shall bear the costs arising from the transfer of ownership and control and recordal of the Domain Names.

TERMINATION

43. TERMINATION FOR IPS DEFAULT

- 43.1 If the IPS commits a material breach of any of its material obligations under this Agreement, the Authority may terminate this Agreement by giving to the IPS not less than 6 months' prior written notice (such notice to give reasonably full details of the breach in question and any suggested steps to be taken for its remedy), provided that if such breach is capable of remedy (other than as to time for performance), the Authority may only terminate this Agreement under this clause 43.1 if the IPS has failed to remedy such material breach within 28 days after receipt of a notice from the Authority (a "**Remediation Notice**") requiring to do so.

44. TERMINATION BY THE IPS ON 31ST MARCH 2013 AND FOR AUTHORITY DEFAULT

- 44.1 Notwithstanding any other clause in this Agreement, the IPS shall have the right to terminate this Agreement, for whatever reason, on the provision of at least one months' notice to expire at any time on or before 31st March 2013.

- 44.2 If an Authority Default has occurred and the IPS wishes to terminate this Agreement, the IPS must serve a (a **“Termination Notice”**) on the Authority.
- 44.3 The Termination Notice must specify the nature of the Authority Default which has occurred entitling the IPS to terminate this Agreement.
- 44.4 This Agreement will terminate on the day falling thirty (30) Working Days after the date the Authority receives the Termination Notice, unless the Authority rectifies the Authority Default within twenty (20) Business Days after receipt of the Termination Notice in question.

45. TERMINATION FOR IPS

- 45.1 The Authority may terminate this Agreement immediately on notice:
- (a) if a resolution is passed or an order is made for the winding up of the IPS (otherwise than for the purpose of solvent amalgamation or reconstruction) or the IPS becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the IPS' property or equipment;
 - (b) if the IPS ceases or threatens to cease to carry on business in the United Kingdom.

46. TERMINATION FOR FAILURE TO AGREE CONTRACT SUM

- 46.1 Notwithstanding any other provision contained in this Agreement, if the IPS does not accept and agree the amount of the proposed Contract Sum for the immediately following Contract Year as notified to it by the Authority by 30th September in the current Contract Year in accordance with the Budget Process, the IPS shall be entitled to give notice to the Authority to terminate this Agreement.
- 46.2 Any notice to be given by the IPS to the Authority pursuant to clause 46.1 shall be given by it on or before 30th October in the same Contract Year in which the Budget Process in question is being conducted.
- 46.3 If the IPS shall give notice to terminate this Agreement to the Authority pursuant to this clause 46, this Agreement shall terminate on 30th September in the following Contract Year.

- 46.4 During the period commencing on the date of notice given by the IPS pursuant to clause 46.1 and termination of this Agreement on the date provided in clause 46.3, if no Contract Sum for such period shall have been previously agreed by the parties the Contract Sum payable for that period shall be an amount equal to ninety-five per cent (95%) of the Contract Sum payable by the Authority to the IPS in respect of the current Contract Year (calculated pro rata where such period shall be less or greater than 12 months in duration).

47. VOLUNTARY TERMINATION ON NOTICE

- 47.1 Without prejudice to any other provision of this Agreement, either party may terminate this Agreement at any time by not less than 2 years' prior notice to the other party, provided that neither party shall be entitled to give any such notice to the other pursuant to this clause 47 before 1st August 2017.

48. CONSEQUENCES OF TERMINATION

- 48.1 On the date of the expiry or termination of the whole of this Agreement for any reason, the licences granted pursuant to clauses 14.1 and 42.1 and the Leases granted to the IPS pursuant to Schedule 11 shall also terminate on that same date.

- 48.2 On the Termination Date:

- (a) the provisions of the Exit Management Plan shall come into effect and the IPS shall co-operate fully with the Authority (at the cost of the Authority) to ensure an orderly migration of the Library Services to the Authority or, at the Authority's request, a Replacement Service Provider.
- (b) the Authority shall provide the IPS with such access as the IPS shall reasonably require to any of the Authority Premises and/or the Properties to remove any of the IPS equipment located at such Authority Premises and/or Properties and all such equipment shall be promptly removed by the IPS;
- (c) the IPS shall procure that all Authority Assets held at the Termination Date by the IPS (including data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating solely to the Library Services), shall be delivered to the Authority by the IPS by leaving all of such items at the respective Libraries and the IPS' Authorised Representative or General Manager shall certify full compliance with this clause 48.2(c);

- (d) the IPS shall procure that all Assets held at that time by the IPS and required in order to carry out the Library Services in the same manner and to the same standard as carried out by the IPS up to the Termination Date are transferred back to the Authority in consideration of the payment of £1.00. For the avoidance of doubt, any surplus assets owned or used by the IPS on the Termination Date and not required in order to provide the Library Services to the same standard set out in this sub clause, whether or not such assets have been donated to the IPS or otherwise purchased out of, for example, donations, bequests or other non-Authority funding, will remain with the IPS; and
- (e) the Stock shall be returned to the Authority in accordance with clause 15.7.

48.3 The Authority agrees that all costs and expenses incurred by the IPS on the termination of this Agreement shall be paid by the Authority and the Authority hereby indemnifies the IPS against all such costs and expenses arising.

48.4 The provisions of clause 10.5 (provision of records), clause 35 (Indemnities), clause 37 (Insurance), clause 38 (Freedom of Information), clause 39 (Data Protection), clause 41 (Audit), clauses 43 – 47 (inclusive) (Termination for Breach) and this clause 48 (Consequences of termination) shall survive termination or expiry of this Agreement.

49. FORCE MAJEURE

49.1 Subject to the remaining provisions of this clause 49, neither party to this Agreement shall be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such non-performance is due to an event of Force Majeure.

49.2 In the event that either party is delayed or prevented from performing its obligations under this Agreement by an event of Force Majeure, such party shall:

- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;

- (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
- (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

49.3 A party cannot claim relief if the event of Force Majeure is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the event of Force Majeure in question.

49.4 As soon as practicable following the affected party's notification of the occurrence of an event of Force Majeure, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the event of Force Majeure and to facilitate the continued performance of this Agreement. Where the IPS is the affected party, it shall take and/or procure the taking of all reasonable steps to overcome or minimise the consequences of the event of Force Majeure.

49.5 The affected party shall notify the other party as soon as practicable after the event of Force Majeure ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the event of Force Majeure in question unless agreed otherwise by the parties.

49.6 Where an event of Force Majeure shall continue or its consequence remains such that the affected party is unable to comply with its obligations under this Agreement for a period of more than sixty (60) Working Days, then the unaffected party may terminate this Agreement by giving not less than twenty (20) Working Days' written notice to the other affected party.

50. PREVENTION OF BRIBERY

50.1 The IPS:

- (a) shall not, and shall procure that any IPS Party and all IPS Personnel shall not, in connection with this Agreement commit a Prohibited Act;
- (b) warrants that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full

details have been disclosed in writing to the Authority before execution of this Agreement.

- 50.2 The IPS shall, if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act.
- 50.3 The IPS shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any IPS Party or IPS Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 50.4 If any breach of clause 50.1 is suspected or known, the IPS must notify the Authority immediately.
- 50.5 If the IPS notifies the Authority that it suspects or knows that there may be a breach of clause 50.1, the IPS must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation. This obligation shall continue for 3 years following the expiry or termination of this Agreement.
- 50.6 Subject to clause 50.10, the Authority may terminate this Agreement by written notice with immediate effect if the IPS, IPS Party or IPS Personnel (in all cases whether or not acting with the IPS' knowledge) breaches clause 50.1. In determining whether to exercise the right of termination under this clause 50.6, the Authority shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the IPS or a senior officer of the IPS or by an employee, Sub-Contractor or supplier not acting independently of the IPS. The expression "not acting independently of" (when used in relation to the IPS or a Sub-Contractor) means and shall be construed as acting:
- (a) with the authority; or,
 - (b) with the actual knowledge,
- of any one or more of the directors of the IPS or the Sub-Contractor (as the case may be); or
- (c) in circumstances where any one or more of the directors of the IPS ought reasonably to have had knowledge.
- 50.7 Any notice of termination under clause 50.6 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
- (c) the date on which this Agreement will terminate.

50.8 Despite clause 32 (Dispute Resolution), any dispute relating to:

- (a) the interpretation of clause 50; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by the Authority (acting reasonably) and its decision shall be final and conclusive.

50.9 Any termination under clause 50.6 will be without prejudice to any right or remedy which has already accrued or, as a direct result of such termination, accrues to the Authority.

50.10 The parties agree that the Authority shall have no right to terminate this Agreement under clause 50.6 where the employment or engagement of an employee or officer or other engaged person of the IPS (including but not limited to any Sub-Contractors), an IPS Party or the IPS Personnel is terminated by the IPS.

GENERAL PROVISIONS

51. NON-SOLICITATION

51.1 Neither party shall (except with the prior written consent of the other) during the term of this Agreement, solicit the services of any senior staff of the other party who have been engaged in the provision of the Library Services or the management of this Agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

51.2 The Authority agrees that during the Term of this Agreement it shall only engage the services of the IPS to provide its "Schools Library Service" (including the supply of books and advisory services) and services to prison libraries within Suffolk and will not seek to obtain from a third party or provide itself the provision of all or any aspects of these services.

52. WAIVER

- 52.1 No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

53. CUMULATION OF REMEDIES

- 53.1 Subject to the specific limitations set out in this Agreement, no remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy except as expressly provided for in this Agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

54. SEVERABILITY

- 54.1 If any of the provisions of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

55. PARTNERSHIP OR AGENCY

- 55.1 Nothing in this Agreement shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this Agreement.

56. THIRD PARTY RIGHTS

- 56.1 Subject to clause 56.2, no term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Agreement.
- 56.2 A Transferring Employee shall be entitled to enforce the provisions of clause 6 and Schedules 9 and 14.

57. PUBLICITY

- 57.1 Neither party shall make any press announcements or publicise the financial or other obligations under this Agreement or its contents in any way without the prior written consent of other party (which shall not be

unreasonably withheld or delayed) and only in the form of a statement agreed in writing between the parties.

- 57.2 Each party shall ensure all its publicity and publicly available correspondence relating to the Library Services shall prominently acknowledge the Authority as the primary funder of the Library Services in such terms as shall be previously agreed by the parties (acting reasonably).

58. NOTICES

- 58.1 Any notice to be given under or pursuant to this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice or communication as set out below:

- (a) the IPS: Alison Wheeler, General Manager, County Library, Northgate Street, Ipswich, Suffolk, IP1 3DE; and
- (b) the Authority: Stephen Taylor, Commissioner of Libraries, Endeavour House, Russell Road, Ipswich, Suffolk, IP1 2BX.

or as otherwise specified by the relevant party by notice in writing to each other party.

- 58.2 Notices shall be sent by first-class mail. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting.

59. ENTIRE AGREEMENT

- 59.1 This Agreement, the Schedules and the documents annexed to it or otherwise referred to in it (including the Leases) contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

60. COUNTERPARTS

- 60.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement.

61. LOCAL GOVERNMENT (CONTRACTS) ACT 1997

- 61.1 The Certification Requirements are intended to be satisfied by the Authority with respect to this Agreement before the end of the period relating to each agreement within which the Certification Requirements must be satisfied for the agreement to be a certified contract for the purposes of the Local Government (Contracts) Act 1997.
- 61.2 The IPS hereby consents to the issue by the Authority of certificates under Section 3 of the Local Government (Contracts) Act 1997 in respect of this Agreement and such certificate shall be issued by the Authority and delivered to IPS on execution of this Agreement.

62. FURTHER ASSURANCE

- 62.1 Notwithstanding any other provision contained within this Agreement, the Authority will itself, and will procure that any necessary third parties will provide and/or make available to the IPS, without limitation;-
- (a) any further assets, stock, IT equipment and IT software;
 - (b) any additional services; and
 - (c) any additional funding;

which may be required in order for the IPS to perform the Library Services in accordance with its obligations under the terms of this Agreement.

- 62.2 The Authority will itself, and will procure that any necessary third parties will execute and deliver such documents, obtain consents and perform such acts in order to give effect to its obligations under clause 62.1 above. This will be undertaken at the sole cost and expense of the Authority.

63. GOVERNING LAW AND JURISDICTION

- 63.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.
- 63.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.

This Agreement has been entered into on the date stated at the beginning of it.

The Common Seal of SUFFOLK
COUNTY COUNCIL was hereby
affixed in the presence of

.....

duly authorised to witness the
affixing of the Common Seal

.....

Duly authorised Officer

Signed by
for and on behalf of SUFFOLK'S
LIBRARIES INDUSTRIAL AND
PROVIDENT SOCIETY

.....

Director