

**SCHEDULE 4**  
**CALL-OFF TERMS AND CONDITIONS**  
**LOT 3**

**Call-Off Terms and Conditions**  
**For**  
**The Provision of Personal Independence Payment (PIP) Assessment Services**  
**LOT 3**

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## A. GENERAL PROVISIONS

### A1 Definitions and Interpretation

A1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

**"Acceptable/Unacceptable Criteria"** means the quality audit methods and criteria set out in sections 4.4 and 4.5 of the PIP Assessment Guide dated (1 May 2016 which the Parties agree will be used to determine if assessment reports are of 'acceptable' (including 'acceptable HP learning required' and 'acceptable report amendment required') or 'unacceptable' quality for the purposes of this Contract.

**"Actual Chargeable Clearances"** means the number of Chargeable Clearances which are Cleared by the Provider during the Extension Period.

**"Affiliate"** means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and "holding company" and "subsidiary" shall have the meaning given to them in section 1159 of the Companies Act 2006.

**"Agreed Tolerance"** means [REDACTED]. For the purposes of the calculations associated with No Pay Amounts in paragraph 5A of Appendix 4 (Prices and Rates), the Agreed Tolerance value is [REDACTED].

**"Annex"** means an annex attached to an Appendix, which is attached to, and forming part of, the Contract.

**"Appendix"** means an appendix attached to, and forming part of, the Contract.

**"Approval"** means the prior written consent of the Authority.

**"Assessment Period"** means a rolling period of three (3) consecutive Months.

**"Audit Agents"** means any or all of the following (but shall exclude any party who is a direct competitor to the Provider):

- a) the Authority's internal, external or statutory auditors;
- b) HM Treasury and/or the Cabinet Office;
- c) any person formally appointed by the Authority to carry out an audit; and
- d) successors or assignees of any of the above.

**"Authority"** means Department for Work and Pensions ("DWP") or other Contracting Body making a Call off under the Framework Agreement.

**“Authority Data”** means

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

**“Authority ICT System”** means the Authority’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Provider in connection with the Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Provider ICT System or which is necessary for the Authority to receive the Services.

**“Authority’s Premises”** means the Authority’s premises where the Services are to be supplied as set out in the Order Form and/or the Call-off Terms and Conditions.

**“Authority Software”** means software which is owned by or licensed to the Authority, including software which is, or will be used by the Provider for the purpose of providing the Services but excluding the Provider Software.

**"Average Actual Clearance Time" or "AACT"** means the average length of time that a 'Normal Rules' assessment referral cleared in any Month takes to be cleared. The AACT is calculated using the following formula:

$$\text{AACT} = \text{WDC}/\text{TNR}$$

Where:

WDC = the cumulative total number of Working Days taken to clear all Normal Rules Referrals which are Chargeable Clearances (regardless of when the Referral resulting in the Chargeable Clearance was made to the Provider) which have been cleared during the Month;

TNR = the total number of Normal Rules Referrals which are Chargeable Clearances (regardless of when the Referral resulting in the Chargeable Clearance was made to the Provider) which have been cleared during the Month.

**“Average Actual Outstanding Time”** means a monthly snapshot (which is the position at one point in time) of the average length of time that non-cleared business activities have been outstanding.

**"Baseline Cost Model"** shall be as defined in paragraph 3.2D.2 of Appendix 12.

**“Breach of Security”** means the occurrence of unauthorised access to or use of the Premises, the Services, the Provider ICT System or data (including the Authority’s Data) used by the Authority or the Provider in connection with this Contract.

**“Bribery Act 2010”** means 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 the legislation.

**“Business Continuity Plan”** means any plan prepared pursuant to clause H5.6, as may be amended from time to time.

**“Cabinet Office Statement”** means the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector issued in January 2000 and revised in November 2007 (including the annex to that Statement entitled “A Fair Deal for Staff Pensions” together with HM Treasury’s note issued in June 2004 entitled “A Fair Deal for Staff Pensions: procurement of bulk transfer agreements and related issues”) as any of the same may be amended from time to time.

**“Call-Off Terms and Conditions”** means the terms and conditions in schedule 4 of the Framework Agreement and any changes detailed in the Order form set out in Schedule 3 of the Framework Agreement.

**"Catastrophic Event"** means a catastrophic event which has a direct and significant impact on service delivery for a sustained period of time with no reasonable prospect of recovery within four (4) Months of the event occurring, but excluding any event of circumstance which:

- (a) is foreseeable (or ought reasonably to be foreseeable) as at the Second Variation Effective Date, including for the avoidance of doubt, volume fluctuations and the exercise by the Authority of any rights under the Contract;
- (b) arises as a result of the Provider failing to comply with its obligations under this Contract, including for the avoidance of doubt, the Business Continuity Plan;
- (c) is within the reasonable control of the Provider or any Sub-contractor;
- (d) is wholly or partly attributable to an act or failure to take preventative action by the Provider or any Sub-contractor; and
- (e) is an event of Force Majeure, which shall, for the avoidance of doubt, be dealt with in accordance with clause H7.

**"Central Government Body"** a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency.

**"Chargeable Clearance"** means a Normal Rules assessment referral which is Cleared in any Month and results in a Chargeable Output.

**"Chargeable Clearance Commitment"** has the meaning given to it in paragraph 2 of Annex 1 of Appendix 4.

**"Chargeable Output"** comprises the delivery of reports relating to Paper Based Review Outputs and Consultation Assessment Outputs.

**"Clear"** shall mean the conclusion of a Referral and return to the Authority of output of a Referral in accordance with the Specification (either by way of Chargeable Output or otherwise) and **"Cleared"** shall be construed accordingly.

**"Collaboration Principles"** means the principles for collaboration between the Provider, the Authority and any Replacement Provider(s) as detailed in Annex 2 to Appendix 12.

**"Combined Referral Volume Threshold"** means the total volume for the remaining Contract Period for both this Contract aggregated with the Lot 3 Agreement as set out in the Operational Forecasts in each of this Contract and the Lot 3 Agreement applicable at the proposed commencement of the First Transition.

**"Commencement Date"** means the date the Parties enter into the Contract.

**"Commercially Sensitive Information"** means the Information (i) listed in the Commercially Sensitive Information Appendix; or (ii) notified to the Authority in writing (prior to the commencement of this Contract) which has been clearly marked as Commercially Sensitive Information comprised of information:

- a) which is provided by the Provider to the Authority in confidence for the period set out in that Appendix or notification; and/or
- b) which constitutes a trade secret.

**"Commercially Sensitive Information Appendix"** means the Appendix containing a list of the Commercially Sensitive Information.

**"Confidential Information" means:**

- a) any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored) including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Provider, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential; and
- b) the Commercially Sensitive Information and does not include any information:
  - i) which was public knowledge at the time of disclosure (otherwise than by breach of clause E4 (Confidential Information));

- ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- iv) is independently developed without access to the Confidential Information.

**“Consultation Assessment Output”** means the production of the assessment report which results from the consultation assessment end to end process.

**“Contract”** means the legally binding agreement for the provision of Services made between the Authority and the Provider comprising an Order Form, the Call-Off Terms and Conditions, Specification, and any other documents expressly incorporated by the Order Form, and any variations entered into from time to time between the parties in respect of this Contract (including at the Variation Date, those amendments, variations and supplements referenced in Annex B to Appendix 1 of this Contract);

**“Contracting Authority”** shall include any ‘contracting authority’ within the meaning of regulation 2 of the Public Contracts Regulations 2015, as may be amended from time to time.

**“Contracting Body”** means the Department for Work and Pensions and any other contracting body described in the OJEU Notice Number Service Contract; 25522 - 2012 (2012/s 16-025522)

**“Contract Period”** means the period from the Commencement Date to 31 July 2021 or such earlier date of termination or partial termination of the Contract in accordance with Law or the provisions of the Contract;.

**“Contract Price”** means the price (exclusive of any applicable VAT), payable to the Provider by the Authority under the Contract, as set out in Appendix 4 (Prices & Rates), for the full and proper performance by the Provider of its obligations under the Contract.

**“Cost Model”** means the cost model which at the Variation Date is as set out at Annex 3 to Appendix 12 which shall be updated further to Appendix 12 of this Contract.

**“Costs”** means costs during the relevant Profit Share Period which are incurred by the Provider in delivering the Services, as reported in the Financial Model and such reporting to be consistent with the Provider's internal financial reporting.

**“Crown”** means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and The Welsh Assembly Government), including, but not limited to, government ministers, government departments, government and particular bodies, and government agencies.

**“Data Controller”** shall have the same meaning as given in the Data Protection Legislation.

**“Data Loss Event”** any event that results, or may result, in unauthorised access to Personal Data and Special Categories of Personal Data held by the Provider under this Contract and/or actual or potential loss and/or alteration and/or destruction of Personal Data and Special Categories of Personal Data in breach of this Contract, including any Personal Data Breach.

**“Data Processing”** shall have the same meaning as given in the Data Protection Legislation.

**“Data Processor”** shall have the same meaning as given in the Data Protection Legislation.

**“Data Protection Impact Assessment”** means an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data and Special Categories of Personal Data.

**“Data Protection Legislation”** means the GDPR, the LED and any applicable national implementing Laws as amended from time to time, the DPA, the Criminal Law Enforcement Data Protection Directive 2016/680, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable Law relating to the processing of Personal Data and Special Categories of Personal Data.

**“Data Protection Officer”** shall have the same meaning as given in Data Protection Legislation.

**“Data Subject”** shall have the same meaning as given in Data Protection Legislation.

**“Data Subject Access Requests”** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data and Special Categories of Personal Data.

**“Default”** means any breach of the obligations, or any default or negligence of a Party, its employees, agents or sub-contractors in connection with or in relation to the subject-matter of the Contract.

**“Detailed Transition Requirements”** means the requirements for Transition, exit and Future Operating Model issued by the Authority in accordance with paragraph 3.2B of Appendix 12.

**“DPA”** means the Data Protection Act 2018 and any subordinate legislation made under such 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.

**“DWP Offshoring Policy”** means the Authority’s policy and procedures as advised to the Provider by the Authority from time to time.

**“Emergency”** means an event causing or, in the reasonable opinion of a Party, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment, in each case on a scale beyond the capacity of the emergency services or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services.”

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

**“Equipment”** means the Provider’s equipment, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under the Contract.

**“Estate Lease(s)”** shall be as defined in clause H4B.2.

**“Exit and Service Transfer Arrangements”** means the arrangements set out in Appendix 12 which shall apply in the event of the expiry or termination (howsoever arising) of the Contract or upon the issuance of a Transition Notice by the Authority in accordance with Appendix 12 (paragraph 3A.1).

**“Extension Period”** means the period commencing on 1 August 2019 and ending on the expiry of the Contract Period.

**“February 2018 Side Agreement”** means the side agreement entered into in February 2018 relating to changes to the fixed unit price payments, payment of outstanding Service Credits and No Pay Amounts owed to DWP and a temporary discount to the fixed unit price payments.

**“Financial Model”** means the Financial Model projecting the Contract Price in relation to the provision of Services prepared by the Provider as at the Commencement Date and updated in accordance with paragraph 1 of Part C (Financial Model, Transparency and Audit) of Appendix 4 (Prices and Rates).

**“First Transition”** means the transition of Services from the Provider to one or more Replacement Providers and/or the Authority as further described at paragraph 3A.1.1 of Appendix 12.

**“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under this 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”** means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- a) any industrial action occurring within the Provider's or any Sub-contractor's organisation; or
- b) the failure by any Sub-contractor to perform its obligations under any sub-contract.

**"Framework Agreement"** means the agreement which governs the relationship between the DWP and the Provider in respect of the provision, through the application of these Call-Off Terms and Conditions and the Ordering Procedures, of the Services by the Provider to the Authority and to other Contracting Bodies"

**"Further Medical Evidence Report"** means reports that are produced by organisations external to the Provider which provide further medical evidence in respect of a Participant.

**"Future Operating Model"** means the proposed operating model for the provision of services similar to the Services following Transition and expiry or termination of this Contract by one or more Replacement Provider(s) and/or the Authority (which may include, without limitation, items such as the proposed IT environment for such service delivery).

**"GDPR"** means the General Data Protection Regulation (*Regulation (EU) 2016/679*).

**"Good Industry Practice"** means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

**"Government Apprenticeship Programme"** means training which is funded by the Government via the National Apprenticeship Service.

**"Grade C Report"** has the meaning set out in sections 4.4 and 4.5 of the PIP Assessment Guide dated 28 July 2015.

**"Guarantee"** means the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of this Contract (which is substantially in the form set out in the Appendix (Parent Company Guarantee) or such similar or analogous form acceptable to the Authority from time to time).

**"Guarantor"** is the organisation which signs the parent company Guarantee issued with the Order Form at call off.

**"Head of Work Threshold"** means 27,000 Referrals made to the Provider and not yet Cleared by the Provider at the beginning of a Month.

**"HoT"** the binding heads of terms entered into by the Authority, the Provider and Atos SE dated 8 August 2014.

**"ICT"** means information and communications technology.

**“ICT Environment”** means the Authority ICT System and the Provider ICT System.

**“Incumbent Provider”** means any provider (including for the avoidance of doubt, the Authority) providing any service that constitutes or that will constitute part or all of the Services immediately before the Commencement Date.

**“Information”** has the meaning given under section 84 of the FOIA.

**“Information Commissioner”** shall have the same meaning as given in Data Protection Legislation.

**“Information Commissioner’s Office”** is an executive non-departmental public body, sponsored by the Department for Digital, Culture, Media and Sport and any successor body as may be appointed.

**“Initial Contract Period”** means the period from the Commencement Date to the date of expiry set out in the Order Form, or such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of clause A2 of the Contract.

**“Intellectual Property Rights”** means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

**“Key Personnel”** means those persons named in the Specification as being Key Personnel.

**“Lancaster Model”** means the model known as such which was developed by the Authority together with the associated instructions (document reference: Lancaster Clarification final, dated 15 April 2016) and which the Parties agree will be used to identify sample size and selection in connection with audits carried out by the Provider under this Contract.

**“Landed Resources”** means when the Provider or any Sub-contractor causes foreign nationals to be brought to the United Kingdom, to provide the Services.

**“Last Validated SC1 Period”** means the last Assessment Period of the Contract Period which the Authority has validated or confirmed in writing that it does not wish to exercise its right to conduct an audit or validation under paragraph 5A.7 of Appendix 4 (Prices and Rates).

**“Latest Forecast”** means the latest updated forecast of volume of Referrals provided by the Authority, which will set out the volume of Referrals the Authority expects to make to the Provider for the duration of the Contract in respect of each Month.

**“Law”** means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code,

judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Provider is bound to comply.

**“Loss”** means direct losses, liabilities, claims, damages, costs, charges, outgoings and expenses (including legal expenses) of every description, provided in each case that such losses are reasonable, direct, and proper and mitigated.

**“Lot”** lot 1, covered by PIP Contract Ref No UI\_DWP\_100429, or lot 3, covered by PIP Contract Ref No UI\_WP\_100431.

**“Lot 1 Agreement”** means the agreement entered into between the parties on 24 July 2012 for the provision of services similar to the Services marked as Lot 1.

**“Lot 2 Provider”** means the person, firm or company with whom the Authority enters into a contract with for the provision of personal independence payment assessment services under Lot 2 (Central England and Wales) of the Health and Disability Assessment Services Framework (UI\_DWP\_100255).

**“Malicious Software”** means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

**“Merlin Standard”** means the DWP standard and accreditation process in respect of supply chain management as detailed in the Specification.

**“Monitoring Requirements”** means Appendix 3 which contains details of the monitoring arrangements.

**“Month”** means calendar Month.

**“New PCG”** means a guarantee to be entered into by the Guarantor in accordance with Clause G5.

**“No Pay Amount”** means the amount calculated and applied in accordance with paragraphs 5A.2 or 5A.3 subject to the remaining provisions of paragraph 5A of Appendix 4 (Prices and Rates).

**“Normal Rules”** means any Referral made to the Provider by the Authority which requires either a Paper Based Review Output or a Consultation Assessment Output to be completed, with the exclusion of cases referred under Special Rule Terminally Ill (SRTI) (as the same is defined in the PIP Assessment Guide), advice cases and rework cases.

**“OJEU Notice”** means the contract notice published in the Official Journal of the European Union by the DWP under reference number Service Contract 25522 - 2012 (2012/s 16-025522) in respect of the Framework Agreement.

**“Operative Clearance Profile”** shall mean the clearance profile agreed between the Authority and the Provider under clause F 5.2A.

**"Operative Forecast"** means the operative forecast of the volume of Referrals provided by the Authority as referred to in clauses C1 and F5.2 where a Latest Forecast (subject to any changes to correct manifest errors) shall become the Operative Forecast on a date falling exactly 6 (six) full Months after the date of such Latest Forecast whereby the Operative Forecast shall remain in force regardless of any changes made to correct manifest error.

**"Order"** means an order for Services served by the Contracting Body on the Provider in accordance with the Ordering Procedures.

**"Order Form"** means a document setting out details of an Order in the form set out in Schedule 3 of the Framework Agreement.

**"Ordering Procedures"** means the ordering and award procedures specified in clause 7 of the Framework Agreement.

**"Original Public Sector Employee"** means a former employee of the Crown or other public sector body who as a result of the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 or of the TUPE Regulations, in relation to what was done for the purposes of carrying out a contract for the provision of services which were the equivalent of or similar to the Services, becomes or became an employee of someone other than the Crown or other public sector body.

**"Outstanding Referrals"** shall mean any case referred to the Provider which has not been Cleared.

**"Over-Referral Period"** means a rolling continuous period of three (3) consecutive Months during which the average number of Referrals made by the Authority is more than 110% of the average number of Referrals forecast for that period, based on the Operative Forecast applicable at the start of the relevant period. Provided that Over-Referrals which are made by the Authority due to the occurrence of an event of Force Majeure shall not be included in the calculation of an Over-Referral Period.

**"Paper Based Review Output"** means the production of the assessment report which results from the paper based review end to end process.

**"Participant"** means the person(s) directly receiving the Services provided by the Provider as specified in the Order Form.

**"Participant's records"** means the records prepared and maintained by the Provider (in whatever form or storage media) concerning an individual Participant.

**"Party"** means a party to the Contract.

**"Persistent Breach"** means a Default which has occurred on three or more separate occasions within a continuous period of six (6) months.

**"Personal Data"** shall have the same meaning as given in the Data Protection Legislation.

**“Personal Data Breach”** shall have the same meaning as given in Data Protection Legislation.

**“PIP Assessment Guide”** means guidance for healthcare professionals carrying out assessment activity and for those responsible for putting in place and delivering processes to ensure the quality of assessments. Current version of the PIP Assessment Guide, as updated and amended from time to time via the formal change control process. The PIP Assessment Guide can be found here: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/210722/pip-assessment-guide.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210722/pip-assessment-guide.pdf)

**“PIP Contracts”** means the contracts (each, individually, a **“PIP Contract”**) in respect of:

- a) the Personal Independence Payment Assessment Service Lot 1 (Contract Ref No UI\_DWP\_100429) between the Authority and the Provider dated 31 July 2012; and
- b) the Personal Independence Payment Assessment Service Lot 3 (Contract Ref No UI\_DWP\_100431) between the Authority and the Provider dated 31 July 2012

**“Pre-Existing Intellectual Property Rights”** means any Intellectual Property Rights vested in or licensed to (a) the Provider prior to or independently of the performance by the Provider of its obligations under the Contract; and (b) the Authority prior to or independently of the performance by the Authority of its obligations under the Contract.

**“Premises”** means the location where the Services are to be supplied as set out in the Order Form and/or the Call-off Terms and Conditions

**“Prices & Rates Appendix”** means Appendix 4 which contains details of the Contract Price.

**“Professional Day”** means for any of the Provider’s Staff, 7.5 hours of labour.

**“Profile Chargeable Clearances”** means the Chargeable Clearances forecast in any Month under the Operative Clearance Profile.

**“Profit”** means the difference between the Contract Price (on an accrual accounting basis and prior to any adjustments) for the relevant Profit Share Period and total Costs (on an accrual accounting basis) for such Profit Share Period, as reported in the Provider's own internal financial management accounts and recorded in the Financial Model agreed under paragraph 1.1 of Part D (Profit Share) of Appendix 4 (Prices and Rates).

**“Profit Margin”** means the Profit for the relevant Profit Share Period divided by the Contract Price (on an accrual accounting basis and prior to any adjustments) for such Profit Share Period and expressed as a percentage.

**“Profit Share Period”** means the Profit Share Period 1, Profit Share Period 2, Profit Share Period 3 and/or Profit Share Period 4 (as applicable).

**"Profit Share Period 1"** means the period commencing on and from 1 October 2015 up to and including 31 July 2017 or the last day of the Contract Period in the event of earlier termination.

**"Profit Share Period 2"** means the period commencing on and from 1 August 2017 up to and including 31 July 2018 or the last day of the Contract Period in the event of earlier termination.

**"Profit Share Period 3"** means the period commencing on and from 1 August 2018 up to and including 31 July 2019 or the last day of the Contract Period in the event of earlier termination.

**"Profit Share Period 4"** means the period commencing on and from 1 August 2019 up to and including the last day of the Contract Period.

**"Property"** means the property, other than real property, issued or made available to the Provider by the Authority in connection with the Contract.

**"Proposed Clearance Profile"** means a proposed forecast submitted by the Provider of all Referrals expected to be Cleared (including but not limited to Chargeable Clearances) in respect of any Month to be agreed by the Authority and the Provider in the format set out at Annex 2 to Appendix 14.

**"Protective Measures"** means appropriate technical and organisational measures which shall be sufficient to secure that the Data Processor will meet the requirements of GDPR and ensure the protection rights of the Data Subject and may include (without limitation):

- (i) Pseudonymisation and encrypting Personal Data and Special Categories of Personal Data;
- (ii) ensuring on-going confidentiality, integrity, availability and resilience of systems and services used for data processing;
- (iii) measures to restore the availability and access to Personal Data and Special Categories of Personal Data in a timely manner in the event of a physical or technical incident;
- (iv) ensuring that availability of and access to Personal Data and Special Categories of Personal Data can be restored in a timely manner after an incident; and
- (v) regularly assessing and evaluating the effectiveness of such measures adopted by it.

**"Provider"** means the person, firm or company with whom the Authority enters into the Contract.

**"Provider ICT System"** means the information and communications technology system used by the Provider in performing the Services, excluding any such system as forms part of the Authority ICT System.

**"Provider Initiated Variation"** has the meaning given to it in clause F3A (Provider Initiated Variations).

**“Provider Software”** means software which is proprietary to the Provider, including software which is or will be used by the Provider for the purposes of providing the Services, but excluding the Authority Software.

**“Pseudonymisation”** shall have the same meaning as given in Data Protection Legislation.

**“Quality Standards”** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.

**“Quarter”** means one of the four periods running from 1 June to 31 August, 1 September to 30 November, 1 December to 28 February, 1 March to 31 May and “Quarterly” should be construed accordingly.

**“Rate Card”** means the rates set out in Annex 2 (Rate Card) of Appendix 4 (Prices and Rates).

**“Rate Card Resource”** means a resource as included in the Rate Card.

**“Referral”** means the referral of a case to the Provider in accordance with paragraph 8 (Referrals) of the Specification.

**“Regulatory Bodies”** means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority and “Regulatory Body” shall be construed accordingly.

**“Relevant Convictions”** means a conviction that is relevant to the nature of the Services (or as listed by the Authority and/or relevant to the work of the Authority).

**“Relevant Employees”** means the employees who are the subject of a Relevant Transfer.

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

**“Replacement Provider”** means any third party service provider (including any public sector body) appointed by the Authority to supply any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services or Central Government Body who takes responsibility for the provision of any services which are substantially similar to any of the Services, in either case following any Transition or the expiry, termination or partial termination of the Contract;

**“Request for Information”** shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

**"Retention Amount"** means the amount calculated and applied in accordance with paragraph 5A.10 subject to the remaining provisions of paragraph 5A of Appendix 4 (Prices and Rates).

**“Returning Employees”** means those employees wholly or mainly engaged in the provision of the Services immediately before the expiry or earlier termination of this Contract whose employment transfers to the Authority and/or (as appropriate) a Replacement Provider pursuant to the TUPE Regulations.

**"Risk"** means a risk identified in the Cost Model.

**"Risk Impact Value"** means the risk impact value for a Risk as identified in the Cost Model.

**"Risk Report"** shall be as defined and agreed between the parties in paragraph 3.2.19 of Appendix 12.

**"SC1 TP Tolerance"** means:

- (a) for SC1 Transition Q1, five percent (5%). For the purposes of the calculations associated with No Pay Amounts in paragraph 5A of Appendix 4 (Prices and Rates), the SC1 TP Tolerance value for SC1 Transition Q1 is 0.05;
- (b) for SC1 Transition Q2, three and a half percent (3.5%). For the purposes of the calculations associated with No Pay Amounts in paragraph 5A of Appendix 4 (Prices and Rates), the SC1 TP Tolerance value for SC1 Transition Q2 is 0.035;
- (c) for SC1 Transition Q3, three percent (3%). For the purposes of the calculations associated with No Pay Amounts in paragraph 5A of Appendix 4 (Prices and Rates), the SC1 TP Tolerance value for SC1 Transition Q3 is 0.03.

**"SC1 Transition Period"** means the period commencing from and including 1 March 2016 up to and including 30 November 2016.

**“SC1 Transition Q1”** means the Assessment Period from and including 1 March 2016 up to and including 31 May 2016.

**“SC1 Transition Q2”** means the Assessment Period from and including 1 June 2016 up to and including 31 August 2016.

**“SC1 Transition Q3”** means the Assessment Period from and including 1 September 2016 up to and including 30 November 2016.

**"Second Transition"** means the transition of Services from the Provider to one or more Replacement Providers and/or the Authority as further described at paragraph 3A.1.2 of Appendix 12.

**"Second Variation Effective Date"** means 1 April 2016.

**"Second Variations"** means the following:

- (a) deed of variation between the Parties and Atos SE in respect of the PIP Contract for Lot 1 (Contract Ref: UI\_DWP\_100429, Variation Number: PIPCV AL1 27); and/or
- (b) deed of variation between the Parties and Atos SE in respect of the PIP Contract for Lot 3 (Contract Ref: UI\_DWP\_100431, Variation Number: PIPCV AL3 22).

**"Security Plan"** means the Provider's security plan prepared pursuant to paragraph 3 of Appendix 6 (Security Requirements & Plan)]

**"Security Policy"** means the Authority's Security Policy annexed to the Appendix (Security Requirements and Plan) as updated from time to time.

**"Security Tests"** means conduct tests of the processes and countermeasures contained in the Security Plan

**"Services"** means the services to be supplied as specified in the Specification.

**"Service Credits"** means the sums payable by the Provider as credits against sums owing to the Provider by the Authority in accordance with clause F5.2 and Appendix 14 and Service Credit shall be construed accordingly.

**"Service Credit Let(s)"** means a relief (in whole or in part) calculated in accordance with clauses F5.2B and F5.2C of any Service Credits which would otherwise be payable by the Provider to the Authority in respect of a failure by the Provider to meet Service Levels SC4(a) and/or SC4(b).

**"Service Credit Let Period"** means a three (3) Month period commencing on the first day of the Month immediately following the end of the Over-Referral Period (so that, by way of illustration: if the Over-Referral Period is January to March, the Service Credit Let Period shall be the three (3) month period beginning on 1 April and ending on 30 June).

**"Service Levels"** means those performance levels for the Services that are set out in Appendix 14 and Service Level shall be construed accordingly

**"Service Termination Thresholds"** means the thresholds set out in Annex 1 of Appendix 14 which, if reached, by the Provider in its performance of the Services trigger the Authority's right of termination under clause H2.4

**"Service Transfer Plan (STP)"** means the plan produced in accordance with paragraph 3 of Appendix 12 by the Provider to be agreed by the Authority to facilitate any transfer of the Services (or any part of the Services), for whatever reason, from the Provider or any Sub-Contractor to the Authority or to a Replacement Provider.

"**Side Letter**" the legally binding side letter sent by the Authority to the Provider dated 13 November 2014 to amend the HoT, as extended by a side letter dated 30 December 2014.

"**Special Categories of Personal Data**" shall have the meaning given in Data Protection Legislation

"**Specification**" means the description and requirements of the Services to be supplied under the Contract. (The Specification is referred to in the Order Form [and in Appendix 1 (The Services) and its annexes]).

"**Staff**" mean all persons employed by the Provider to perform its obligations under the Contract together with the Provider's servants, agents, suppliers Sub-processors and Sub-contractors used in the performance of its obligations under the Contract.

"**Staff Vetting Procedure**" means the Authority's procedures for the vetting of personnel and as advised to the Provider by the Authority.

"**Sub-contractor**" means any third party appointed by the Provider under clause F1.1 which through its employees or agents directly delivers the Services.

"**Sub-processor**" means any third party appointed to process Personal Data and Special Categories of Personal Data on behalf of the Provider under this Contract.

"**Target Chargeable Clearances**" [REDACTED].

"**Target Chargeable Clearance Credit**" has the meaning given to it in paragraph 2.2 of Annex 1 of Appendix 4.

"**Target Chargeable Clearance Discount**" means the deduction referred to and calculated in accordance with paragraph 1 of Annex 1 of Appendix 4.

"**Tender**" means the document(s) submitted by the Provider to the Authority in response to the Authority's invitation to suppliers for formal offers to supply it with the Services. (The Tender is referred to in the Order Form).

"**Third Party Confidentiality**" means any contractually binding constraints upon the Provider in respect of disclosing third party confidential information, save that the Provider undertakes to seek the consent of such third parties to disclose such confidential information for the purpose of the audit requirements in Part C (Financial Model, Transparency and Audit) of Appendix 4 (Prices and Rates).

"**Third Party Software**" means software which is proprietary to any third party (other than an Affiliate of the Provider) which is or will be used by the Provider for the purposes of providing the Services.

"**Threshold Profit Margin**" means:

- (a) [REDACTED] per cent ([REDACTED]%) for Profit Share Period 1;
- (b) [REDACTED] per cent ([REDACTED]%) for Profit Share Period 2;

- (c) [REDACTED] per cent ([REDACTED]%) for Profit Share Period 3; and
- (d) [REDACTED] per cent ([REDACTED]%) for Profit Share Period 4.

**"Time and Material Prices"** shall have the meaning set out in paragraph 6.4 of Part A of Appendix 4 (Prices and Rates).

**"Total Monthly Price"** means the price (exclusive of any applicable VAT) for the delivery of assessment reports in the relevant Month before taking into account the effect of any adjustment of price (for example, before the application of Service Credits, the No Pay Amounts, the Retention Amount or any deductions or discounts applied in accordance or connection with the February 2018 Side Agreement, or the Target Chargeable Clearance Discount). For the avoidance of doubt, the "Total Monthly Price" will not include pass through costs specified in Appendix 4 (Prices and Rates) Annex 1 (Rates Payable), Table D (Further Medical Evidence) in respect of Further Medical Evidence.

**"Total Quarterly Price"** means the price (exclusive of any applicable VAT) for the delivery of assessment reports in the relevant SC1 Transition quarter during the SC1 Transition Period (being the aggregate of the Total Monthly Price for each Month of the relevant SC1 Transition quarter), before taking into account the effect of any adjustment of price (for example, before the application of Service Credits, the No Pay Amounts or the Retention Amount) during such period. For the avoidance of doubt the "Total Quarterly Price" will not include pass through costs specified in Appendix 4 (Prices and Rates) Annex 1 (Rates Payable), Table D (Further Medical Evidence) in respect of Further Medical Evidence.

**"Tranche"** the aggregated performance tranches as further described in Appendix 4 paragraph 5A.2.4.

**"Transfer Date"** means the date the Transferring Employee is transferred to the employment of the Provider or of a Sub-contractor

**"Transferring Employee"** means an employee of an Incumbent Provider whose contract of employment becomes, by virtue of the application of the TUPE Regulations in relation to what is done for the purposes of carrying out the Contract, a contract of employment with someone other than the Incumbent Provider.

**"Transition"** means a transition forming part of either (a) the First Transition; or (b) the Second Transition and "Transitions" shall be construed accordingly.

**"Transition Notice"** a notice issued by the Authority requiring the commencement of transition activities and detailing the information referenced in paragraph 3A.2 of Appendix 12.

**"Transition Pricing Review"** means a review of the Charges under this Contract which may be instituted by the Provider following issue of a Transition Notice and shall be conducted in accordance with Annex 1 of Appendix 12.

**"Transparency Objectives"** means in respect of this Contract, the Authority's requirement for transparency in order to:

- (a) obtain a clear understanding of the Provider's costs, revenues and margins and have confidence that any financial information provided is based on justifiable numbers and appropriate forecasting techniques, and is in line with generally accepted accounting principles and practice within the UK, including any accounting standards and other guidance published by the UK's Financial Reporting Council;
- (b) have a clear understanding of the likely financial impact of potential changes and be in an informed position to consider how this might be mitigated and/or explore alternative approaches which may have a lesser quantitative impact;
- (c) consider ideas for efficiency and improvements;
- (d) be assured that the Provider's business with the Authority as a whole is healthy and sustainable; and
- (e) demonstrate that it is achieving value for money for the tax payer.

**"Travel Expenses"** means the transport costs incurred by the Participant and/or the companion in travelling from the Participant's home to the venue where the consultation takes place.

**"TUPE Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended.

**"Under-Referral Period"** has the meaning given to it in clause C1B.

**"Variation"** has the meaning given to it in clause F3.1 (Variation).

**"Variation Date"** means 2 January 2019.

**"VAT"** means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

**"Volume Adjustment Restriction"** shall have the meaning given to it in clause C1A.

**"Working Day"** means any day (other than a Saturday or Sunday) on which banks in the United Kingdom are open for business.

A1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

- a) Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- b) Words importing the masculine include the feminine and the neuter;
- c) Reference to a clause is a reference to the whole of that clause unless stated otherwise;

- d) Reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- e) Reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- f) The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation" and shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall take effect as, limiting the generality of any preceding words;
- g) The words "day", "month" and "year" means calendar day, calendar month and calendar year unless stated otherwise;
- h) References to currency are to British Pounds Sterling and the symbol "£" means British Pounds Sterling; and
- i) Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.
- j) References to "Service Level", "service level", "SLA", "Service Credit", "service credit" and "SC" shall be construed as references to the relevant Service Level and/or Service Credit, as set out in Annex 1 of Appendix 14 (Service Credit), and any references to Annex Seven of the Specification or Annex J (KPI/Contract Performance Targets) to Appendix 3 (Monitoring Requirements) of the Call-Off Terms and Condition shall be deemed to refer to Annex 1 of Appendix 14 (Service Credit).
- k) References to "Management Information", "management information" and "MI" shall be construed as references to the relevant Management Information requirement(s), as set out in Annex G (List of Management Information Requirements) to Appendix 1 (The Services) of the Call-Off Terms and Conditions and any references to Annex 8 (Management Information) of the Specification shall be deemed to refer to Annex G of Appendix 1 (The Services).

## **A2 Contract Period**

The Contract shall take effect on the Commencement Date and shall expire automatically on the last day of the Contract Period, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.

## **A3 Provider's Status**

At all times during the Contract Period the Provider shall be an independent Provider and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

#### **A4 Authority's Capacity and Obligations**

- A4.1 Save as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Authority to the Provider.
- A4.2 The Authority shall comply with its obligations set out in Appendix 1 Annex H.

#### **A5 Entire Agreement**

- A5.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- A5.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.
- A5.3 Nothing in clauses 5.1 or 5.2 shall operate to exclude fraud or fraudulent misrepresentation.
- A5.4 In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:-
- a) the Order Form;
  - b) the clauses of the Contract; and
  - c) any other document referred to in the clauses of the Contract.
- A5.5 The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

#### **A6 Notices**

- A6.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.
- A6.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by electronic procurement system (ePS); hand, post, registered post or by the recorded delivery service) or by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause A6.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be

deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of submission via ePS, electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

A6.3 For the purposes of clause A6.2, the address of each Party shall be as set out in the Order Form.

A6.4 Either Party may change its address for service by serving a notice in accordance with this clause.

#### **A7 Mistakes in Information**

The Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Provider in connection with the supply of the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

#### **A8 Conflicts of Interest**

A8.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Staff and the duties owed to the Authority under the provisions of the Contract. The Provider will disclose to the Authority full particulars of any such conflict of interest which may arise.

A8.2 The Authority reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

A8.3 This clause shall apply during the continuance of the Contract and for a period of 2 years after its termination.

#### **A9 Prevention of Fraud**

A9.1 The Authority places the utmost importance on the need to prevent fraud and irregularity in the delivery of this Contract. Providers and Sub-contractors are required to:

- a) Have an established system that enables Provider and Sub-contractor staff to report inappropriate behaviour by colleagues in respect of contract performance claims;
- b) Ensure that Provider or Sub-contractors performance management systems do not encourage individual staff to make false claims regarding achievement of contract performance targets;

- c) Ensure a segregation of duties within the Provider's or Sub-contractors operation between those employees directly involved in delivering the service/goods performance and those reporting achievement of contract performance to the Authority;
  - d) Ensure that an audit system is implemented to provide periodic checks, as a minimum at six (6) Monthly intervals, to ensure effective and accurate recording and reporting of contract performance.
- A9.2 The Provider shall use its best endeavours to safeguard the Authority's funding of the Contract against fraud generally and, in particular, fraud on the part of the Provider's directors, employees or Sub-contractors. The Provider shall pay the utmost regard to safeguarding public funds against misleading claims for payment and shall notify the Authority immediately if it has reason to suspect that any serious irregularity or fraud has occurred or is occurring.
- A9.3 If the Provider, its Staff or its Sub-contractors commits fraud or otherwise wilfully or recklessly commits serious financial irregularities in relation to this or any other contract with the Authority, the Authority may:
- a) serve notice on the Provider terminating the Contract with immediate effect and recover from the Provider the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or
  - b) recover in full from the Provider any other loss sustained by the Authority in consequence of any breach of this clause.
- A9.4 Any act of fraud committed by the Provider or its Sub-contractors (whether under this Contract or any other contract with any other Contracting Authority) shall entitle the Authority to serve notice on the Provider terminating this Contract with immediate effect, and any other contract the Authority has with the Provider, by serving written notice on the Provider.
- A9.5 If the Authority finds that the Provider has deliberately or recklessly submitted or allowed to be submitted false claims for Contract payments with the knowledge of its senior officers the Authority will be entitled to serve notice on the Provider terminating this Contract, or any other contract the Authority has with the Provider, with immediate effect.
- A9.6 The Provider shall co-operate fully with the Authority and assist it in the identification of Participants who may be unlawfully claiming state benefits. The Authority may from time to time brief the Provider as to the co-operation and assistance it reasonably requires including the provision of information regarding fraud by Participants. On receipt of the information, further evidence may be collected by the Authority or other department, office or agency of Her Majesty's Government with a view to prosecution.

## **A10 Non-Exclusivity**

- A10.1 The Authority gives no guarantee, warranty or assurance as to either the type, frequency, amount or level of the Services which shall be carried out by the Provider, or which the Authority shall procure from the Provider, pursuant to this Contract or as to the frequency or amount of any fees, payment, remuneration or income which the Provider shall receive pursuant to this Contract.
- A10.2 The Provider shall be the Authority's exclusive contractor for the provision of the Services, save that such exclusivity shall not apply:
- A10.2.1 where otherwise stipulated in the Specification;
  - A10.2.2 where the Authority is entitled to make alternative arrangements for the provision of the Services or any part of the Services pursuant to clauses F5, F10, and H (Remedies in the event of Inadequate Performance, Authority Step-In, Default Disruption and Termination) or any express provisions of the Contract;
  - A10.2.3 to services of the same or substantially the same nature which are not part of the Services;
  - A10.2.4 in respect of Services which have been omitted pursuant to a Variation;
  - A10.2.5 from the date set out in the first Transition Notice issued by the Authority in accordance with Appendix 12 (paragraph 3A.1) for the commencement of transition activities for the First Transition.

## **B. SUPPLY OF SERVICES**

### **B1 The Services**

- B1.1 The Provider shall supply the Services during the Contract Period in accordance with the Authority's requirements as set out in the Specification and the provisions of the Contract in consideration of the payment of the Contract Price. The Authority may inspect and examine the manner in which the Provider supplies the Services at the Premises during normal business hours on reasonable notice.
- B1.2 Without prejudice to the generality of clause B1.1, clause B3.1 or any other requirement of this Contract that stipulates the standard of the Services to be performed by the Provider, the Provider shall in its performance of the Services ensure that it meets the Service Levels (subject to and in accordance with the provisions of Appendix 14 and the Specification).
- B1.3 Spare
- B1.4 If required by the Authority, the Provider shall prepare a Service Transfer Plan for review by the Authority no later than three (3) Months after the date of the Contract and at regular intervals thereafter as specified in Appendix 12.

## **B2 Provision and Removal of Equipment**

- B2.1 Unless otherwise stated in the Order Form, the Provider shall provide all the Equipment necessary for the supply of the Services.
- B2.2 The Provider shall not deliver any Equipment nor begin any work on the Authority's Premises without obtaining prior Approval.
- B2.3 All Equipment brought onto the Premises shall be at the Provider's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Provider is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Provider shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed or stipulated in the Specification, Equipment brought onto the Premises will remain the property of the Provider.
- B2.4 The Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- B2.5 The Provider shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
- a) remove from the Premises any Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with the Contract; and
  - b) replace such item with a suitable substitute item of Equipment.
- B2.6 On completion of the Services the Provider shall remove the Equipment together with any other materials used by the Provider to supply the Services and shall leave the Authority's Premises in a clean, safe and tidy condition. The Provider is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Provider or any Staff.
- B2.7 The Authority may at its option purchase any item of Equipment from the Provider at any time, if the Authority considers that the item is likely to be required in the provision of the Services following the expiry or termination of the Contract. The purchase price to be paid by the Authority shall be the fair market value.

## **B3 Manner of Carrying Out the Services**

- B3.1 The Provider shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Provider shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and in any event, the Provider shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- B3.2 While not in anyway limiting any other provision of this Contract, in delivering the Services, the Provider, or any of its Sub-contractors, shall comply with the DWP Offshoring Policy. The DWP Offshoring Policy shall apply to Landed Resources.

- B3.3 The Provider shall ensure that all Staff supplying the Services shall do so in accordance with Good Industry Practice and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- B3.4 The Authority will conduct a review of the performance of this contract at least annually during the Contract Period. During this review, a performance report will be agreed.
- B3.5 The Provider shall ensure that the Provider ICT System that relates to the Services interface with the Authority ICT System.
- B3.6 In respect of network, communications, computer or other equipment provided by or used by the Provider or its Sub-Contractors in the provision of the Services that do or are required to interface with the Authority ICT System, the Provider shall have primary management responsibility for incident or problem resolution, including:
- (a) for ensuring that such requirement does not interfere with the provision of the Services in accordance with the Contract; and
  - (b) for taking all necessary steps within its power, and in full consultation with the Authority, to ensure that the interface is successfully achieved, including the provision of all necessary resources and personnel to rectify any incidents or problems.

### **Customer Complaints**

- B3.7 The Provider shall have an internal dispute resolution procedure for dealing with complaints from Participant about the Provider (and/or any of its Sub-contractors).
- B3.8 If the dispute between the Participant and the Provider (and/or the Sub-contractor) cannot be resolved the dispute shall be referred to the Independent Case Examiner ("ICE") for mediation.
- B3.9 If the dispute cannot be resolved by mediation, ICE will conduct a full investigation. The decision of ICE shall be final and binding upon the parties to the dispute. The ICE investigation shall carry a £5,000 (plus VAT) contribution to costs paid by the Provider or the Sub-contractor, who will also be liable for any financial redress recommended by ICE. In the event that the complaint against the Provider or Sub-contractor is dismissed, no costs shall be payable. Any costs in respect of complaints that have been upheld against the Provider or the Sub-contractor and any financial redress due to the Participant shall be paid within four (4) weeks of the date of the ICE final investigation report.

### **The Merlin Standard**

- B3.10 The Provider shall operate in accordance with the Merlin Standard and key values and principles of behaviour essential for creating healthy, high performing supply chains;
- B3.11 Where the Authority has approved the appointment of Sub-contractor, the Provider shall, at its own expense, at all times comply with the Merlin Standard (including for the avoidance of doubt, but without limitation, any mediation and/or arbitration arising out of, or in connection with, the Merlin Standard) and any other guidance and/or codes of

practice issued by the Authority and, where applicable, shall maintain accreditation with the relevant Merlin Standard authorisation body. Any breach by the Provider of these clauses B3.10 and B3.11 shall be a Default for the purpose of this Contract.

#### **B4 Key Personnel**

- B4.1 The Provider acknowledges that the Key Personnel, as detailed in [Appendix 1, Annex D], are essential to the proper provision of the Services to the Authority.
- B4.2 The Key Personnel shall not be released from supplying the Services without the prior written agreement of the Authority.
- B4.3 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- B4.4 The Authority shall not unreasonably withhold its agreement under clauses B4.2 or B4.3. Such agreement shall be conditional on appropriate arrangements being made by the Provider to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

#### **B5 Provider's Staff**

- B5.1 The Authority may, by written notice to the Provider, refuse to admit onto, or withdraw permission to remain on, the Authority's Premises:
- a) any member of the Staff; or
  - b) any person employed or engaged by any member of the Staff,
- whose admission or continued presence would, in the reasonable opinion of the Authority, be undesirable.
- B5.2 At the Authority's written request, the Provider shall provide a list of the names and business addresses of all persons who may require admission in connection with the Contract to the Authority's Premises, within seven (7) Working Days from date of request, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.
- B5.3 The decision of the Authority as to whether any person is to be refused access to the Authority's Premises and as to whether the Provider has failed to comply with clause B5.2 shall be final and conclusive.
- B5.4 The Provider's Staff, engaged within the boundaries of the Authority's Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Authority's Premises.
- B5.5 The Provider shall comply with all applicable legislation relating to safeguarding and protecting vulnerable groups, including the Safeguarding Vulnerable Groups Act 2006, the Safeguarding Vulnerable Groups Order (Northern Ireland) 2007 and the Protecting

Vulnerable Groups Act 2007 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

- B5.6 The Provider shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Provider confirms that all persons employed or engaged by the Provider shall have complied with the Staff Vetting Procedures prior to commencing the Services and accessing the Premises.
- B5.7 The Provider shall provide training on a continuing basis for all Provider Staff employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan.
- B5.8 The Provider shall be responsible for ensuring that its Staff are not claiming any Social Security Benefit, where payment of that Social Security Benefit is precluded due to earnings.
- B5.9 The Provider shall further use all reasonable endeavours to ensure that its staff who are not EC nationals are legally entitled to be resident in the United Kingdom and have a work permit, where applicable. The Provider shall promptly take all reasonable steps to ensure compliance with this clause.
- B5.10 Without prejudice to clause B5.2, if the Provider fails to comply with clause B5 and in the reasonable opinion of the Authority, such failure may be prejudicial to the interests of the Crown, then the Authority may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

## **B6 Inspection of Premises**

Save as the Authority may otherwise direct, the Provider is deemed to have inspected the Authority's Premises before submitting its Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

## **B7 Licence to Occupy Premises**

- B7.1 Any land or Premises made available from time to time to the Provider by the Authority in connection with the Contract shall be made available to the Provider on a non-exclusive licence basis free of charge and shall be used by the Provider solely for the purpose of performing its obligations under the Contract. The Provider shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- B7.2 The Provider shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Provider shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Authority may reasonably request.
- B7.3 The Provider shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Authority, and the Provider shall pay for the cost of making good any damage caused by the Provider or its Staff other than fair wear and tear. For the

avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

- B7.4 The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Provider or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.
- B7.5 Should the Provider require modifications to the Authority's Premises, such modifications shall be subject to prior Approval and shall be carried out by the Authority at the Provider's expense. The Authority shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Authority

## **B8 Property**

- B8.1 Where the Authority provides Property free of charge to the Provider such Property shall be and remain the property of the Authority and the Provider irrevocably licences the Authority and its agents to enter upon any premises of the Provider during normal business hours on reasonable notice to recover any such Property. The Provider shall not in any circumstances have a lien or any other interest on the Property and the Provider shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Provider shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- B8.2 The Property shall be deemed to be in good condition when received by or on behalf of the Provider unless the Provider notifies the Authority otherwise within five (5) Working Days of receipt.
- B8.3 The Provider shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.
- B8.4 The Provider shall ensure all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, is secured in accordance with the Authority's reasonable security requirements as published from time to time.
- B8.5 The Provider shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Provider shall inform the Authority within two (2) Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

## **B9 Offers of Employment**

- B9.1 For the duration which is the shorter of either (a) the Contract and (b) the period up to the issue of a Transition Notice by the Authority and in either case for a period of twelve (12) Months thereafter neither the Authority nor the Provider shall employ or offer employment to any of the other Party's staff who have been associated with the

procurement and/or the contract management of the Services without that other Party's prior written consent.

## **B10 TUPE and Employment Matters**

### **Application of TUPE Regulations**

- B10.1 The Authority and the Provider agree that where the identity of a provider (including, if any, an Incumbent Provider) of any service which constitutes or which will constitute part of the Services is changed pursuant to this Contract (including upon termination of this Contract) then the change may constitute a Relevant Transfer.
- B10.2 Following the Commencement Date, on the occasion of any Relevant Transfer during the Contract Period (but excluding, for the avoidance of doubt a Relevant Transfer upon termination of this Contract), the Provider shall and shall procure that any new provider (including any new Sub-contractor) of the relevant Services shall comply with all of its obligations under the TUPE Regulations and the Directive in respect of the Relevant Employees.
- B10.3 The Authority and the Provider acknowledge and accept that to the extent that there is a Relevant Transfer, under the TUPE Regulations the contracts of employment of the Transferring Employees will have effect (except in relation to occupational pension scheme benefits excluded under Regulation 10 of the TUPE Regulations) from the Transfer Date as if originally made between the Transferring Employees and the Provider.

### **Sub-contractors**

- B10.4 In the event that the Provider enters into any sub-contract in connection with this Contract, it shall impose obligations on its Sub-contractor in the same terms as those imposed on it pursuant to this Clause B10 and Clause B11 and shall procure that the Sub-contractor complies with such terms. The Provider shall indemnify the Authority and keep the Authority indemnified in full from and against all direct, indirect or consequential liability or Loss awarded against or incurred or paid by the Authority as a result of or in connection with any failure on the part of the Sub-contractor to comply with such terms.

### **Emoluments and Outgoings**

- B10.5 The Parties acknowledge that the Provider (including the Incumbent Provider) is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees or Relevant Employees as applicable, including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions, pension contributions and otherwise, up to the date of the Relevant Transfer. Should any potential Transferring Employees be identified whether prior to, on or after the Commencement Date, the Authority at the request of the Provider will use reasonable endeavours, to procure that any employee provisions of termination contained within the Authority's contract with such Incumbent Provider for the benefit of a Replacement Provider will be notified to the Provider, for the Provider to enforce as it considers appropriate.
- B10.6 The Provider shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees and all employees employed by

the Provider or any Sub-contractor on the provision of the Services from the Commencement Date (including, for the avoidance of doubt, the Transferring Employees in the event of there being a Relevant Transfer on the Commencement Date) and throughout the Contract Period, including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Commencement Date. The Provider will indemnify/keep indemnified and hold the Authority harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may incur in respect of the same.

### **Provision of Information**

- B10.7 The Authority has provided to the Provider the information relating to the Transferring Employees at the Transfer Date but does not warrant that the information is accurate and complete as at the date of this Contract.
- B10.8 The Provider agrees to comply with the provisions set out in clause B11 below in respect of the information required.

### **Indemnities**

- B10.9 The Provider shall indemnify the Authority from and against all Loss in connection with or as a result of any claim or demand by any Transferring Employee or Relevant Employee arising out of the employment of or termination of the employment of any Transferring Employee or Relevant Employee provided that this arises directly or indirectly from any act, negligence, fault or omission of the Provider or any Sub-contractor or their employees in relation to any Relevant Employee or Transferring Employee, on or after the date of the Relevant Transfer.
- B10.10 The Provider shall indemnify the Authority from and against all Loss in connection with or as a result of any claim by any Transferring Employee or Relevant Employee that the identity of the Provider or Sub-contractor is to that Transferring Employee's or Relevant Employee's detriment or that the terms and conditions to be provided by the Provider or any Sub-contractor or any proposed measures of the Provider or any Sub-contractor are to that employee's detriment whether such claim arises before or after the Transfer Date.
- B10.11 The Provider shall indemnify the Authority from and against all Loss in connection with or as a result of any failure by the Provider to comply with its obligations under Regulations 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Authority to comply with any of its obligations under Regulation 13 of TUPE.
- B10.12 The Provider shall indemnify the Authority from and against all Loss in connection with or as a result of any claim (including any individual employee's entitlement under or consequent on such a claim) by any trade union or other body or person representing any Transferring Employees arising from or connected with any failure by the Provider to comply with any legal obligations to such trade union, body or person.

## **Pension Protection**

- B10.13 The Provider shall, from the date of any Relevant Transfer during the Contract Period (including, for the avoidance of doubt, from the Commencement Date, in the event of there being a Relevant Transfer on that date), comply and procure that each Sub-contractor shall comply with the Cabinet Office Statement and any related governmental guidance or codes of practice.
- B10.14 Without prejudice to the generality of Clause B10.13, the Provider shall, and shall procure that each Sub-contractor shall, ensure from the date of any Relevant Transfer during the Contract Period (including, for the avoidance of doubt, from the Commencement Date, in the event of there being a Relevant Transfer on that date) that –
- (a) Original Public Sector Employees who are eligible for public sector pension scheme to which the Cabinet Office Statement applies, shall be offered membership of a pension scheme broadly comparable to their pre-transfer pension scheme;
  - (b) when employing staff who are not Original Public Sector Employees, such staff have access to good quality pension arrangements that comply with relevant legislation from time to time in force including the Pensions Act 2004, and the pension provisions of the Cabinet Office Statement;
  - (c) it shall have certification from the Government Actuary's Department, that any pension arrangements provided to Original Public Sector Employees to which the Cabinet Office Statement applies, are at least, broadly comparable to their pre-transfer pension scheme.
- B10.15 Without prejudice to the generality of Clause B10.13, the Provider shall, and shall procure that each Sub-contractor shall, ensure that from the date of any Relevant Transfer during the Contract Period (including, for the avoidance of doubt, from the Commencement Date, in the event of there being a Relevant Transfer on that date) and on expiry or termination of the Contract, that it will comply with the Cabinet Office Statement in respect of compliance with bulk transfer agreements received from any Replacement Provider and cooperate in the provision of information in respect of relevant bulk transfer agreements with any Replacement Provider .
- B10.16 Clauses B10.13 to B10.16 are intended to confer rights on any Relevant Employees pursuant to the Contracts (Rights of Third Parties) Act 1999. Provided that if the Authority and the Provider rescind this Contract or vary any of its terms (including any release or compromise in whole or in part of liability) in accordance with the relevant provisions of this Contract or terminate this Contract, such rescission, variation or termination will not require the consent of any Relevant Employee.

## **B11 Employee Provisions On Expiry Or Termination**

- B11.1 Within thirty (30) days of (a) the beginning of the Extension Period or (b) the issue of a Transition Notice in accordance with Appendix 12 and thereafter again during the six (6) Months preceding the expiry of this Contract (or during the period of six (6) Months following the giving by the Authority of notice to terminate this Contract) or at any other

time as directed by the Authority, and within twenty (20) Working Days of being so requested by the Authority, the Provider shall fully and accurately disclose to the Authority, and shall procure that any relevant Sub-contractor shall fully and accurately disclose, any and all information in relation to all personnel engaged in providing the Services, (whether engaged by the Provider or any Sub-contractor) ("**Employee Information**") including all Relevant Employees who are to transfer as a consequence of a Relevant Transfer as the Authority may request, in particular but not necessarily restricted to any of the following:

- a) a list of employees employed by the Provider, or any Sub-contractor identified by team (as further described in the Cost Model) and role type (categorised as agreed between the Parties, acting reasonably);
- b) a list of agency workers, agents and independent providers engaged by the Provider identified by team (as further described in the Cost Model) and role type (categorised as agreed between the Parties, acting reasonably);
- c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those personnel identified by team (as further described in the Cost Model) and role type (categorised as agreed between the Parties, acting reasonably);
- d) the terms and conditions of employment of the Relevant Employees, their age, salary, date continuous employment commenced and (if different) the commencement date, accrued holiday entitlement, pension details, location, retirement age, enhancement rates, any other factors affecting their redundancy entitlement and any outstanding claims arising from employment.
- e) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; or
- f) details of all collective agreements with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes and claims for recognition by any trade union.

Provided that where such information is provided at the beginning of the Extension Period in accordance with this clause B11.1, it may be provided on an anonymised basis.

B11.2 Where information has been provided in accordance with clause B11.1 above and the Provider or Sub-contractor makes or becomes aware of any changes or discovers new information the Provider shall notify the Authority within 7 (seven) days of any such change or discovery.

B11.3 The Provider shall warrant the accuracy and completeness of all the information provided to the Authority pursuant to clause B11.1 and B11.2 and authorises the Authority to use any and all the information as it may consider necessary for the purposes of the Authority's business or for informing any tenderer for any services which are substantially the same as the Services (or any part thereof).

- B11.4 During either (a) the six (6) Months preceding the expiry of this Contract; or (b) the period of six (6) Months following notice to terminate this Contract for whatever reason having been given; or (c) following the issue of a Transition Notice by the Authority; or (d) following the issue of Detailed Transition Requirements by the Authority, the Provider shall allow the Authority or such other persons as may be authorised by the Authority to communicate with and meet the Relevant Employees and their trade union or employee representatives as the Authority may reasonably request. Provided that where such access under this Clause B11.4 is provided under (c) or (d) above, the Authority shall use reasonable endeavours to minimise any disruption to the business of the Provider, or provision of the Services.
- B11.5 During either (a) the six (6) Months preceding the expiry of this Contract; or (b) the period of six (6) Months following notice to terminate this Contract for whatever reason having been given; or (c) following the issue of a Transition Notice by the Authority; or (d) following the issue of Detailed Transition Requirements by the Authority, the Provider shall not without the prior written consent of the Authority unless bona fide in the ordinary course of business:
- a) vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
  - b) increase or decrease the number of employees employed in connection with the Services; or
  - c) assign or redeploy any employee employed in connection with the Services to other duties unconnected with the Services.
- B11.6 The Provider confirms that it will comply fully with its obligations under the TUPE Regulations in respect of providing information to any Replacement Provider and hereby warrants that any information provided in accordance with Regulation 11 shall be accurate and complete.

### **Indemnity**

- B11.7 The Provider shall indemnify the Authority and any Replacement Provider appointed by the Authority and keep the Authority and any Replacement Provider appointed by the Authority indemnified in full from and against all Loss awarded against or incurred or paid by the Authority or any Replacement Provider appointed by the Authority as a result of or in connection with:
- a) the employment or termination of employment of any Relevant Employee or employee of any Sub-contractor during any period prior to and including the date of expiry or termination of this Contract.
  - b) any claim brought against the Authority or any Replacement Provider as a result of the Provider's failure to comply with any of its obligations under the TUPE Regulations.
- B11.8 The Authority shall use reasonable endeavours, at the end of the Contract Period to procure from any Replacement Provider for the benefit of the Provider an indemnity on substantially similar terms to that in Clause B11.7 (a) in respect of any claim by any

Relevant Employee brought against the Provider in respect of the period after the end of the Contract Period subject to the Authority procuring such an indemnity.

- B 11.9 Notwithstanding any other provisions of this Contract for the purposes of these Clauses B10 and B11, and in accordance with the Contracts (Rights of Third Parties) Act 1999, the parties accept that any Replacement Provider shall be entitled to enforce the benefits conferred by it here under. Provided that if the Parties rescind this Contract or vary any of its terms (including any release or compromise in whole or in part) in accordance with the relevant provisions of this Contract or terminate this Contract, the consent of any Replacement Provider shall not be required for such rescission, variation of termination.
- B11.10 Clause B10 and this Clause B11 shall apply during the Contract Period and indefinitely thereafter.

## C. PAYMENT AND CONTRACT PRICE

### C1 Contract Price

- C1.1 Subject to Clause C1B below, in consideration of the Provider's performance of its obligations under the Contract, the Authority shall pay the Contract Price in accordance with clause C2 (Payment and VAT).
- C1.2 The Authority shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.
- C1A Within five (5) Working Days of 31 January 2019, and thereafter once during the months of July and January in each year of the Contract Period or not more than once every six (6) Months the Authority shall deliver to the Provider the Latest Forecast. The volume of Referrals in each Month as set out in such Latest Forecast shall be a figure equivalent to 90-110% of the volume of Referrals stated in the immediately previous Latest Forecast, (the "**Volume Adjustment Restriction**") provided that the Volume Adjustment Restriction shall not apply where:
- C1A.1 the adjustment to the volumes is as a result of a request by the Provider to under-refer at any point (such request to be agreed solely at the discretion of the Authority); or
- C1A.2 the adjustment to the volumes is as a result of subsequent referrals forecasted to be submitted by the Authority which were previously under-referred at the request of the Provider; or
- C1A.3 the adjustment to the volumes follows the issue of a Transition Notice by the Authority in accordance with Appendix 12 (Exit and Service Transfer Arrangements).
- C1B The Parties agree that, for the term of the Extension Period where the number of Referrals made by the Authority during any consecutive three (3) Month period (calculated on a rolling basis), is less than the total number of Referrals forecast by the Authority for that three (3) Month period (each an "**Under-Referral Period**"), based on

the Operative Forecast, the Provider may be entitled either to an increase in the Contract Price payable in respect of the last Month of the Under-Referral Period or a price review of the Contract Price in respect of the last Month of that Under-Referral Period (in accordance with clause C1D below) as follows, provided that each of the conditions set out in clause C1C are satisfied:

Referrals made by the Authority in a given Under-Referral Period expressed as a percentage of the total Referrals forecast (based on the Operative Forecast) in respect of that Under-Referral Period ("Under-Referral Percentage")	Price payable in respect of the last Month of the relevant Under-Referral Period
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

C1C The conditions referred to in clause C1B above are as follows:

- C1C.1 the number of Referrals made to the Provider and not yet Cleared at the beginning of the final Month of the Under-Referral Period is less than the Head of Work Threshold; and
- C1C.2 the under-referral is not made by the Authority as a result of a request by the Provider for the Authority to under-refer in the Under-Referral Period (such request to be agreed solely at the discretion of the Authority); and
- C1C.3 the under-referral is not made by the Authority due to a failure of the Provider to meet the service levels at SC4(a) and/or SC4(b) where:
  - (i) in relation to service level SC4(a) there is a failure to meet SC4(a) over any three (3) consecutive month period in the six (6) months immediately prior to the start of the Under-Referral Period;
  - (ii) in relation to Service Level SC4(b) the under-referrals which are made by the Authority is due to there being 300 or more cases exceeding the 55 Working Days threshold at the end of Month in the six (6) Months immediately prior to the start of the Under-Referral Period; and
  - (iii) in relation to both Service Levels SC4(a) and SC4(b) the Authority has notified the Provider that the circumstances in C1C.3(i) have occurred at or prior to the commencement of the Under-Referral Period and have outlined that a reduction to Referral volumes is planned as a result.
- C1C.4 the under-referral is not made by the Authority due to an event of Force Majeure occurring in the six (6) Months immediately prior to the start of the Under-Referral Period provided that the Authority has notified the

Provider that the circumstances in this C1C.4 have occurred at or prior to the commencement of the Under-Referral Period and have outlined that a reduction to Referral volumes is planned as a result.

C1D Where the Provider is entitled to a price review pursuant to clause C1B and subject to C1C above, the Parties shall work together in good faith to agree an adjustment to the Contract Price for the Under-Referral Period. In proposing any Contract Price adjustment, the Provider shall ensure that:

C1D.1 it has calculated any such adjustment by reference to the principles in the Cost Model;

C1D.2 it has calculated any such adjustment by reference to the costs reasonably incurred by it, and not recovered under the Total Monthly Price directly as a result of the under-referral; and

C1D.3 the purpose of the pricing review and any associated resultant adjustment in Contract Price is solely to mitigate any negative impact on the Provider's Profit Margin directly caused by under-referral of volumes as per clause C1B. The pricing review is not intended to mitigate reduced margin for any other reason or pre-dating any such under-referral (such as Provider under-performance or other higher costs).

C1E A worked example in respect of clauses C1B and C1C is set out at Appendix 14, Annex 3.

## **C2 Payment and VAT**

C2.1 The Authority shall pay all sums due to the Provider within thirty (30) days following receipt of a valid invoice, submitted Monthly in arrears.

C2.2 The Authority shall pay all sums by direct credit transfer into a suitable bank account or by other electronic payment methods as appropriate.

C2.3 The Provider shall ensure that each invoice contains a valid purchase order number. All appropriate references and a detailed breakdown of the Services supplied and any other documentation reasonably required by the Authority to substantiate the invoice should be supplied in accordance with the Order Form.

C2.4 Where the Provider enters into a sub-contract for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Provider to the Sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.

C2.5 The Provider shall add VAT to the Contract Price at the prevailing rate as applicable and the Authority shall pay the VAT to the Provider following its receipt of a valid VAT invoice.

C2.6 The Provider shall indemnify the Authority on a continuing basis 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 Provider's failure to account for or to pay any VAT relating to payments made to the Provider under the Contract. Any amounts due under this clause C2.6 shall be paid by the Provider to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

- C2.7 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate the Contract under clause H2.3 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- C2.8 Where payment by the Authority of all or any part of any invoice rendered or other claim for payment by the Provider is disputed, this dispute shall be resolved in accordance with the procedures set out in the Appendix (Administration Requirements).

### **C3 Recovery of Sums Due**

- C3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay, apply or apportion to the Authority in respect of any breach or provision of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under the Contract or under any other agreement or contract with the Authority.
- C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Provider shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Provider.
- C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.
- C3.5 Notwithstanding that the Side Letter shall cease to apply after 28 February 2015 any outstanding payment due to either Party pursuant to the Side Letter shall continue to be payable in accordance with the terms of the Side Letter. Any other payments shall be as provided by the PIP Contracts or the HoT provided always that there will be no double payment of costs under the Side Letter and under the PIP Contracts or HoT. The Provider undertakes promptly to return any double payment which is identified by either party, to the Authority, without any right to withhold or set off the amount of that double payment.

### **C4 NOT USED**

**C5 Euro**

- C5.1 Any requirement of Law to account for the Services in Euro (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Provider at nil charge to the Authority.
- C5.2 The Authority shall provide all reasonable assistance to facilitate compliance with clause C5.1 by the Provider.

**C6 Third Party Revenue**

- C6.1 The Provider may not obtain any third party revenue, income or credit based on the Services and/or copyright works delivered under this Contract without the express prior written agreement of the Authority.

**D. STATUTORY OBLIGATIONS AND REGULATIONS**

**D1 Prevention of Bribery and Corruption**

- D1.1 The Provider shall not, and shall procure that any Staff shall not, commit any of the prohibited acts listed in this clause D1 in relation to the prevention of bribery. For the purposes of this clause D1, a prohibited act is committed when the Provider or any Staff:
- (a) directly or indirectly offers, promises or gives 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) directly or indirectly requests, agrees to receive or accepts any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
  - (c) commits any offence:
    - (i) under the Bribery Act 2010;
    - (ii) under legislation creating offences concerning fraudulent acts;
    - (ii) at common law concerning fraudulent acts relating to the Contract or any other contract with the Authority; or
    - (iv) defrauding, attempting to defraud or conspiring to defraud the Authority
- D1.2 The Provider warrants, represents and undertakes 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 the Contract, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of the Contract.

- D1.3 The Provider shall:
- (a) 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 2010;
- D1.4 The Provider shall have an anti-bribery policy which prevents any Staff from committing any prohibited acts as in clause D1.1 a copy of this shall be provided to the Authority upon request.
- D1.5 If any breach of clauses D1.1 or D1.2 is suspected or known, the Provider must notify the Authority immediately.
- D1.6 If the Provider notifies the Authority that it suspects or knows that there may be a breach of clauses D1.1 or D1.2, the Provider 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.
- D1.7 If the Provider, its Staff or anyone acting on the Providers behalf engages in conduct prohibited by clauses D1.1 or D1.2, the Authority may;
- a) terminate the Contract and recover from the Provider the amount of any Loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or
  - b) recover in full from the Provider any other Loss sustained by the Authority in consequence of any breach of those clauses.
- D1.8 Despite clause I (Disputes and Law), any dispute relating to:
- (a) the interpretation of clause D1; or
  - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Authority, acting reasonably having given due consideration to all relevant factors, and its decision shall be final and conclusive.
- D1.9 Any termination under clause D1.7 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.
- D1.10 In exercising its rights or remedies under clause D1.7, the Authority shall:
- a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of, the person performing the conduct prohibited by clauses D1.1 or D1.2;

- b) give all due consideration, where appropriate, to action other than termination of the contract

## **D2 Discrimination**

- D2.1 The Provider shall not unlawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex or sexual orientation and without prejudice to the generality of the foregoing the Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- D2.2 The Provider shall take all reasonable steps to secure the observance of clause D2.1 by all Staff.
- D2.3 The Provider shall comply with the provisions of the Human Rights Act 1998.
- D2.4 In delivering the Services, the Provider shall operate at all times in accordance with the diversity and equality requirements set out in Appendix 8 (Diversity and Equality Requirements) or such other diversity and equality requirements as notified by the Authority to the Provider from time to time.
- D2.5 Not Used
- D2.6 In delivering the Services, the Provider shall operate at all times in accordance with the apprenticeships and skills requirements set out in Appendix 10 (Apprenticeships and Skills Requirements) or such other apprenticeships and skills requirements as notified by the Authority to the Provider from time to time.

## **D3 The Contracts (Rights of Third Parties) Act 1999**

A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

## **D4 Environmental Requirements**

- D4.1 The Provider shall, when working on the Premises, perform its obligations under the Contract in accordance with the Authority's environmental principles, which are to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances, minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- D4.2 In delivering the Services, the Provider shall comply at all times with the requirements set out in Appendix 7 (Sustainable Development Requirements) or such other requirements as may be reasonably notified by the Authority to the Provider from time to time.

## **D5 Health and Safety**

- D5.1 The Provider shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Authority shall promptly notify the Provider of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Provider in the performance of its obligations under the Contract.
- D5.2 While on the Authority's Premises, the Provider shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working there.
- D5.3 The Provider shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- D5.4 The Provider shall comply with the requirements of the Health and Safety at Work 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 Premises in the performance of its obligations under the Contract.
- D5.5 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work Act 1974) is made available to the Authority on request.

## **E. PROTECTION OF INFORMATION**

### **E1 Authority Data**

- E1.1 The Provider shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- E1.2 The Provider shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Provider of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- E1.3 To the extent that Authority Data is held and/or processed by the Provider, the Provider shall supply that Authority Data to the Authority as requested by the Authority.
- E1.4 The Provider shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- E1.5 The Provider shall perform secure back-ups of all Authority Data and shall ensure that up-to-date backups are stored off-site in accordance with the Provider's Business Continuity Plan. The Provider shall ensure that such backups are available to the Authority at all times on request.
- E1.6 The Provider shall ensure that any system or media on which the Provider holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy detailed in Annex K to Appendix 6 (Security Requirements and Plan).

- E1.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Provider's Default so as to be unusable, the Authority may;
- a) require the Provider (at the Provider's expense) to restore or procure the restoration of the Authority Data or Personal Data and the Provider shall do so as soon as practicable but not later than twenty four (24) hours; and/or;
  - b) itself restore or procure the restoration of the Authority Data or Personal Data, and shall be repaid by the Provider any reasonable expenses incurred in doing so.
- E1.8 If at any time the Provider suspects or has reason to believe that the Authority Data or Personal Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Provider shall notify the Authority immediately and inform the Authority of the remedial action the Provider proposes to take.
- E1.9 In accordance with the DWP Offshoring Policy and while not in any way limiting any other provision of this Contract, the Provider, or any of its Sub-contractors, shall not process, host at or access Authority Data from premises outside the United Kingdom without the prior written consent of the Authority, and where the Authority gives consent, the Provider shall comply with any reasonable instructions notified to it by the Authority in relation to the Authority Data in question.
- E1.10 Any breach by the Provider of this clause E1 shall be a material breach for the purposes of clause H2 (Termination on Default) and shall entitle the Authority (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2 (Termination on Default).

## **E2 Protection of Personal Data**

- E2.1 Each of the Parties including the personnel of each Party (personnel shall include directors, officers, employees, servants, agents, consultants, suppliers, Sub-processors and Sub-contractors) will comply with all of its applicable requirements of the Data Protection Legislation and shall not knowingly or negligently by any act or omission, place the other Party in breach, or potential breach of Data Protection Legislation. This clause is in addition to and does not relieve, remove or replace a Party's obligations under the Data Protection Legislation.
- E2.2 With respect to the Parties' rights and obligations under the Contract, the Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Data Controller and the Provider is the Data Processor.
- E2.3 (a) The Provider shall notify the Authority without delay if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- (b) In such case, the Authority and the Provider shall revise the instructions within 5 Working Days.

- E2.4 The Provider shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include (without limitation):-
- a. a systematic description of the envisaged processing operations and the purpose of the processing;
  - b. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - c. an assessment of the risks to the rights and freedoms of Data Subjects;
  - d. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data and Special Categories of Personal Data; and
  - e. upon request provide a copy of the record of the processing of any Personal Data and Special Categories of Personal Data it carries out on behalf of the Authority including (without limitation) the records specified in Article 30(2) of the GDPR.
- E2.5 The Provider shall, in relation to any Personal Data and Special Categories of Personal Data processed or to be processed in connection with its obligations under this Contract:-
- a) process that Personal Data and Special Categories of Personal Data only to the extent and in such manner as is necessary for the purposes specified in this Contract and in accordance with Appendix 15 unless the Provider is required to process the Personal Data and Special Categories of Personal Data otherwise by Law. In such case, the Provider shall inform the Authority of that legal requirement unless the Law prevents such disclosure on the grounds of public interest;
  - b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:-
    - i. nature of the Personal Data and Special Categories of Personal Data to be protected;
    - ii. harm that might result from a Data Loss Event;
    - iii. state of technological development; and
    - iv. implement any Protective Measures at the Provider's own expense and at no cost to the Authority;
  - c) review and approval of the Protective Measures by the Authority shall not relieve the Provider of its obligations under Data Protection Legislation including, for the avoidance of doubt, putting Protective Measures in place.
  - d) ensure that it and its Staff:-

- i. do not process Personal Data and Special Categories of Personal Data except in accordance with this Contract and Data Protection Legislation and access to such data is limited to those Staff who need to access Personal Data and Special Categories of Personal Data to meet the Provider's Data Processor duties under the Contract and Data Protection Legislation and only collect Personal Data and Special Categories of Personal Data on behalf of the Authority in the format agreed with the Authority which shall contain a data protection notice informing the Data Subject of the identity of the Data Controller, the identity of any data protection representative it may have appointed, the purpose(s) for which the Data Subject's Personal Data and Special Categories of Personal Data will be processed and any other information, which is necessary to comply with Data Protection Legislation. The Provider shall not modify the format agreed with the Authority without the prior written consent of the Authority;
- ii. take all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and Special Categories of Personal Data and ensure that they:-
  - A. are aware of and comply with the Provider's duties under this clause E2;
  - B. are subject to appropriate confidentiality undertakings including between the Provider and any Sub-processor;
  - C. are informed of the confidential nature of the Personal Data and Special Categories of Personal Data and do not publish, disclose or divulge any of the Personal Data and Special Categories of Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract or required to do so under a legal requirement/court order (provided that the Provider shall give notice to the Authority of any disclosure of Personal Data and Special Categories of Personal Data that it or any of its Staff is required to make under such a legal requirement or court order immediately when it is made aware of such a requirement); and
  - D. have sufficient skills and have undergone adequate training in the use, care, protection and handling of Personal Data and Special Categories of Personal Data;
- e) not transfer Personal Data and Special Categories of Personal Data outside of the United Kingdom unless the prior written consent of the Authority has been obtained and provided the following conditions are fulfilled:-
  - i. the Authority or the Provider has provided appropriate safeguards in relation to the transfer;
  - ii. the Data Subject has enforceable rights and effective legal remedies;

- iii. the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data and Special Categories of Personal Data that is transferred; and
- iv. the Provider complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data and Special Categories of Personal Data;
- f) at the written direction of the Authority, delete or return Personal Data and Special Categories of Personal Data (and any copies of it) using a secure method of transfer to the Authority upon expiry or earlier termination of the Contract unless the Provider is required by Law to retain the Personal Data and Special Categories of Personal Data;
- g) permit the Authority or the Authority's Representative to inspect and audit the Provider's Data Processor activities (and/or those of its Staff) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify that the Provider is in full compliance with its obligations under the Contract.

E2.6 Subject to clause E2.7, the Provider shall notify the Authority without delay if it:-

- a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- b) receives a request to rectify, block or erase any Personal Data;
- c) receives any other request, notice, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data and Special Categories of Personal Data processed under this Contract;
- e) receives a request from any third party for disclosure of Personal Data and Special Categories of Personal Data where compliance with such request is required or purported to be required by Law; or
- f) becomes aware of a Data Loss Event.

E2.7 The Provider's obligation to notify the Authority under clause E2.6 shall include the provision of further information to the Authority promptly.

E2.8 Taking into account the nature of the processing, the Provider shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause E2.6 (and insofar as possible within the timescales reasonably required by the Authority) at no cost to the Authority including by promptly providing:-

- a) the Authority with full details and copies of the complaint, communication or request;

- b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request promptly;
  - c) the Authority, at its request, with any Personal Data and Special Categories of Personal Data it holds in relation to a Data Subject;
  - d) assistance as requested by the Authority following any Data Loss Event to enable the Authority to mitigate the impact of the Data Loss Event, to ensure that Data Loss Events of the same nature do not occur again, to notify the competent regulatory body of the Data Loss Event and/or to notify the Data Subjects of the Data Loss Event;
  - e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office;
  - f) the Authority with any information reasonably requested by the Authority.
- E2.9 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with its Data Processor obligations under this clause E2.
- E2.10 The Provider shall allow for audits of its Data Processing activity (and/or Data Processing activity of its Staff) by the Authority or the Authority's designated auditor. The Provider shall keep a record of any processing of Personal Data and Special Categories of Personal Data it carries out on behalf of the Authority including (without limitation) the records specified in Article 30(2) of the GDPR.
- E2.11 The Provider shall designate a Data Protection Officer if required by Data Protection Legislation or by the Authority in writing.
- E2.12 Before allowing any Sub-processor to process any Personal Data and Special Categories of Personal Data under this Contract, the Provider must:-
- a) notify the Authority in writing of the intended Sub-processor and processing;
    - (i) obtain the advance written consent of the Authority to allow the Sub-processor to process any Personal Data and Special Categories of Personal Data under the Contract; and
    - (ii) enter into a written contract with the Sub-processor which reflects the terms set out in this clause E2 such that they apply to the Sub-processor as a Data Processor.
- E2.13 The Provider shall remain fully liable for all acts or omissions of any Sub-processor and Staff.
- E2.14 The Authority may, at any time on not less than thirty (30) Working Days' advance notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme under Article 43 of the GDPR (which shall apply when incorporated by an attachment to this Contract).

E2.15 The Provider shall comply with guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Working Days' notice to the Provider amend this Contract to ensure that it complies with any guidance issued by the Information Commissioners Officer and/or any changes to Data Protection Legislation.

E2.16 The Provider shall indemnify and keep the Authority indemnified in full from and against all claims, proceedings, actions, damages, loss, penalties, fines, levies, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of or in connection with, any breach by the Provider or any of its Staff of this clause E2.

**E3 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989**

E3.1 The Provider shall comply with, and shall ensure that it's Staff comply with, the provisions of;

- a) the Official Secrets Acts 1911 to 1989; and
- b) Section 182 of the Finance Act 1989.

E3.2 In the event that the Provider or its Staff fails to comply with this clause, the Authority reserves the right to terminate the Contract with immediate effect by giving notice in writing to the Provider.

**E4 Confidential Information**

E4.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

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

E4.2 Clause E4 shall not apply to the extent that;

- a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause E5 (Freedom of Information);
- b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- c) such information was obtained from a third party without obligation of confidentiality;

- d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
  - e) it is independently developed without access to the other Party's Confidential Information.
- E4.3 The Provider may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- E4.4 The Provider shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.
- E4.5 At the written request of the Authority, the Provider shall procure that members of Staff or such professional advisors or consultants identified by the Authority give a confidentiality undertaking before commencing any work in accordance with this Contract.
- E4.6 Nothing in this Contract shall prevent the Authority from disclosing the Provider's Confidential Information:
- a) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority;
  - b) to any consultant, Provider or other person engaged by the Authority or any person conducting an Office of Government Commerce gateway review;
  - c) for the purpose of the examination and certification of the Authority's accounts; or
  - d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- E4.7 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Body, employee, third party or sub-contractor to whom the Provider's Confidential Information is disclosed pursuant to clause E4 is made aware of the Authority's obligations of confidentiality.
- E4.8 Nothing in this clause E4 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.
- E4.9 In the event that the Provider fails to comply with clauses E4.1-3, the Authority reserves the right to terminate the Contract with immediate effect by notice in writing.

- E4.10 Clauses E4.1-6 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.
- E4.11 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- E4.12 Notwithstanding any other term of this Contract, the Provider hereby gives his consent for the Authority to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract, to the general public. The Authority may consult with the Provider to inform its decision regarding any redactions but the Authority will have the final decision in its absolute discretion. The Provider shall assist and co-operate with the Authority to enable the Authority to publish this Contract.

## **E5 Freedom of Information**

- E5.1 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- E5.2 The Provider shall and shall procure that its Sub-contractors shall;
- a) transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
  - b) provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and
  - c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- E5.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- E5.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- E5.5 The Provider acknowledges that (notwithstanding the provisions of clause E5) the Authority may, acting in accordance with the Department of Constitutional Affairs'

Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“the Code”), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Services;

- a) in certain circumstances without consulting the Provider; or
- b) following consultation with the Provider and having taken their views into account;

provided always that where E5.5 (a) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider’s attention after any such disclosure.

E5.6 The Provider shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

E5.7 The Provider acknowledges that the Commercially Sensitive Information listed in Commercially Sensitive Information Appendix is of indicative value only and that the Authority may be obliged to disclose it in accordance with clause E5.5.

## **E6 Publicity, Media and Official Enquiries**

E6.1 The Provider shall not:

- a) Make any press announcements or publicise this Contract or its contents in any way; or
- b) use the Authority’s name or brand in any promotion or marketing or announcement of orders;

without the written consent of the Authority, which shall not be unreasonably withheld or delayed.

E6.2 Both Parties shall take reasonable steps to ensure that their servants, employees, agents, Sub-contractors, suppliers, professional advisors and consultants comply with clause E6.1.

E6.3 Where applicable, each Party shall give the other advance notice of proposed visits to the Provider’s premises or any premises of its Sub-contractors (including Members of Parliament, members of the press and media) to observe the delivery of the Service(s) by the Provider or its Sub-contractors.

E6.4 If so requested by the Authority the notepaper and other written material of the Provider and its Sub-contractors relating to the delivery of the Services(s) shall carry only logos and markings approved by the Authority. This may include, but shall not be limited to, such banner or logo as the Authority shall use to identify the Service(s) (“Trade Mark”) from time to time. All publicity and marketing material produced by the Provider (or its Sub-contractors) in relation to this Contract shall be submitted to the Authority for approval, and no such items shall be printed (other than for approval purposes) until such approval is received.]

## **E7 Security**

- E7.1 The Provider shall take all measures necessary to comply with the provisions of any enactment relating to security that may be applicable to the Provider in the performance of the Services.
- E7.2 Whilst on the Authority's Premises, Staff shall comply with all security measures implemented by the Authority in respect of Staff and other persons attending those Premises.
- E7.3 The Provider shall comply, and shall procure the compliance of the Provider Staff, with the Security Policy and the Security Plan. The Provider shall ensure that the Security Plan fully complies with the Security Policy.
- E7.4 The Authority shall notify the Provider of any changes or proposed changes to the Security Policy.
- E7.5 If the Provider believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may request a Variation to the Contract by written notice to the Authority. In doing so, the Provider must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Contract Price shall then be agreed in accordance with clause F3 (Variation).
- E7.6 Until and/or unless a change to the Contract Price is agreed by the Authority pursuant to clause E7.5 the Provider shall continue to perform the Services in accordance with its existing obligations.

## **E8 Intellectual Property Rights**

- E8.1 Save as granted under the Contract, neither the Authority nor the Provider shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights. The Provider acknowledges that the Authority Data is the property of the Authority and the Authority hereby reserves all Intellectual Property Rights which may subsist in the Authority Data.
- a) The Authority shall grant the Provider a non exclusive, revocable, no cost licence for the Contract Period to use the Authority's Intellectual Property Rights where it is necessary for the Provider to supply the Services. The Provider shall have the right to sub license the Sub- Contractor's use of the Authority's Intellectual Property Rights. At the end of the Contract Period the Provider shall cease use, and shall procure that any Sub-Contractor ceases use, of the Authority's Intellectual Property Rights.
- b) The Provider shall grant the Authority a non exclusive, revocable, no cost licence for the Contract Period to use the Provider's Intellectual Property Rights where it is necessary for the Authority in the provision of the Services. At the end of the Contract Period the Authority shall cease use of the Provider's Intellectual Property Rights.

- E8.2 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs, know-how or other material:
- a) furnished to or made available to the Provider by or on behalf of the Authority shall remain the property of the Authority; and/or
  - b) prepared by or for the Provider on behalf of the Authority for use, or intended use, in relation to the performance by the Provider of its obligations under the Contract shall belong to the Authority,

and the Provider shall not, and shall ensure that its Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any such Intellectual Property Rights.

- E8.3 The Provider shall obtain Approval before using any material, in relation to the performance of its obligations under the Contract which is or may be subject to any third party Intellectual Property Rights. The Provider shall use all reasonable endeavours to ensure that the owner of the rights grants to the Authority a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, any Replacement Provider or to any other third party supplying services to the Authority.

- E8.4 The Provider shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Provider shall, during and after the Contract Period, indemnify and keep indemnified the Authority and the Crown harmless from and against all actions, suits, claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses, damages and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this clause E8.4 or which arise from or are incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by virtue of –

- (a) the making available and/or provision of the Services (or any parts thereof); or
- (b) the performance of the Provider's responsibilities and obligations hereunder;

save to the extent caused by the negligence or breach of contract of the Authority.

- E8.5 The Provider shall promptly notify the Authority if any claim or demand is made or action brought against the Provider for infringement or alleged infringement of any Intellectual Property Right that may affect the availability or provision of the Services (or any parts thereof) and/or the performance of the Provider's responsibilities and obligations hereunder.

- E8.6 The Authority shall promptly notify the Provider in writing if any claim or demand is made or action brought against the Authority or Crown to which Clause E8.4 may apply. The Provider shall at its own expense conduct all negotiations and any litigation

arising in connection with any such claim or demand, provided always that the Provider:

- a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
- b) shall take due and proper account of the interests of the Authority; and
- c) shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).

E8.7 The Authority shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Provider for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Provider's obligations under the Contract and the Provider shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so save to the extent that such claim or demand is caused by the negligence or breach of contract of the Authority

E8.8 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Provider in connection with the performance of its obligations under the Contract.

E8.9 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Provider is likely to be made, the Provider shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:

- a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services; or
- b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority,

and in the event that the Provider is unable to comply with clauses E8.9 (a) or (b) within twenty (20) Working Days of receipt of the Provider's notification the Authority may terminate the Contract with immediate effect by notice in writing.

## **E9 Audit and the National Audit Office**

E9.1 The Provider shall keep and maintain until six (6) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Provider shall on request afford the Authority or the Authority's representatives such access to those records as may be requested by the Authority in connection with the Contract.

E9.2 The Provider (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purpose of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the authority has used its resources. The Provider shall provide such explanations as are reasonably required for these purposes. This clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Provider under Section 6(3) (d) and (5) of the National Audit Act 1983.

## **E10 Malicious Software**

E10.1 The Provider shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.

E10.2 Notwithstanding clause E10.1, if Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

E10.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause E10.2 shall be borne by the Parties as follows:

- a) by the Provider where the Malicious Software originates from the Provider Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Provider); and
- b) by the Authority if the Malicious Software originates from the Authority Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Authority).

## **F. CONTROL OF THE CONTRACT**

### **F1 Transfer and Sub-Contracting**

F1.1 Except where F1.4 and F1.5 applies, the Provider shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Provider of any of its obligations or duties under the Contract.

F1.2 The Provider shall be responsible for the acts and omissions of its Sub-contractors as though they are its own.

F1.3 Where the Authority has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Authority, be sent by the Provider to the Authority as soon as reasonably practicable.

- F1.4 Notwithstanding clause F1.1, the Provider may assign to a third party (“the Assignee”) the right to receive payment of the Contract Price or any part thereof due to the Provider under this Contract (including any interest which the Authority incurs under clause C2.6). Any assignment under this clause F1.4 shall be subject to:
- a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
  - b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
  - c) the Authority receiving notification under both clauses F1.5 and F1.6.
- F1.5 In the event that the Provider assigns the right to receive the Contract Price under clause F1.4, the Provider or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- F1.6 The Provider shall ensure that the Assignee notifies the Authority of the Assignee’s contact information and bank account details to which the Authority shall make payment.
- F1.7 The provisions of clause C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Authority.
- F1.8 Subject to clause F1.10, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to;
- a) any Contracting Body;
  - b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
  - c) any private sector body which substantially performs the functions of the Authority,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Provider’s obligations under the Contract.
- F1.9 Any change in the legal status of the Authority such that it ceases to be a Contracting Body shall not, subject to clause F1.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Authority.
- F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F1.8 to a body which is not a Contracting Body or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Body (in the remainder of this clause both such bodies being referred to as the “Transferee”):

- a) the rights of termination of the Authority in clauses H1 (Termination on Insolvency and Change of Control) and H2 (Termination on Default) shall be available to the Provider in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Provider.

F1.11 The Authority may disclose to any Transferee any Confidential Information of the Provider which relates to the performance of the Provider's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Provider's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F1.12 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.

## **F2 Waiver**

F2.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A6 (Notices).

F2.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **F3 Variation**

F3.1 The Authority may from time to time during the Contract Period, by giving written notice to the Provider, require a variation of the Specification (whether by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided or otherwise the requirements for the Services). Such a change is hereinafter called a "Variation".

F3.2 Subject to clauses F3.3 and F3.4, the Provider shall comply with any Variation required by the Authority pursuant to clause F3.1.

F3.3 Following the giving of written notice by the Authority in accordance with clause F3.1, the Authority and the Provider shall enter into good faith negotiations (for a period of not more than thirty (30) Working Days from the date thereof or where, in the

reasonable opinion of the Authority, the Variation is necessary as a matter of urgency due to circumstances outside the Parties' control, such shorter period as the Authority shall direct) to agree the variation in the Contract Price (if any) that, in all the circumstances, properly and fairly reflects the nature and extent of the proposed Variation having regard to the Provider's prices and rates as set out in the Prices & Rates Appendix. The Provider shall provide such information additional to that set by out in the Rates and Prices Appendix as may be reasonably required by the Authority to enable such variation to the Contract price to be calculated.

- F3.4 If the Parties, acting reasonably, are unable to agree the variation in the Contract Price referred to in clause F3.3, the matter shall be referred to dispute resolution under clause I.2. Pending resolution of the matter the Provider shall nonetheless implement and comply with the Variation.
- F3.5 Any such Variation shall be communicated in writing by the Authority to the Provider in accordance with clause A6 (Notices). All Variations shall form an addendum to the Contract.

### **F3A Provider Initiated Variations**

- F3A.1 The Provider may from time to time during the Contract Period, by giving written notice to the Authority, propose:

F3A.1.1 'business as usual' changes to the Contract which the Provider reasonably believes are necessary to reflect current operations and Service delivery, for example, changes to Annex F of Appendix 1 (Schedule of Site Areas) to ensure that the tables are complete and up to date; and

F3A.1.2 other changes to the Contract which the Provider reasonably believes will, if implemented, secure improvements and/or efficiencies in Service quality and delivery, and/or deliver any other benefits to the Authority

**("Provider Initiated Variation(s)").**

- F3A.2 Following the giving of written notice by the Provider under clause F3A.1, the Authority shall consider the Provider's proposal and if it elects to proceed with the proposal, the Authority and Provider shall enter into good faith negotiations (for a period of not more than thirty (30) Working Days from the confirmation by the Authority of its election to proceed) to agree a Provider Initiated Variation. The Provider shall provide such information as the Authority may reasonably require to understand and assess any change proposal and/or to develop and agree any Provider Initiated Variation.
- F3A.3 For the avoidance of doubt, nothing in this clause F3A shall be construed or interpreted as an obligation on the Authority to proceed with any change proposal or agree to any variation, or as conferring any right for the Provider to request changes in response to volume changes or require a wholesale review of the Contract.

#### **F4 Severability**

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

#### **F5 Remedies in the Event of Inadequate Performance**

F5.1 Without prejudice to B3.7 to B3.9, where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under the Contract, then the Authority shall take all reasonable steps to investigate the complaint. Without prejudice to its other rights and remedies under the Contract, the Authority may, in its sole discretion, uphold the complaint and take further action in accordance with this clause F5 or clause H2 (Termination on Default) of the Contract. . For the avoidance of doubt, the provisions of clauses F5.2 – F5.6 apply irrespective of whether such a complaint has been received by the Authority or not.

#### **F5.2 Service Credits**

F5.2.1 Subject to Clauses F5.2A to F5.2E (inclusive) below, in the event that in its performance of the Services at any time the Provider fails to meet any Service Level set out in Appendix 14 (other than due to Force Majeure or to any Default of the Authority), the Provider shall credit the Authority with the applicable Service Credit(s) as calculated and applied in accordance with Appendix 14.

F5.2.2 The Parties acknowledge that the Service Credits are a genuine pre-estimate of the loss likely to be suffered by the Authority and are reasonable but only to the extent so specified in Appendix 14.

F5.2.3 Subject to clause F5.2.4 and clause F5.2.5, the Service Credits recoverable by the Authority under clause F5.2.1 shall be the Authority's sole financial remedy in respect of the failure to meet the Service Levels to which they apply.

F5.2.4 Clause F5.2.3 shall be without prejudice to any other non-financial rights and remedies of the Authority including, for the avoidance of doubt, the right of the Authority to take into account any such failure of the Provider to meet any Service Level as is referred to in clause F5.2.1 -

a) for the purpose of assessing whether a Service Termination Threshold has been reached; or

b) as a Default for the purposes of assessing whether a Persistent Breach has occurred and/or operating the provisions of clauses H2.2 and H2.3; or

- c) for the purposes of determining whether an improvement plan is required under clause F5.3.2.
- F5.2.5 Clause F5.2.3 shall not apply to the exercise by the Authority of any of its rights under clause F5.4.and clause F5.5.
- F5.2A Within four (4) weeks of receiving each Latest Forecast and in any event not less than once every six (6) Months, the Provider shall deliver to the Authority the Proposed Clearance Profile for agreement by the Authority. In preparing the Proposed Clearance Profile the Provider shall use the template set out in Annex 2 to Appendix 14, and shall ensure that any assumptions are based on historical data, and provide evidence, explanation or further information as reasonably required by the Authority in connection with any assumptions. Where the Authority does not agree the Proposed Clearance Profile, the Provider shall promptly review and update the Proposed Clearance Profile in accordance with the Authority's comments and promptly resubmit it for agreement. The parties shall work together in good faith to agree the Proposed Clearance Profile as amended within four (4) weeks of the Authority first receiving the same from the Provider. Any disputes relating to the Proposed Clearance Profile shall be referred to the Dispute Resolution Procedure. The Proposed Clearance Profile as amended by the agreement of the Parties, including any changes arising through Dispute Resolution, shall be the Operative Clearance Profile for the purposes of the calculations under this clause F5.2A and shall come into effect on the date of commencement of the immediately following Operative Forecast.
- F5.2B Without prejudice to any other rights of the Authority under this Contract (including without limitation in relation to any Service Credits payable in respect of any failure to meet any Service Levels to which a Service Credit Let is not applicable), if, during the term of the Extension Period there is an Over-Referral Period, Service Credit Lets (calculated in accordance with clause F5.2C below) shall apply for the Service Credit Let Period.
- F5.2C Where a Service Credit Let applies in accordance with clause F5.2B above (whether due to a single Service Credit Let Period or multiple concurrent Service Credit Let Periods), the total Service Credits for any Month within a Service Credit Let Period shall be adjusted as follows:
  - F5.2C.1 where, in that Month, the Provider clears an average of 100% or more of the total number of Profile Chargeable Clearances (based on the Operative Clearance Profile) for that Month, the total Service Credits which would otherwise be payable by the Provider in respect of Service Level SC4(a) or SC4(b) in respect of that Month in accordance with clause F5.2.1, shall be reduced by a sum equal to 100% of such Service Credits; or
  - F5.2C.2 where, in that Month, the Provider clears an average of between 85% and up to 100% of the total number of Profile Chargeable Clearances (based on the Operative Clearance Profile) for that Month, the total Service Credits which would otherwise be payable by the Provider in respect of Service Level SC4(a) or SC4(b) in respect of that Month in accordance with clause F5.2.1, shall be reduced by a sum equal to 75% of such Service Credits; or

- F5.2C.3 where, in that Month, the Provider clears less than an average of 85% of the total number of Profile Chargeable Clearances (based on the Operative Clearance Profile) for that Month, the total Service Credits which would otherwise be payable by the Provider in respect of Service Level SC4(a) or SC4(b) in respect of that Month in accordance with clause F5.2.1, shall be reduced by a sum equal to 50% of such Service Credits.
- F5.2D The amount of Service Credit Let which may apply in respect of any Month forming part of a Service Credit Let Period shall be calculated in respect of that Month, at the end of that Month.
- F5.2E For the avoidance of doubt, neither sub-clause F5.2B nor F5.2C shall:
- F5.2E.1 operate to result in an obligation on the Authority to make any payment to the Provider in addition to any other obligation the Authority otherwise has to make payment to the Provider under this Contract; and
- F5.2E.2 apply where the Over-Referral Period arises due to Referrals made by the Authority which were previously subject to a request by the Provider to under-refer in any Month (such request to be agreed solely at the discretion of the Authority).
- F5.2F A worked example in respect of clauses F5.2B and F5.2C is set out at Annex 4 to Appendix 14
- F5.3 In the event of the Provider, through its own Default, failing to perform the Services in accordance with all applicable standards and requirements of this Contract or otherwise failing to comply with any of its obligations under this Contract, the Authority shall (without prejudice to its other rights and remedies) be entitled to exercise one or more of the following remedies: –
- F5.3.1 require the Provider, at the Provider's own expense, to remedy the Default and/or re-schedule and re-perform the Services affected by the Provider's failure (the "Affected Services") within such timescale as the Authority may reasonably require; and/or
- F5.3.2 require the Provider to submit a performance improvement plan detailing why the failure has occurred and how it will be remedied within 10 Working Days following the date of such request or such other period as the Authority may direct; and/or
- F5.3.3 withhold from payment to the Provider, or recover as a sum due from the Provider, the portion of the Contract Price allocable to the Default or the Affected Services (other than where Service Credits are applicable to such Provider's failure in which case clause F5.2 shall apply); and/or
- F5.3.4 Without prejudice to clause F5.6, if the Provider fails to remedy the Default or re-schedule and re-perform the Affected Services in accordance with the timescale stipulated by the Authority under clause F5.3.1) the Authority may itself, or through a third party acting on its

behalf, remedy the Default or re-perform the Affected Services and the Provider shall pay the reasonable costs incurred by the Authority in so doing.

F5.4 In the event that the Authority is of the reasonable opinion that there has been a Default which is a material breach of the Contract by the Provider, then the Authority may, without prejudice to its other rights and remedies under the Contract including under clause H2 (Termination on Default), do any of the following:

- a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Authority that the Provider will once more be able to supply all or such part of the Services in accordance with the Contract;
- b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- c) terminate, in accordance with clause H2 (Termination on Default), the whole of the Contract.

F5.5 Without prejudice to its rights under clause C3 (Recovery of Sums Due), where the Authority exercises its rights under clause F5.4(a) or clause F5.4(b) the Authority may charge the Provider for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

F5.6 In the event that:

- a) the Provider fails to comply with clause F5.3.1 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or
- b) the Provider persistently fails to comply with clause F5.3.1 above,

the Authority may terminate the Contract by giving 10 Working Days notice in writing.

## **F6 Remedies Cumulative**

Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**F7 Monitoring of Contract Performance**

The Provider shall comply with the monitoring arrangements set out in the Monitoring Requirements Appendix 3 including, but not limited to, providing such data and information as the Provider may be required to produce under the Contract.

**F8 NOT USED**

**F9 Counterparts**

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

**F10 Authority Step-in**

**F10.1 Right to Step-In**

If the Authority reasonably believes that it needs to take action in connection with the Services:

F10.1.1 because a serious risk exists to the health or safety of persons or property or to the environment;

F10.1.2 to discharge a statutory duty;

F10.1.3 because an Emergency has arisen and/or

F10.1.4 (without prejudice to clause F5 or clause H2) because the Provider has committed a Default which is a material breach of the Contract,

then the Authority shall be entitled to take action in accordance with clauses F10.2 (Notice to the Provider) to F10.5 (Step-In on Provider Breach).

**F10.2 Notice to the Provider**

If clause F10.1 (Right to Step-In) applies and the Authority wishes to take action, the Authority shall notify the Provider in writing of the following:

F10.2.1 the action it wishes to take;

F10.2.2 the reason for such action;

F10.2.3 the date it wishes to commence such action;

F10.2.4 the time period which it believes will be necessary for such action; and

F10.2.5 to the extent practicable, the effect on the Provider and its obligation to provide the Services during the period such action is being taken.

**F10.3 Action by Authority**

F10.3.1 Following service of such notice, the Authority shall take such action as notified under clause F10.2 (Notice to the Provider) and any consequential additional action as it reasonably believes is necessary (together, the Required Action) and the Provider shall give all reasonable assistance to the Authority, including for the avoidance of doubt making available to the Authority such Staff, Premises, Equipment and data as currently utilised by the Provider in relation to the Services as the Authority may reasonably require to undertake the Required Action, while it is taking the Required Action. The Authority shall provide the Provider with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.

F10.3.2 The Authority shall undertake the Required Action in accordance with Good Industry Practice and where the Required Action has been taken otherwise than as a result of a breach by the Provider, the Authority shall indemnify the Provider against all direct Losses where it fails to do so, subject to the Provider having taken all reasonable steps to mitigate such Losses.

#### F10.4 Step-In without Provider Breach

If the Provider is not in breach of its obligations under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents the Provider from providing any part of the Services:

F10.4.1 the Provider shall be relieved from its obligations to provide such part of the Services; and

F10.4.2 in respect of the period in which the Authority is taking the Required Action and provided that the Provider provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent that incremental costs are incurred), the Contract Price due from the Authority to the Provider shall equal the amount the Provider would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period.

#### F10.5 Step-In on Provider Breach

Without prejudice to the Authority's rights and remedies under clause F5, clause H2 or otherwise, if the Required Action is taken as a result of a Default of the Provider which is a material breach of the Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Provider from providing any part of the Services:

F10.5.1 the Provider shall be relieved of its obligations to provide such part of the Services; and

F10.5.2 in respect of the period in which the Authority is taking the Required Action, the Contract Price due from the Authority to the Provider shall equal the amount the Provider would receive if it were satisfying all its

obligations and providing the Services affected by the Required Action in full over that period, less an amount equal to all the Authority's costs of operation in taking the Required Action.

## G. LIABILITIES

### G1 Liability, Indemnity and Insurance

G1.1 Neither Party excludes or limits liability to the other Party for:

- a) death or personal injury caused by its negligence; or
- b) fraud; or
- c) fraudulent misrepresentation; or
- d) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

G1.2 Subject to clause G1.3, the Provider shall indemnify the Authority and keep the Authority indemnified fully

- a) in respect of any personal injury or loss of or damage to tangible property incurred by the Authority or its employees and agents to the extent that such personal injury or loss of property is directly caused by any Default of the Provider, its employees, agents or Sub-contractors or by circumstances within its or their control in connection with the performance or purported performance of the Contract; and
- b) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) and any other liabilities in respect of any personal injury or damage arising from or incurred by reason of the use of the Services by any Participant.
- c) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Provider of its obligations under the Contract or the presence of the Provider or any Staff on the Premises, including financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider:

G1.3 The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.

G1.4 Responsibility for the control, management and supervision of all Participants shall rest entirely with the Provider subject to the Participant complying with all reasonable instructions and directions which the Provider may issue to the Participant from time to time. The Authority shall not be liable for any personal injury, disease or death, or loss

or damage whatsoever caused, by any act or omission of a Participant, except to the extent (if any) that it was also caused or contributed to by the negligent act or omission or wilful Default of some other person acting as a servant or agent of the Authority.

- G1.5 Subject always to clause G1.1 and without prejudice to clause H2, the liability of either Party for Defaults, under this Contract, shall be subject to the following financial limit:
- a) the annual aggregate liability under the Contract of either Party for all Defaults (other than a Default governed by clauses E8.4 (Intellectual Property Rights) E2.16 (Protection of Personal Data) or G1.4) shall in no event exceed 75% of the Contract Price paid or payable by the Authority to the Provider in the year in which the liability arises.
- G1.6 Subject always to clauses E2.16, G1.1 and G1.2, in no event shall either Party be liable to the other for any:
- a) loss of profits, business, revenue or goodwill; and/or
  - b) loss of savings (whether anticipated or otherwise); and/or
  - c) indirect or consequential loss or damage
- G1.7 The Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of the Contract.
- G1.8 The Provider shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- G1.9 The Provider 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 appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.10 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- G1.11 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract. It shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any liability referred to in clause G1.2.

## **G2 Professional Indemnity**

- G2.1 The Provider shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and Sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Provider shall ensure professional indemnity insurance held by the Provider and by any agent, Sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than that required by the relevant regulatory body for each individual claim. Such insurance shall be maintained for a minimum of six (6) years following the expiration or earlier termination of the Contract.
- G2.2 Any excess or deductibles under the insurance referred to in clause G2.1 shall be the sole and exclusive responsibility of the Provider, or the Providers' agents, professional consultants or Sub-contractors, as applicable.
- G2.3 The terms of any insurance or the amount of insurance cover shall not relieve the Provider, or the Providers' agents, professional consultants or Sub-contractors of any liabilities arising under the Contract.
- G2.4 The Provider, or the Providers' agents, professional consultants or Sub-Contractors shall, on request, provide the Authority with copies of all insurance policies referred to in clause G2.1 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G2.5 If, for whatever reason, the Provider, or the Providers' agents, professional consultants or Sub-Contractors fails to give effect to and maintain the insurances required by this clause then the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

## **G3 Warranties and Representations**

The Provider warrants and represents that:

- a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Provider;
- b) in entering the Contract it has not committed any fraud;
- c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract;
- d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;

- e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;
- g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- h) in the three (3) years prior to the date of the Contract:
  - i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- i) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

**G3A Additional Warranties**

G3A.1 From the 1 January 2018, the Provider and the Guarantor each confirm, represent and warrant that they both are and will continue to be in compliance with any legal, regulatory, accounting or other obligations applicable to them in any relevant jurisdiction with regard to the terms set out in the Contract and the February 2018 Side Agreement and more particularly:

- a) each has conducted and will continue to conduct all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts; and
- b) each has been and will continue to be in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established.

**G4 Parent Company Guarantee**

On or about the date of this agreement (and in any event no later than the first Commencement Date), the Provider shall procure that the Guarantor shall:

- i) execute and deliver to the Authority the Guarantee; and

- ii) deliver to the Authority a certified copy of the board minutes of the Guarantor approving the execution of the Guarantee.

In the event that the Provider fails to comply with its obligations under this clause G4, the Authority reserves the right to terminate the Contract with immediate effect by notice in writing.

## **G5 New PCG**

G5.1 By no later than Thursday 28 February 2019, the Provider shall procure that the Guarantor shall:

- (i) execute and deliver to the Authority the New PCG; and
- (ii) deliver to the Authority a certified copy of the board minutes of the Guarantor approving the execution of the New PCG

G5.2 In the event that the Provider fails to comply with its obligations under this Clause G5, the Authority reserves the right to terminate this Contract with immediate effect by notice in writing.

G5.3 The New PCG shall be in the form appended to this Contract at Appendix 11 (Part 2) PROVIDED THAT if the Guarantor requests amendments to the form of Guarantee, the Authority shall review those and shall not unreasonably refuse to agree to requested amendments that it considers are non-material.

## **H. DEFAULT, DISRUPTION AND TERMINATION**

### **H1 Termination on Insolvency and Change of Control**

H1.1 The Authority may terminate the Contract with immediate effect by notice in writing where the Provider is a company and in respect of the Provider:

- a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

- e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- g) being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- h) any event similar to those listed in H1.1 (a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Authority may terminate the Contract with immediate effect by notice in writing where the Provider is an individual and:

- a) an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider’s creditors; or
- b) a petition is presented and not dismissed within 14 days or order made for the Provider’s bankruptcy; or
- c) a receiver, or similar officer is appointed over the whole or any part of the Provider’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- d) the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider’s assets and such attachment or process is not discharged within fourteen (14) days; or
- f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

H1.3 The Provider shall notify the Authority immediately if the Provider undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (“Change of Control”). The Authority may terminate the Contract by notice in writing with immediate effect within six Months of:

- a) being notified that a change of control has occurred; or

- b) where no notification has been made, the date that the Authority becomes aware of the change of control,

but shall not be permitted to terminate where an Approval was granted prior to the change of control.

## H2 Termination on Default

H2.1 The Authority may terminate the Contract by written notice to the Provider if the Provider commits a Default which is a material breach of the Contract and if:

- a) the Default is capable of remedy and the Provider has not remedied the Default to the satisfaction of the Authority within twenty five (25) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
- b) the Default is not, in the reasonable opinion of the Authority, capable of remedy.

In the case of clause H2.1(a), the Contract shall terminate on the date falling five (5) Working Days after the date of receipt by the Provider of the Authority's written notice of termination and, in the case of clause H2.1(b), the Contract shall terminate on the date falling twenty (20) Working Days after the date of receipt by the Provider of the Authority's written notice of termination.

H2.2 Without prejudice to the provisions of clause H1 or H2.1, where the Authority considers that the Provider has committed a Persistent Breach in relation to the Contract or any part thereof (including any part of the Services), the Authority shall be entitled to serve a written notice (a "**Formal Warning Notice**") on the Provider:

- (a) specifying that it is a Formal Warning Notice;
- (b) giving reasonable details of the Persistent Breach; and
- (c) stating that if the Persistent Breach recurs two or more times within a six (6) month period after the date of service of the Formal Warning Notice, this may result in a termination of the Contract or that part of the Services affected by such Persistent Breach.

H2.3 If:

- (a) twenty (20) Working Days after service of a Formal Warning Notice, the Provider has failed to demonstrate to the satisfaction of the Authority that the Persistent Breach specified has not continued and that the Provider has put in place measures to ensure that such Persistent Breach does not recur; or
- (b) within a six (6) month period after the date of service of the Formal Warning Notice, the Provider has failed to demonstrate to the satisfaction of the Authority that the Persistent Breach specified has not recurred [two] or more times within such six (6) month period and that the Provider has put in place measures to ensure that such Persistent Breach does not recur,

then the Authority may deem such failure shall be a Default which is a material breach of the Contract not capable of remedy for the purposes of clause H2.1 (b).

- H2.4 In the event that the Provider's performance of the Services is such that any Service Termination Threshold is reached or exceeded, this shall be deemed to be a Default in respect of which the Authority shall be entitled, without prejudice to its other remedies under the Contract, to terminate under clause H2.
- H2.5 In the event that through any Default of the Provider, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- H2.6 If the Authority fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Provider may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C3.1 (Recovery of Sums Due).

### **H3 Break**

The Authority shall have the right to terminate the Contract at any time by giving six (6) Months' written notice to the Provider. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Provider during the period of extension.

### **H4 Consequences of Expiry or Termination**

- H4.1 Where the Authority terminates the Contract under clause F5 (Remedies in the Event of Inadequate Performance) or clause H2 (Termination on Default) and then makes other arrangements for the supply of Services, the Authority may recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause F5 or clause H2 (Termination on Default), no further payments shall be payable by the Authority to the Provider until the Authority has established the final cost of making those other arrangements.
- H4.2 Subject to clauses H4.3, H4B and H4C where the Authority terminates the Contract under clause H3 (Break), the Authority shall indemnify the Provider against any commitments, liabilities, or expenditure which would otherwise represent an unavoidable loss by the Provider by reason of the termination of the Contract, provided that the Provider takes all reasonable steps to mitigate such loss. Where the Provider holds insurance, the Provider shall reduce its unavoidable costs by any insurance sums available. The Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Provider as a result of termination under clause H3 (Break). Any payment paid by the Authority in accordance with this clause H4.2 shall be in full and final settlement of any claim, demand and/or proceedings of the Provider in relation to any termination by the Authority pursuant to clause H3 (Break), and the Provider shall be excluded from all other rights and remedies it would otherwise have been in respect of any such

termination. For the avoidance of doubt, this clause H4.2 shall not apply where there is a Services reduction as a result of a Transition, as any such costs would be taken into account as part of the relevant Transition Pricing Review.

H4.3 The Authority shall not be liable under clause H4.2 to pay any sum which:

- a) was claimable under insurance held by the Provider, and the Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- b) when added to any sums paid or due to the Provider under the Contract, exceeds the total sum that would have been payable to the Provider if the Contract had not been terminated prior to the expiry of the Contract Period.

H4.4 On the expiry or termination of this Contract or any part thereof:

- a) the Provider shall repay forthwith to the Authority any moneys paid up to and including such date of termination other than moneys in respect of the Service(s) or part thereof properly performed in accordance with this Contract;
- b) the Provider shall cease all use of all the Authority Intellectual Property Rights, generated Intellectual Property Rights, and any trade mark and shall return or destroy as the Authority requires, all documents and materials (including those in electronic format) incorporating or referring to the same.

H4.5 Save as otherwise expressly provided in the Contract:

- a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Provider under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Bribery and Corruption), E1 (Authority Data), E2 (Protection of Personal Data), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E8 (Intellectual Property Rights), E9 (Audit and National Audit Office), F6 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), G2 (Professional Indemnity), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Expiry or Termination), I1 (Governing Law and Jurisdiction), Appendix 4 (Prices and Rates), Appendix 12 (Exit and Service Transfer Arrangements) and any other clause or Appendix of the Contract which by its terms is to be performed or observed notwithstanding termination (howsoever arising) or expiry or which is expressed or by implication is to survive termination or expiry.

H4.6 Clause H4A shall apply in the event of termination of this Contract in accordance with Clause H2 (termination on Default).

## H4A Termination Payment by Authority for Default

H4A.1 NOT USED.

H4A.2 Subject to the remaining provisions of this clause H4A and subject to the Authority's rights under Clauses C3.1, H4.1 and H4.4(a) of this Contract, the Authority agrees that in the event of termination of this Contract on or before 30 July 2017 in accordance with Clause H2 (Termination on Default) of this Contract the Authority will pay the Provider for the additional investment made under the HoT pursuant to the purpose referred to in clause 1.1 of the HoT in respect of this Contract by an amount equal to P, where P is a positive number calculated as follows:

[REDACTED]

H4A.2.1 X = total costs which the Provider has reasonably incurred in performing its obligations under this Contract, to the date of termination of this Contract, excluding costs which directly arise from the HoT. Such total costs shall be capped:

- (a) in respect of costs incurred prior to the end of May 2014, at an amount no higher than the actual cost incurred up to and including May 2014, being £[REDACTED] million plus overheads of £[REDACTED] million as reported by the Provider in the financial model sent to the Authority via email on 3 July 2014 at 19.05 (file name "Atos PIP Financial Model Lots 1 and 3 Combined July 2012 to Dec 2014 (3rd July 2014)"); and
- (b) in respect of costs incurred after the end of May 2014, for every month after May 2014 costs to be no more than the May 2014 actual costs as reported by the Provider in the financial model sent to the Authority via email on 3 July 2014 at 19.05 (file name "Atos PIP Financial Model Lots 1 and 3 Combined July 2012 to Dec 2014 (3rd July 2014)") plus an overhead [REDACTED]% PLUS

H4A.2.2 Y = total cost of the additional commitments made by the Provider directly arising under the HoT (as identified in, and subject to Clause H4A.7 and in general terms to include additional estate costs, additional staff redundancy costs, incremental personnel costs relating to management and administration and additional estate dilapidation costs) LESS

H4A.2.3 Z = total charges paid to the Provider up to the point of termination of this Contract in accordance with Clause H2 (Termination on Default) of this Contract, without any deduction of applicable Service Credits, No Pay Amounts or the Retention Amount, and, in any event, such service credits shall not be treated as costs in this Clause H4A.2.

- H4A.2.4 Where P is a negative number (i.e. charges paid exceed costs), no further payments shall be made to the Provider by the Authority at the point this Contract is terminated.
- H4A.3 Not Used.
- H4A.4 P shall be capped at a maximum of £[REDACTED] or Y, whichever is the lesser, and the Provider shall have a responsibility to mitigate all costs and cost commitments.
- H4A.5 Prior to any payment the Authority shall have the right to audit the calculation of P and its relevant parts and shall not be obliged to make any payment until reasonably satisfied with the data upon which P has been calculated. The Provider shall provide all assistance, information and documentation as the Authority may reasonably request in connection with any such audit. The basis of evaluating the calculation shall be the methodology as provided in the financial model(s) referred to in Clause H4A.2.1. The Authority agrees to conclude such audit as soon as reasonably practicable, but in any event within three (3) months of receipt of the calculation and relevant data from the Provider.
- H4A.6 Any other payments shall be as provided by this Contract provided always that there will be no double payment of costs under this Contract or otherwise. The Provider undertakes promptly to return any double payment which is identified by either Party, to the Authority, without any right to withhold or set off the amount of that double payment.
- H4A.7 Any costs incurred which fall within Y as described in H4A.2.2 and subject to verification in accordance with H4A.5, shall only be for additional commitments made by the Provider directly arising under the HoT pursuant to the purpose referred to in clause 1.1 of the HoT. No other costs may fall within Y. In general terms, the costs falling within Y will cover:
- H4A.7.1 redundancy costs associated with the termination of the employment contracts for Provider personnel engaged in the performance of services pursuant to this Contract, where the personnel do not transfer to a replacement supplier or the Authority or are not redeployed by the Provider;
  - H4A.7.2 costs associated with the termination of agreed premises, where the premises are not transferred to a Replacement Provider, or to the Authority, or to any other Contracting Authority, subject to and in accordance with clauses H4B and H4C;
  - H4A.7.3 incremental personnel costs relating to management and administration; and
  - H4A.7.4 IT infrastructure costs and associated agreed project costs directly resulting from the additional estate and recruitment of staff under the HoT.
- H4A.8 The costs in Clause H4A.2 (and as described in Clause H4A.7) will only be payable by the Authority where they are unavoidable, proven reasonable and not otherwise capable of recovery by the Provider having mitigated the said costs.

H4A.9 The costs in Clause H4A.2 (and as described in Clause H4A.7) will not be payable by the Authority upon the expiry of this Contract or where the Authority terminates this Contract for convenience under Clause H3 (Break) of this Contract. Any payments made by the Authority in such circumstances shall only be where such payments are otherwise expressly provided in this Contract. Provided that where the Authority terminates this Contract for convenience under Clause H3 (Break) and the HoT are still in operation and have not expired or have been otherwise terminated, the HoT shall also be deemed to be terminated pursuant to Clause H4A.3 and in such circumstances the Authority shall pay to the Provider the costs pursuant to Clause H4A.2 (and as described in Clause H4A.7).

H4A.10 In accordance with Clause H4A.8 above, the Provider shall provide to the Authority evidence of the costs in Clause H4A.2 (and as described in Clause H4A.7) within 30 days of request by the Authority. Where cost commitments have not been made at the time of the request the Provider shall provide the necessary evidence within 30 days of the cost commitment having been made. Such evidence to include details of the new personnel (including numbers, roles and general description of employment terms), premises and fit out costs (which the Provider agrees will be taken on usual market and commercial terms) and any other information which the Authority reasonably requires, to enable the Authority to quantify the potential level of costs.

H4A.11 The Parties agree and acknowledge that each of the caps specified in clauses H4A.2 and H4A.4 are aggregate caps which apply to both PIP Contracts. In the event that the PIP Contracts are not terminated at the same time, the Parties agree that such caps shall be apportioned as follows:

H4A.11.1 If the Lot 1 PIP Contract terminates before termination of the Lot 3 PIP Contract:

(a) the percentage for the Lot 1 PIP Contract shall be [REDACTED]%;  
and

(b) the percentage for the Lot 3 PIP Contract shall be [REDACTED]%;  
and

H4A.11.2 If the Lot 3 PIP Contract terminates before termination of the Lot 1 PIP Contract:

(a) the percentage for the Lot 1 PIP Contract shall be [REDACTED]%;  
and

(b) the percentage for the Lot 3 PIP Contract shall be [REDACTED]%.  
and

For example, if the Lot 1 PIP Contract terminates first, the £[REDACTED] cap in clause H4A.4 (assuming it is lesser than Y) shall be apportioned £[REDACTED] to the Lot 1 PIP Contract and £[REDACTED] to the Lot 3 PIP Contract.

## **H4B Rights to Acquire Estates on Exit**

H4B.1 Where in connection with the Exit and Service Transfer Arrangements, the Authority requires the use of any premises sourced by the Provider either for itself, a

Replacement Provider or other nominated party, including any other Contracting Authority, the Provider shall use best endeavours as soon as reasonably practicable to:

- (a) assign, novate or otherwise transfer (and/or procure the assignment, novation or transfer of) the relevant lease or licence; and
- (b) execute (and/or procure the execution of) all such documents and provide such other assistance required in order to effect such assignment, novation or transfer.

H4B.2 The Provider shall create and maintain a list of all leases and licences in respect of premises used for the purposes of delivering the Services either by itself or by any Sub-contractor ("**Estate Leases**"), and shall in a timely manner provide an up to date copy of such list to the Authority upon request, together with such information as the Authority may reasonably request, including as part of the quarterly updates under this Contract and as part of the Exit Transfer Arrangements. In particular, the Provider shall ensure that it maintains up-to-date quickly and easily accessible information regarding the term (together with any break and extension options, and early termination consequences) and assignability of the Estate Leases, and a copy of the schedule of condition for those premises.

H4B.3 Should the term of any Estate Lease require renewal or extension during the period from the Variation Date to the end of the Contract Period, the Provider shall use best endeavours to procure in the Estate Lease terms the right to novate or assign the Estate Lease to the Authority or a Replacement Provider. In the event that having used its best endeavours the Provider cannot agree such terms in connection with any Estate Lease, it shall notify the Authority not less than ninety (90) days prior to the expiry of any right the Provider has to renew or extend the relevant Estate Lease and shall use its best endeavours to facilitate direct discussions between the Authority and the relevant agent or landlord.

H4B.4 Without prejudice to clause H4B.3 above, the Provider shall use reasonable endeavours to facilitate direct discussions between the Authority and the relevant agent or landlord of each Estate Lease by no later than thirty (30) days following the issue by the Authority of Detailed Transition Requirements.

H4B.5 From the date of any Transition Notice issued by the Authority in accordance with Appendix 12, the Provider shall grant or procure the grant of access to any premises used in connection with the provision of the Services to the Authority and/or to any Replacement Provider, upon the provision of reasonable notice by the Authority and the compliance of the Authority or the relevant Replacement Provider with reasonable security requirements of the Provider

#### **H4C Estate Breakage Costs**

H4C.1 In the event the Provider is entitled to recover from the Authority costs associated with terminating estate or premises arrangements as a result of termination or expiry under this Contract, then: (a) such entitlement shall not apply where there is a Services reduction as a result of a Transition, as any such costs would be taken in to account as part of the relevant Transition Pricing Review and (b) such entitlement will be subject to and in accordance with this clause H4C.

H4C.2 The Provider shall be entitled to recover only those costs which are incurred by the Provider directly as a result of termination of the Contract by the Authority under clause H2 (Termination on Default), or under clause H3 (Break), and which:

- (a) in the event of termination of the Contract by the Authority under clause H2 (Termination on Default), such termination is effective on or before 30 July 2017 and clause H4A (Termination Payment by Authority for Default) applies;
- (b) are payable by the Provider to landlord(s), lessor(s) and/or licensor(s) for terminating leases or licences to occupy premises which are used exclusively for the purposes of delivering the Services;
- (c) are in respect of leases or licences to occupy that are not assigned, novated or otherwise transferred to the Authority, a Replacement Provider or other nominated party, including any other Contracting Authority, pursuant to clause H4B.1; and
- (d) the Provider can demonstrate to the Authority:
  - (i) are surplus to the Provider's requirements after the date of termination, whether in relation to use internally within its business or in providing services to any of its other customers;
  - (ii) have been entered into by it in the ordinary course of business; and
  - (iii) have been minimised and mitigated in accordance with paragraphs H4C.3 and H4C.4;

H4C.3 In respect of each terminating lease or licence to occupy, the costs shall be the lesser of:

- (a) the costs that the Provider has negotiated with the relevant landlord, lessor or licensor for early termination of the lease or licence to occupy; and
- (b) the costs that would have been incurred if the relevant lease or licence continued to its expiry date.

H4C.4 The Provider agrees to use its best endeavours to minimise and mitigate costs by:

- (a) assigning, novating or otherwise transferring the leases and/or licences to the Authority, Replacement Provider or other nominated party (at the request of the Authority);
- (b) in respect of any leases or licences which are not to be assigned or transferred under paragraph H4C.4(a):
  - (i) terminating those leases and licences at the earliest possible date without breach or where contractually permitted; and
  - (ii) negotiating minimal cancellation or termination charges.

H4C.5 Nothing in this Contract shall require the Authority to pay any costs associated with terminating estate or premises arrangements in the event of termination of the Contract by the Authority under clause H2 (Termination on Default) and such termination is effective after 30 July 2017.

## **H5 Disruption**

H5.1 The Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other Provider employed by the Authority.

H5.2 The Provider shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

H5.3 In the event of industrial action by the Staff, the Provider shall seek Approval to its proposals to continue to perform its obligations under the Contract.

H5.4 If the Provider's proposals referred to in clause H5.3 are considered insufficient or unacceptable by the Authority acting reasonably, then this shall be deemed a material breach of the Contract for the purposes of clause H2.1 and the Contract may be terminated with immediate effect by the Authority by notice in writing

H5.5 If the Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Authority, an appropriate allowance by way of extension of time will be approved by the Authority. In addition, the Authority will reimburse any additional expense reasonably incurred by the Provider as a direct result of such disruption.

H5.6 The Provider shall have a Business Continuity Plan in place, agreed with the Authority by 15/03/13, to ensure that the Service to the Authority will be maintained in the event of disruption (including, but not limited to, disruption to information technology systems) to the Provider's operations, and those of Sub-contractors to the Provider, however caused. Such contingency plans shall be available for the Authority to inspect and to practically test at any reasonable time, and shall be subject to regular updating and revision throughout the currency of the contract.

## **H6 Recovery upon Expiry or Termination**

H6.1 At the expiry or earlier termination of the Contract Period (howsoever arising) the Provider shall immediately deliver to the Authority or as directed upon request all Property (including materials, documents, information and access keys) used in the performance of its obligations under the Contract in its possession or under its control or in the possession or under the control of any permitted suppliers or Sub-contractors and in the event the Provider fails to do so, the Authority may recover possession thereof and the Provider grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted suppliers or Sub-contractors where any such items may be held.

H6.2 At the expiry or earlier termination of the Contract Period (howsoever arising) and/or after the Contract Period the Provider shall provide assistance to the Authority and any

Replacement Provider in order to ensure an effective handover of all work then in progress, including as set out in Appendix 12 (Estate and Service Transfer Arrangements) and clause H4B (Rights to acquire estates on exit). Where the end of the Contract Period arises due to the Provider's Default, the Provider shall provide such assistance at nil charge. Where the contract ends for other reasons the Authority shall pay the Provider's reasonable costs of providing the assistance (up to the cost cap or as specified in the Service Transfer Plan) and the Provider shall take all reasonable steps to mitigate such costs.

- H6.3 The Authority shall for a period of twelve (12) Months following expiry or termination (howsoever arising) of the Contract (or until the date on which the Provider fulfils all its duties and responsibilities pursuant to the Exit and Service Transfer Arrangements, if later) be entitled to require access to data and such information relating to and arising from the Services from the Provider as remains in the possession or control of the Provider.
- H6.4 The Provider agrees that the Authority shall have a first right of refusal (in accordance with clause H4B (Rights to acquire estates on exit)) in relation to premises in the event of: (a) expiry; (b) termination by the Provider; or (c) termination by the Authority.
- H6.5 Where the Provider takes on or engages any additional premises or personnel pursuant to the HoT, it shall do so in accordance with all applicable terms of the Contract and the Supporting PIP assessment guide.
- H6.6 On any Transition in accordance with Appendix 12 (Estate and Service Transfer Arrangements), the Provider shall comply with the provisions of clauses H6.1 and H6.2 in so far as they apply to the reduction of Services resulting from that Transition.

## **H7 Force Majeure**

- H7.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six (6) Months, either Party may terminate the Contract with immediate effect by notice in writing.
- H7.2 Any failure or delay by the Provider in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Provider.
- H7.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause H7.1 it shall immediately notify the other Party by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

## **Catastrophic Event**

H8 In the event of a Catastrophic Event, the Provider shall immediately notify the Authority of such event and the Authority and the Provider shall enter into discussions (for a period of not more than thirty (30) Working Days) to agree the nature and extent of the impact of the Catastrophic Event on the Services and ways in which such impact can be mitigated. Such discussions may (but shall not necessarily) include potential variations to this Contract. Nothing in this clause H8 shall be construed or interpreted as an obligation on either Party to agree to any such variation.

## I. DISPUTES AND LAW

### I 1 **Governing Law and Jurisdiction**

The Contract and any action, suit, proceeding or dispute in connection with it shall be governed by and interpreted in accordance with English law and the Parties submit to the jurisdiction of the English courts. Each Party irrevocably waives any objection which it might at any time have to the courts of England being nominated as the forum to hear and decide any proceedings and to settle any disputes and agrees not to claim that the courts of England are not a convenient or appropriate forum.

### I 2 **Dispute Resolution**

I 2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute ultimately to the Commercial Director (or such other person as he may direct) of each Party.

I 2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

I 2.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I2.5 unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Provider does not agree to mediation.

I 2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Provider and its Staff shall comply fully with the requirements of the Contract at all times.

I 2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

- a) a neutral adviser or mediator (the "Mediator") shall be chosen by agreement between the Parties, or if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator, or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to a mediation provider to appoint a Mediator.

- b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from a mediation provider to provide guidance on a suitable procedure.
- c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
- f) If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause I 2.6.

I 2.6 Subject to clause I2.2, the Parties shall not institute court proceedings until the procedures set out in clauses I2.1 and I2.3 have been completed save that:

- a) the Authority may at any time before court proceedings are commenced, serve a notice on the Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7.
- b) if the Provider intends to commence court proceedings, it shall serve written notice on the Authority of its intentions and the Authority shall have twenty one (21) days following receipt of such notice to serve a reply on the Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7.
- c) the Provider may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with clause I2.7, to which the Authority may consent as it sees fit.

I 2.7 In the event that any arbitration proceedings are commenced pursuant to clause I2.6:

- a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- b) the Authority shall give a written notice of arbitration to the Provider (the "Arbitration Notice") stating:
  - i) that the dispute is referred to arbitration; and

- ii) providing details of the issues to be resolved;
- c) the London Court of International Arbitration (“LCIA”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with I2.7 (b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- e) if the Parties fail to agree the appointment of the arbitrator within ten (10) days of the Arbitration Notice being issued by the Authority under clause I2.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- f) the arbitration proceedings shall take place in London and in the English language; and
- g) the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

### **I 3 Records**

- I 3.1 The Provider and any Sub-contractors appointed by it shall maintain the records referred to in clause E9.1 and such other documents as the Authority may reasonably require throughout the period of this Contract; and the Provider and any Sub-contractors appointed by it shall maintain such records and documents until at least seven (7) years after the date of termination or expiry (whichever is the earlier) of this Contract (or as long a period as may be agreed between the Parties.

## APPENDIX 1 – THE SERVICES

### 1 General

1.1 The following additional documents shall be deemed to be incorporated into this Contract;

<b>Document</b>	
Specification	As defined at A1.1
Provider's Tender	Submitted 21 May 2012
PIP Assessment Guide	See Supplying DWP website <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/2/assessment-guide.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/2/assessment-guide.pdf</a>
HMG Baseline Personnel Security Standard – A Guide for DWP Contractors	See Supplying DWP Website

### 2 Plan to Set Up and Mobilise Operations

The following shall be deemed to be incorporated into this Contract;

Activity	Date – as stated below (unless some other date is agreed in writing by the parties)
Security Accreditation in place	<ul style="list-style-type: none"> <li>31.05.13: Lot 3</li> </ul>
Business Operational Report by:	<ul style="list-style-type: none"> <li>31.05.13: Lot 3 (New Claims Full go-live)</li> <li>15.8.13 (Reassessment Controlled go-live)</li> <li>15.11.13 (Reassessment full roll-out)</li> </ul>
Operational Readiness Confirmation by:	<ul style="list-style-type: none"> <li>31.05.13 Lot 1 (New Claims Full go-Live)</li> </ul>

### 3 Paragraph not in use

### 4 Working Hours

4.1 The Services shall be carried out at the following times;

Monday to Friday from 8am to 8pm.

- 4.2 The Provider shall not provide the Services on national Bank Holidays or Public Holidays.

## **5 Recruitment Through Jobcentre Plus**

- 5.1 One of the key objectives of the Department for Work and Pensions is to move people from welfare into work. DWP has a Great Britain-wide network of Jobcentre Plus offices that provide job broking services for unemployed people. The Provider is therefore required to notify Jobcentre Plus when recruiting staff for any entry-level i.e. which requires little or no experience and for which the pay is at or around the national minimum wage job vacancies located within Great Britain, which may arise from the delivery of their contract to the Authority.

- 5.2 The Provider is also encouraged to notify Jobcentre Plus of any other vacancies that may arise. The Provider may in addition use other recruitment methods.

## **6 Annexes**

- 6.1 The following annexes form part of this appendix; Where relevant they are also referred to in the Order Form:

Annex A – List of Authority’s Property

Annex C – Provider’s Anticipated Resource Structure

Annex D – Provider and Sub-contractor Key Staff

Annex E – Approved Sub-contractors

Annex F – Site Areas

Annex G – List of Management Information Requirements

Annex H – Authority Obligations

## Annex A – List of Authority’s Property

### 1. Introduction

1.1 This Annex aims to list the Authority Property issued to, or made available to the Provider by the Authority in connection with the Contract. Specific obligations of the Authority and the Provider in relation to Authority Property are included in the relevant sections of the Specification and/ or other Schedules/Annexes to this Agreement. A breach by the Authority of anything listed in this Annex shall not of itself enable the Provider to bring any claim against the Authority. The list contained within this Annex is not exhaustive.

### 1.2 List of Authority Property:

<b>Description inc make, model and Authority’s Asset Register Number</b>	<b>Quantity</b>	<b>Original Date of Installation</b>	<b>Serial Number(s)</b>	<b>Maintenance A = Authority responsible for maintenance P = Provider responsible for maintenance</b>
Envelopes and Polylopes issued to the Provider by the Authority for use in delivering the PIP service.	Quantity will vary depending on demand	Issued for April go-live and ongoing during lifetime of contract	NA	P = Provider is responsible for ensuring it orders and appropriately stores sufficient stock of envelopes and polylopes.
The Authority shall provide to the Provider access to and use of its national courier service solely for the purpose of performing the Services in accordance with this agreement.	NA	Available for April go live and ongoing during lifetime of contract	NA	A = Authority is responsible for the contract with the courier
All documents and materials (including those in electronic format) provided by	NA	Will be issued throughout lifetime of contract.	NA	A=Authority is responsible for providing updated

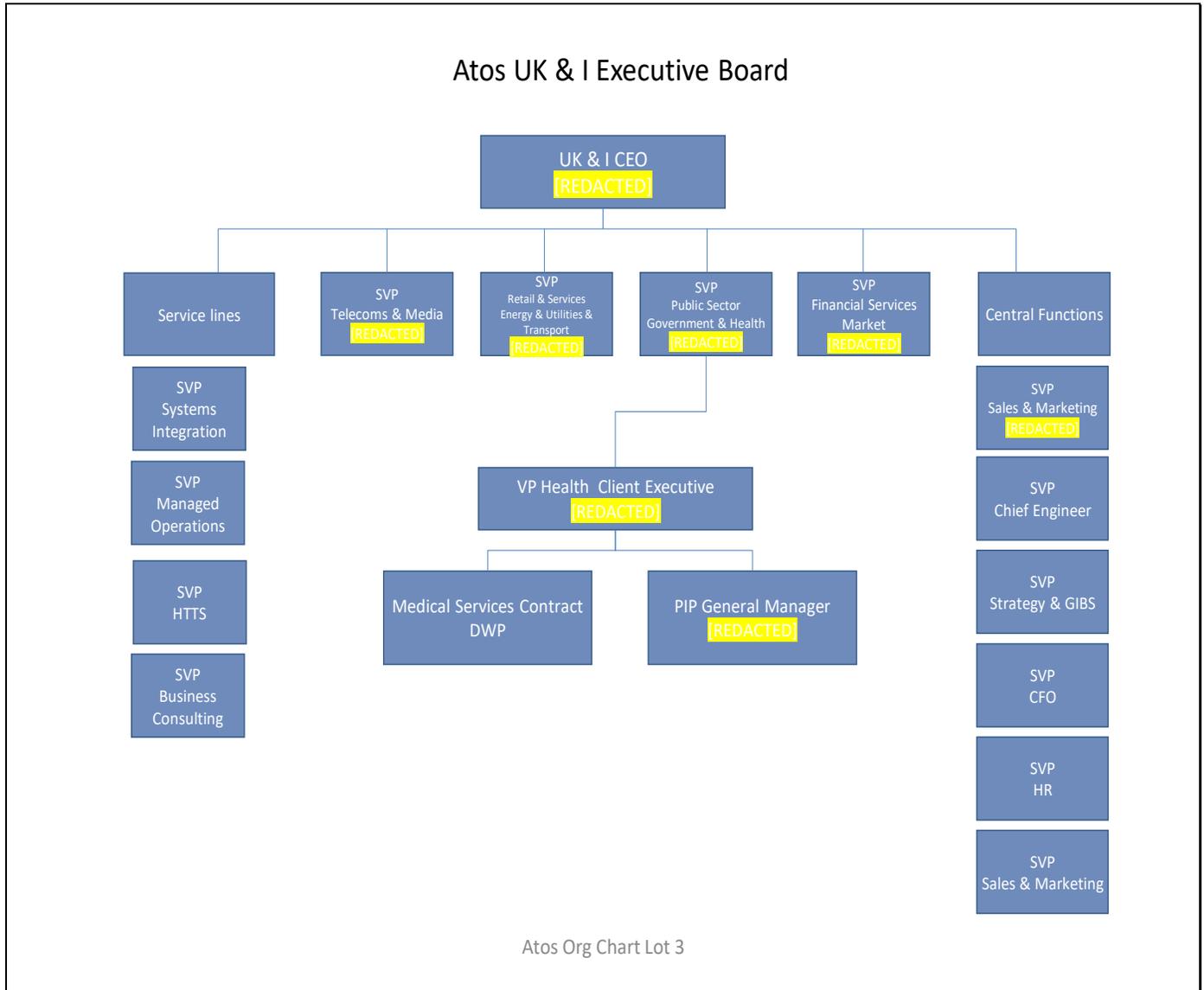
the Authority to the Provider				documents and materials where applicable. P= Provider is responsible for ensuring materials/ guidance are used and stored in accordance with the contract.
Access to and use of DWP IT as detailed in the 'Assessment Provider Service Management Guide'. to be used by the Provider in the delivery of the PIP service.	NA	Access will be given to Providers in stages from the 8 <sup>th</sup> April 2013.	NA	A= These applications are hosted by the Authority.

## Annex B

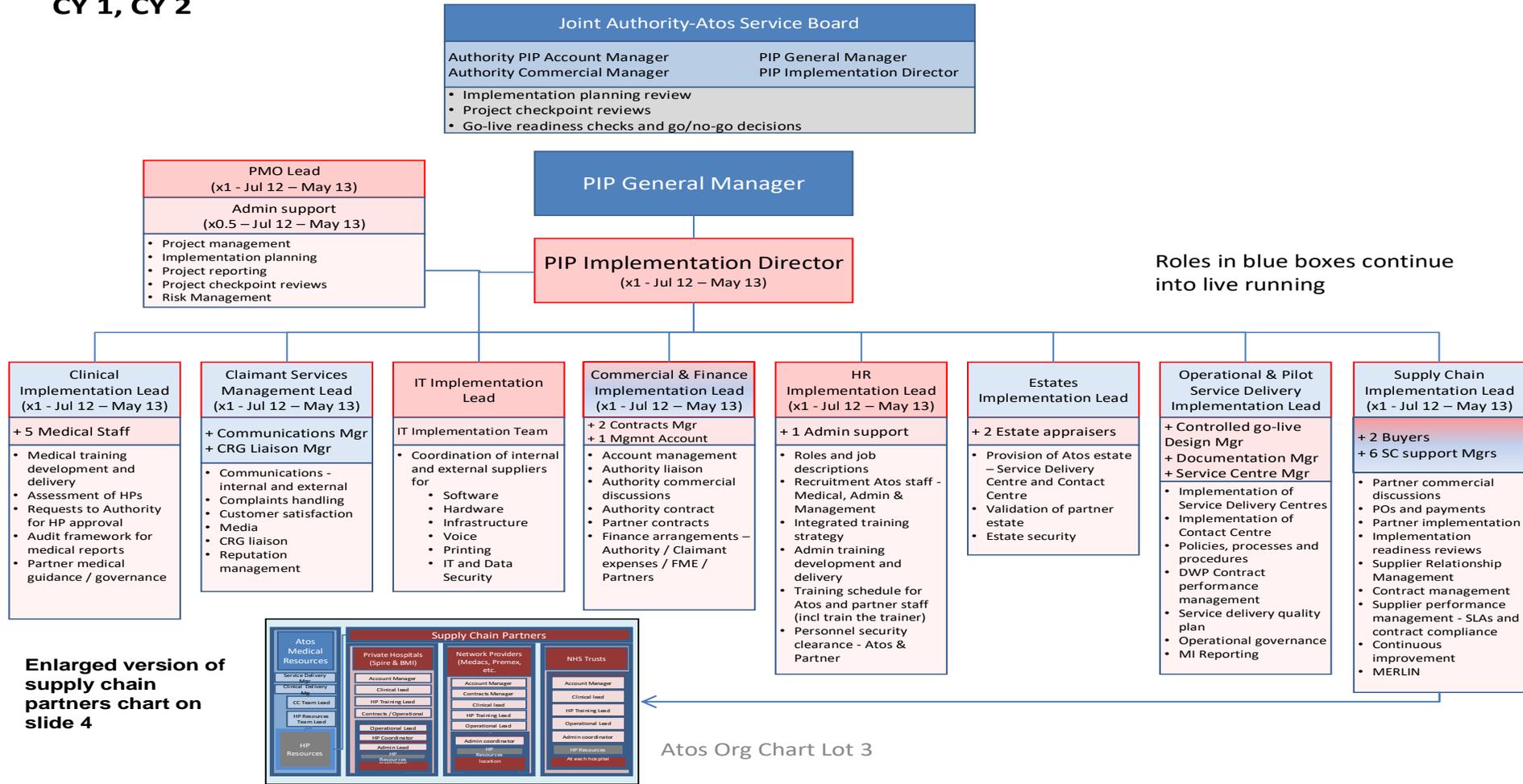
<b>Lot 3</b>		
<b>CV Number</b>	<b>Title of change</b>	<b>Effective Date</b>
PIPCV AL3 01	Baselining Variation	10.06.13
PIPCV AL3 02	Reimbursement of Claimant Travel Expenses	10.06.13
PIPCV AL3 03	Change of Contract Manager	01.08.13
PIPCV AL3 04	External Training Resources	01.10.13
PIPCV AL3 05	Atos Room Sizes	01.04.13
PIPCV AL3 06	Claimants Living Abroad	01.04.13
PIPCV AL3 07	Unacceptable Claimant Behaviour	17.07.14
PIPCV AL3 08	Re-Work	10.06.13
PIPCV AL3 09	Interim MI	Not Used
PIPCV AL3 10	90 Minute Travel Time	01.05.14
PIPCV AL3 11	Audio Recording	10.03.13
PIPCV AL3 12	Suspension of SLA10	01.02.14
PIPCV AL3 13	Adding a Subcontractor to the Delivery Option	03.03.14
PIPCV AL3 14	Atos Room Sizes (2nd Variation)	01.07.14
PIPCV AL3 15	Changes to Annex E and F	22.08.14
PIPCV AL3 15A	Changes to Annex E and F (September 2014)	30.09.14
PIPCV AL3 15B	Changes to Annex E and F (December 2014)	31.12.14
PIPCV AL3 15C	Changes to Annex E and F (March 2015)	31.03.15
PIPCV AL3 16	Changes to HP Criteria	02.06.14
PIPCV AL3 17	Not Used	Not Used
PIPCV AL3 18	Call-Off Terms and Conditions - Removal of Requirement to Supply Monthly Backup Data	08.12.14
PIPCV AL3 19	Atos Heads of Terms First Variation	16.04.15
PIPCV AL3 20	PA1	10.06.13
PIPCV AL3 21	Travel to Assessment Centres	15.03.15

PIPCV AL3 22	Atos Heads of Terms Second Variation	03.06.16
PIPCV AL3 127	Room Size Refund	23.2.17
PIPCV AL3 23	HP On Site Award Review	1.4.17
PIPCV AL3 24	HP approvals process	28.03.18
PIPCV AL3 25	Side Agreement - February 2018	01.01.18
PIPCV AL3 26	SLA5a Change in TI Target	01.04.18
PIPCV AL3 27	Change of Registered Address	28.02.18
PIPCV AL3 28	General Data Protection Regulation (GDPR)	25.05.18
PIPCV AL3 29	Change from local rate to freephone number	13.11.18
PIPCV AL3 30	Postcode realignment	19.12.18

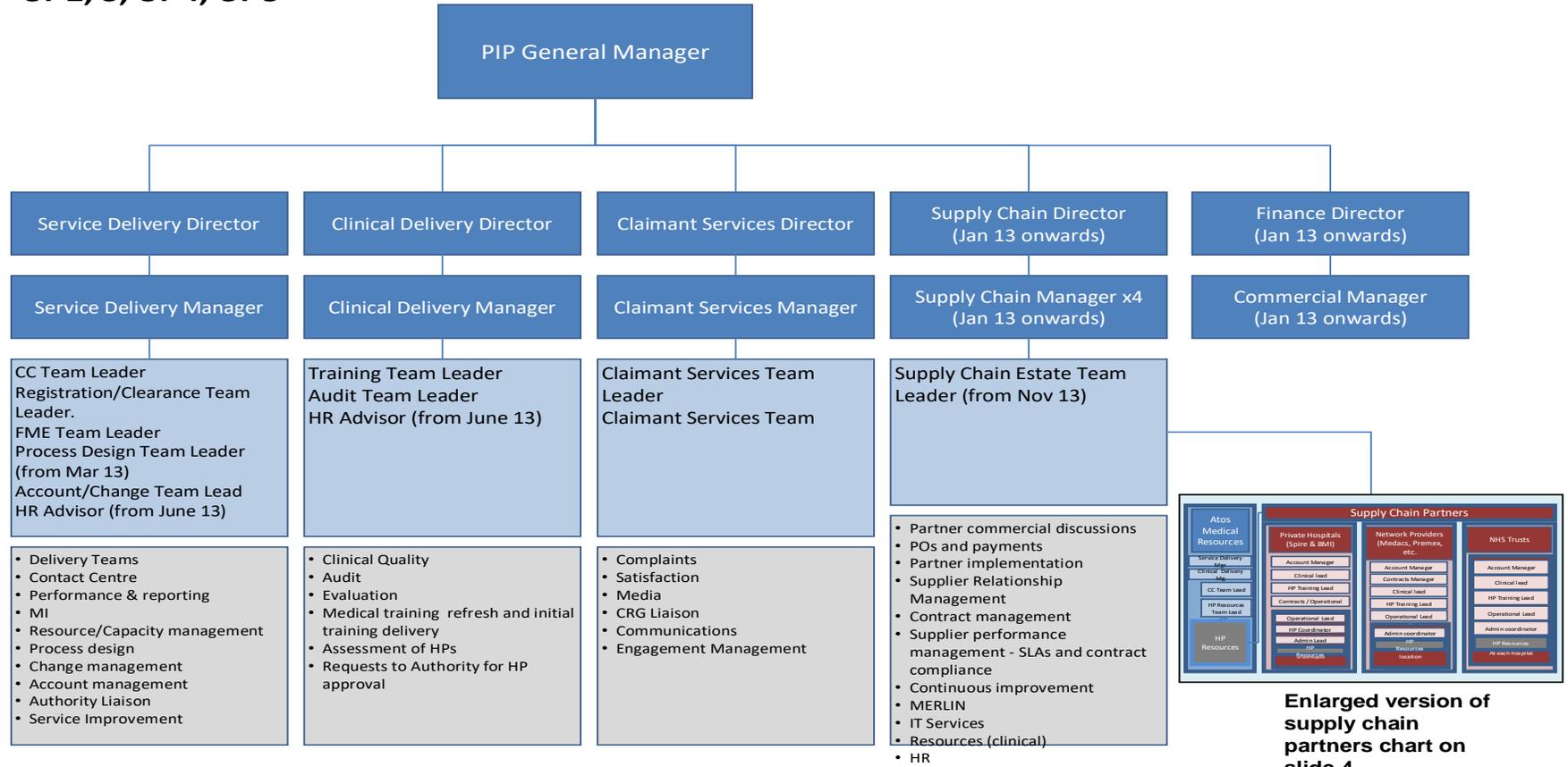
**Annex C – Provider’s Anticipated Resource Structure**



# Lot 3 - Implementation Structure (July 2012 – completed ramp-up) Implementation CY 1, CY 2

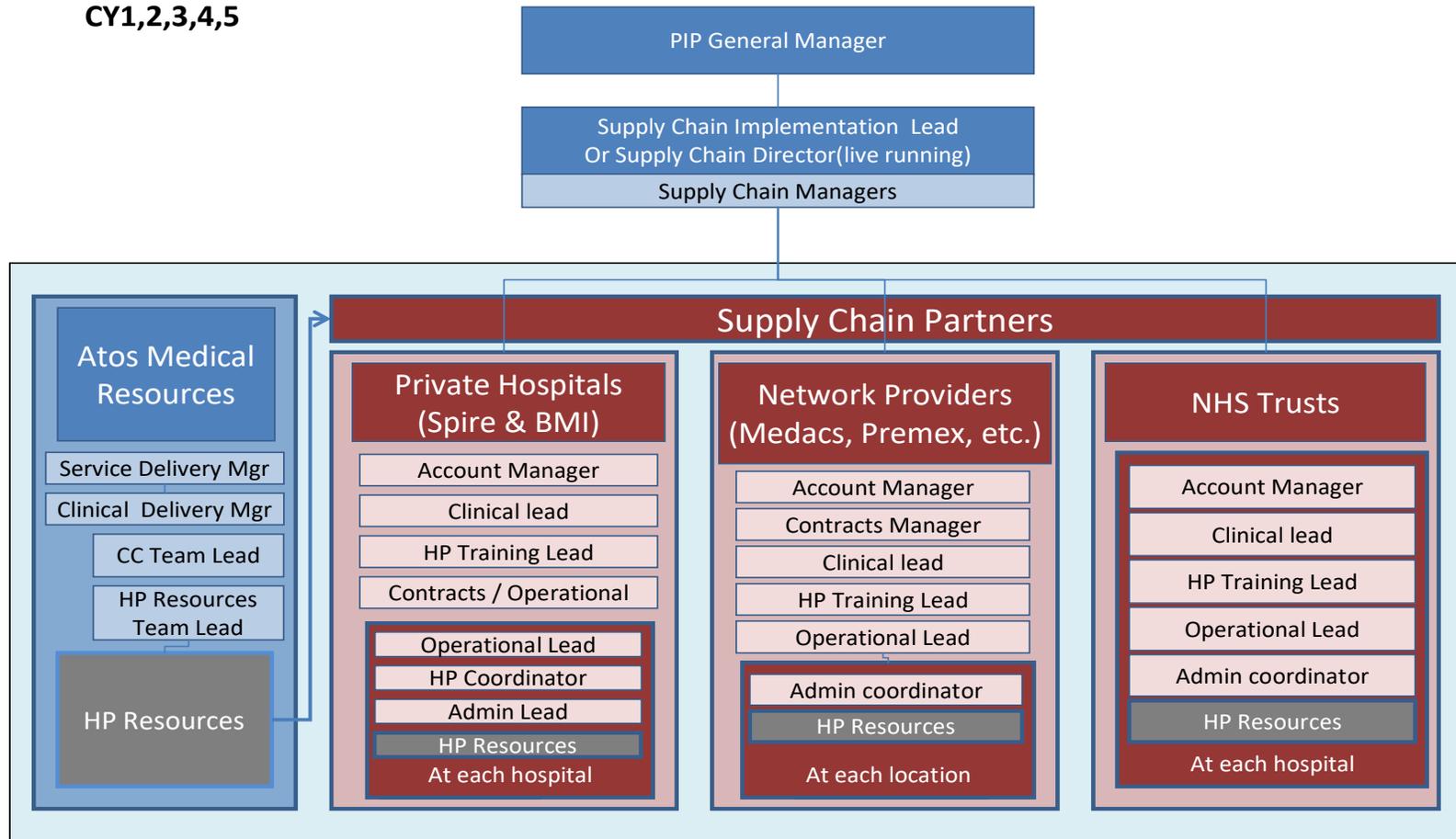


**Lot 3- Ramp Up and Live running Structure (Apr 2013 – Mar 2018)  
CY 2, 3, CY 4, CY 5**



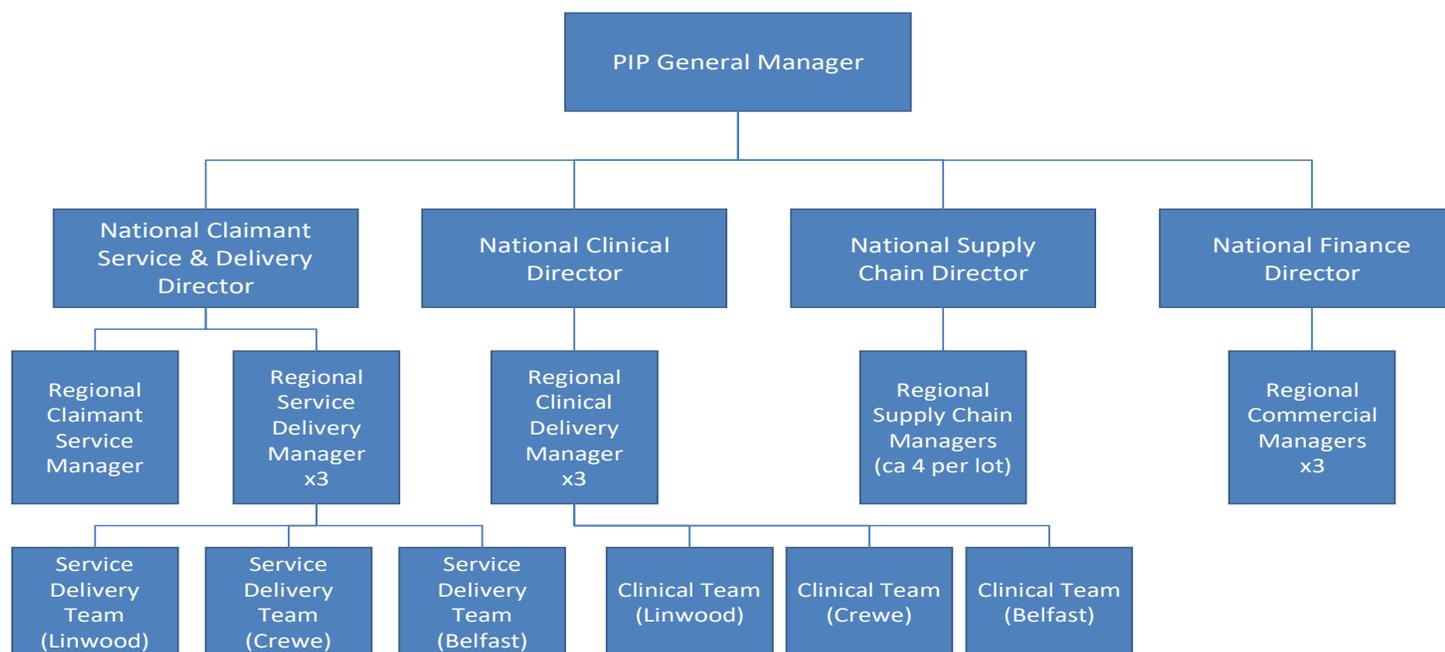
Atos Org Chart Lot 3

**Lot 3 - Supply Chain Management Structure (July 2012 – March 2018)  
CY1,2,3,4,5**



Atos Org Chart Lot 3

## Atos Overarching Organisation Chart



## Annex D – Provider and Sub-contractor Key Staff

### CONTRACTOR STAFF

FOR THE PROVISION OF: Personal Independence Payment (PIP) Assessment Service  
 LOT: 3 London / Southern England

Job Role	Numbers in Role	Percentage of time spent on PIP	Other duties undertaken outside of PIP
PIP Manager General	1	100%	N/A
Commercial Manager	1	100%	N/A
Finance Director	1	100%	N/A
Supply Director Chain	1	100%	N/A
Supply Manager Chain	1	100%	N/A
Clinical Director Delivery	1	100%	N/A
Clinical Manager Delivery	4	100%	N/A
Claimant Director Services	1	100%	N/A
Claimant Manager Services	1	100%	N/A
Service Director Delivery	1	100%	N/A
Service Manager Delivery	1	100%	N/A
Call Centre Manager	1	100%	N/A
Senior Responsible Officer	1	100%	N/A
Operational Security Manager	1	100%	N/A
Application Support Manager	1	100%	N/A
Infrastructure	1	100%	N/A

Support Manager			
IT Service Manager	1	100%	N/A
IT Programme Manager	1	100%	N/A
Technical Architecture Manager	1	100%	N/A
Team Leaders, including but not limited to:- <ul style="list-style-type: none"> <li>- Supply Chain Estate</li> <li>- Training;</li> <li>- Audit;</li> <li>- Claimant Services;</li> <li>- Call Centre;</li> <li>- Registration / Clearance;</li> <li>- FME; and</li> <li>- Process Design.</li> </ul>	15 - 20	100%	N/A
Administrators, including but not limited to:- <ul style="list-style-type: none"> <li>- Call Centre Agent;</li> <li>- Receptionist;</li> <li>- "Level 1" Admin;</li> <li>- "Level 2" Admin;</li> <li>- Claimant Services; and</li> <li>- Expense Management.</li> </ul>	175 - 180	100%	N/A
Auditor	25 - 30	100%	N/A
Trainer	15 - 20	100%	N/A
Condition Champion E.g. Mental function	35	100%	N/A
HP	30 - 35	100%	N/A

**SUB-CONTRACTOR STAFF**

**FOR THE PROVISION OF: Personal Independence Payment (PIP) Assessment Service  
LOT: 3 London / Southern England**

<b>Job Role</b>	<b>Numbers in Role</b>	<b>Percentage of time spent on PIP</b>	<b>Other duties undertaken outside of PIP</b>
HCP – Physiotherapist	1700	40 - 60%	Clinical assessments for other customers. E.g. Physiotherapy for private patients, medico-legal work.
HCP – Occupational Therapist	200	40 - 60%	Clinical assessments for other customers. E.g. Physiotherapy for private patients, medico-legal work.
HCP – Nurse	125	40 - 60%	Clinical assessments for other customers. E.g. Physiotherapy for private patients, medico-legal work.
HCP – Doctor	25	40 - 60%	Clinical assessments for other customers. E.g. Physiotherapy for private patients, medico-legal work.
Administrators	600	20 - 40%	General office admin. E.g. Creation of clinical work schedules.

## **Annex E - Schedule of Approved Sub-contractor's**

**The Provider will submit an updated version of this Annex within 10 working days of each quarter end (March, June, September, December)**

**FOR THE PROVISION OF: Personal Independence Payment (PIP) Assessment Service  
LOT: 3 London /Southern England**

**ORGANISATIONS PROPOSED TO DELIVER SPECIFIC ELEMENTS OF THE SERVICE**

**[DN – Please refer to applicable version]**

**Annex F – Site Areas**

**SCHEDULE OF SITE AREAS**

**The Provider will submit an updated version of this Annex within 10 working days of each quarter end (March, June, September, December)  
FOR THE PROVISION OF: Personal Independence Payment (PIP) Assessment Service  
LOT: 3 North West England / North East England / Scotland / Isle of Man**

**[DN – Please refer to applicable version]**

## Annex G – List of Management Information Requirements

The Provider shall supply information listed below relevant to the delivery of the Services to the Authority, using formats and to timescales as specified by the Authority, [covering areas such as (but not limited to);]

<b>Management Information Required</b>	<b>Frequency/Date Required</b>
Submit copy of Board Minutes for Parent Company where PCG has been signed	On or about the effective date (and in any event no later than the first Commencement Date)
Full and final Security Plan in accordance with Appendix 6	Within twenty (20) Working Days after the Commencement Date (unless some other date is agreed in writing by the parties) and reviewed at least annually thereafter.
Sustainable Development Policy Statement & Sustainable Development Plan in accordance with Appendix 7	By 01/06/13 and annually thereafter.
Diversity & Equality Delivery Plan in accordance with Appendix 8	By 10/05/13 and at least annually thereafter.
Workforce Monitoring Declaration in accordance with Appendix 8	By 01/08/13 and at least annually thereafter.
Apprenticeships & Skills Report in accordance with Appendix 10	By 01/06/13 and annually thereafter.
HMG Baseline Personnel Security Standard - Provider's Declaration see HMG Baseline Personnel Security Standard - A Guide for DWP Contractors	Within four (4) weeks of contract go live and submitted for each calendar year thereafter within one Month of the end of each calendar year (i.e. by 31 <sup>st</sup> January for year ending 31 <sup>st</sup> December)

## Annex G Additional Management Information

No	MI Information	Report Level & Duration	Definition/further information
1	<p>Further Medical Evidence</p> <ul style="list-style-type: none"> <li>a) Number and % of referrals where FME is requested.</li> <li>b) Average number of days taken to obtain medical evidence (includes requesting further evidence where appropriate).</li> <li>c) Number of requests from the Dept for the AP to provide further medical evidence</li> </ul>	<ul style="list-style-type: none"> <li>a) Lot, Region and Sub-Region. And by individual HP if requested. Monthly.</li> <li>b) Lot, Region and Sub-Region. Monthly with a weekly breakdown</li> <li>c) Lot, Region and Sub-Region. Monthly.</li> </ul>	<ul style="list-style-type: none"> <li>a). A count of the number of referrals where Further Medical Evidence is requested by the AP and the percentage of referrals where Further Medical Evidence is request by the AP.</li> <li>b). Calculation of the average number of days taken to obtain medical evidence.</li> <li>c), Number of requests to the AP from the DWP, to request further medical evidence, after an assessment report has been completed.</li> </ul>
2	<p>Number of requests for advice from DWP.</p>	<p>Lot. Monthly.</p>	<p>The Provider must provide the number of requests for supplementary advice reports received from DWP (no categorisation will be needed).</p>
3	<p>Provide a continuous improvement regime report each Quarter, setting out priorities for the next Quarter, taking into account any priorities set by the Authority and including any addressing any specific concerns or areas notified to the Provider</p>	<p>Lot, Region and Sub-Region. (to be confirmed following agreement of processes). Quarterly</p>	<p>Provider to seek Authority's input into the priorities for each Quarter prior to producing report. Narrative report on any priorities set by the Authority, any</p>

No	MI Information	Report Level & Duration	Definition/further information
	<p>by the Authority, as well as identifying any other areas which could be improved. Specifics could include the following:-</p> <ul style="list-style-type: none"> <li>• Improved quality of service;</li> <li>• Service levels, e.g. faster turnaround times for referrals, etc;</li> <li>• More medical resources through use of HPs;</li> <li>• Better quality reports and quality of information to DMs;</li> <li>• Improved scheduling of appointments</li> <li>• Effective comms through use of call centres, etc;</li> <li>• Reduction in non-attendance at consultation</li> </ul> <p>Improved value for money</p>		<p>specific areas of concern which the Authority has notified to the Provider and the action Providers are taking to address these Authority-led priorities or concerns, as well as identify any other performance issues, what additional issues have been identified and the action being taken to improve these.</p> <p>Requires supporting data from AP's</p>
4	<p>Outstanding workload – to monitor actuals against expected head of work.</p>	<p>Lot, Region and Sub-Region. Weekly AND Monthly.</p>	<p>The Provider must provide a count of Provider's outstanding workload.</p> <p>Ranges to be agreed closer to go-live</p> <p>DWP will fit the data into the agreed RAG ranges.</p>
5	<p>% of claimants Unable to Attend (UTA) against the total number of outstanding appointments.</p>	<p>Lot, Region and Sub-Region. Monthly</p>	<p>The Provider must calculate the total number and percentage of Unable To Attends (UTA) recorded (cancelled appointments), against the number of appointments that are within the reporting period.</p> <p>Of total appointments booked in Month, what percentage were UTA</p> <p>Total UTA Booked %</p> <p><b>Note:</b> UTA MI must include Home Consultations</p>

No	MI Information	Report Level & Duration	Definition/further information
6	Claimant Special Requirements e.g. interpreters, Same Sex HCP (x-ref SLA 13):- a) number of requests; b) number and % of special requirements met.	a) Lot, Region and Sub-Region. Quarterly.  b) Lot, Region and Sub-Region. Quarterly.	a). The Provider must provide a count of the number of Special Requirements requested  b). The Provider must provide a count of the number of Special Requirements met and the percentage of Special Requirements that are met.
7	Average Consultation time (including home consultations)	Lot, Region and Sub-Region. Monthly with weekly breakdown.	The Provider must provide the average time (in minutes) of all face-to-face consultations (the time where claimant is present with the HP).
7A	Average preparation time for all face to face Consultations	Lot, Region and Sub-Region. Monthly	The Provider must provide the average time (in minutes) spent by its Health Professionals (as defined in the Specification) in preparing for face to face Consultations
8	% of Failure to Attend (FTA) against the total number of appointments scheduled.	Lot, Region and Sub-Region. Monthly	The Provider must calculate the total number and percentage of Failure To Attend's (FTA) recorded, against the number of outstanding appointments that are within the reporting period.  Of total appointments booked in Month, what percentage FTA  $\frac{\text{Total FTA}}{\text{Booked}} \times \%$  This will include any home visits (where claimant is not at home at the time of their appointment)
9	Time taken for an assessment report to be completed following consultation.	Lot, Region and Sub-Region. Monthly with a weekly breakdown.	The Provider must provide the average time (in minutes) that HPs take to complete their assessment

No	MI Information	Report Level & Duration	Definition/further information
			reports following a consultation. This should not include the time taken to re-key any information from one system to another or from a clerical form into an online system but the time the HP takes to complete their deliberations and write-up.
10	<p>Number and clearance times for DWP referrals for advice. (x-ref SLA SC6(a) and SC6(b)).</p> <ul style="list-style-type: none"> <li>a) Number of advice requests received</li> <li>b) Number of advice requests cleared</li> <li>c) Number of days taken to clear advice requests</li> <li>d) Number of outstanding advice requests</li> <li>e) Number of Working Days associated to all outstanding advice requests at the end of the Month</li> </ul>	<p>Lot and Region. Weekly AND monthly</p>	<p>The Provider must provide a count of the number of DWP advice referrals completed and provide listings of the clearance times of all DWP advice referrals.</p> <p>Verbal advice is not required as part of the MI.</p>
11	<p>Claimant and DWP/Provider call waiting time (x-ref SLA SC8(a) and SC8(b)):-</p> <ul style="list-style-type: none"> <li>a) number and % of calls answered within 30 seconds</li> <li>b) number and % of calls answered over 30 seconds</li> <li>c) number and % of calls lost.</li> </ul>	<ul style="list-style-type: none"> <li>a) Lot, Region Weekly with a Daily breakdown AND Monthly</li> <li>b) Lot, Region Weekly with a Daily breakdown AND Monthly</li> <li>c) Lot, Region Weekly with a Daily breakdown AND Monthly</li> </ul>	<ul style="list-style-type: none"> <li>a). The Provider must provide a count of the number of calls answered and the percentage of calls answered within 30 seconds.</li> <li>b). The Provider must provide a count of the number of calls answered and the percentage of calls answered over 30 seconds</li> <li>c). The Provider must provide a count of the number and percentage of calls lost</li> </ul> <p>Note: 'answered' is when DWP/claimant begins speaking to an agent.</p>

No	MI Information	Report Level & Duration	Definition/further information
		DWP data will be Lot 1 & 3 combined.	<p>Calls Lost. 'Lost' defined as calls abandoned before they are answered by an agent.</p> <p>a), b) and c) should be broken down by caller types:</p> <p>Claimant DWP</p>
12	Claimant Satisfaction results relating to the quality of service provided (x-ref SLA SC9).	<p>Lot, Region and Sub-Region. Quarterly/Annually (Supported by MI provided monthly)</p> <p>To be confirmed following agreement of claimant satisfaction processes.</p>	The Provider must provide a report that lists the Claimant Satisfaction results that relate to the quality of service. This is a requirement within the specification see P34. The sample size will be statistically validated and work is ongoing and will be shared once completed.
13	<p>Number and clearance times of paper based review activity, to decide on whether further medical evidence is required or to arrange F2F.</p> <p>a) Number of initial reviews received b) Number of initial reviews cleared c) Number of days taken to clear each review d) Number of initial reviews outstanding e) Number of days that outstanding initial reviews have been outstanding</p>	Lot, Region and Sub-Region. Monthly	The Provider must provide a count of the number of paper-based review 'Initial Review's' activities completed and listed clearance times of paper-based review 'Initial Review's' activities.
14	<p>Waiting Time (x-ref SLA SC11(a) and SC11(b)):-</p> <p>a) Consultation Centre - % of claimants seen within 30 minutes of their appointment time</p> <p>;</p> <p>b) Home Consultation - % of claimants examined within 60 minutes of their appointment time.</p>	<p>a) Lot, Region and Sub-Region. Monthly, Rolling 12 Months.</p> <p>b) Lot, Region and Sub-Region. Monthly, Rolling</p>	a). The Provider must calculate the percentage of claimants seen at a consultation centre (or mobile unit) within 30 minutes of their appointment time (Including mobile units).

No	MI Information	Report Level & Duration	Definition/further information
		12 Months.	<p>b). The Provider must calculate the percentage of claimants that are examined within 60 minutes of their Home Consultation appointment time</p> <p>Frequency - Required each month from day 1 for the first 12 months, then monthly and on a rolling 12 month basis. IE - 2 reports required – Monthly percentage and a Rolling 12 month percentage.</p>
15	<p>Number and % of reasons why claimant is sent home unseen - where onus is on the claimant:-</p> <ul style="list-style-type: none"> <li>• Claimant arrived late (over 10 mins) and could not be examined;</li> <li>• Claimant unfit to be examined;</li> <li>• Accommodation problem outside Providers control; (EG – HP unable to complete Home visit due to accommodation issues OR claimant unhappy with accommodation at consultation centre etc.)</li> <li>• HP unable to continue;</li> <li>• Special Requirements not notified in advance;</li> <li>• Client arrived on time (or early) but wouldn't wait up to 30 minutes.</li> <li>• Suitable IDV not provided.</li> <li>• System Performance Problems – DWP</li> <li>• Appointee did not attend</li> </ul>	Lot, Region and Sub-Region., Monthly, Rolling 12 Months.	<p>The Provider must provide a count of the number of claimants that are sent home unseen where the onus is on the claimant, this must be then broken down by the percentage of each reason type.</p> <p>Required each month from day 1 for the first 12 months, then monthly and on a rolling 12 month basis. IE - 2 reports required – Monthly percentage and a Rolling 12 month percentage.</p>
16	<p>Number and % of reasons why claimant is sent home unseen – where onus is on the Provider includes:- (x-ref SLA SC12)</p> <ul style="list-style-type: none"> <li>• Special Requirements not provided when requested in advance;</li> <li>• Claimant arrived on time (or early) but would not wait more than 30 minutes;</li> <li>• No of claimants attended exceeds capacity</li> <li>• HP unavailable/HP did not attend for session;</li> <li>• System performance problems; - Provider</li> <li>• Accommodation problem e.g.</li> </ul>	Lot, Region and Sub-Region. Monthly, Rolling 12 Months.	<p>The Provider must provide a count of the number and percentage of claimants that are sent home unseen where the onus is on the Provider. (The count must be broken down by the percentage of each reason type).</p> <p>HP not able to attend home visit is covered within HP unavailable/did not attend session.</p>

No	MI Information	Report Level & Duration	Definition/further information
	Flooding, bomb scare		Required each month from day 1 for the first 12 months, then monthly and on a rolling 12 month basis. IE - 2 reports required – Monthly percentage and a Rolling 12 month percentage.
17	CPD for Medical Personnel Deliver an agreed Training Needs Analysis (TNA) by 31 May each year. (x-ref SLA 3)	Lot. Annual	CPD for Medical Personnel Deliver an agreed Training Needs Analysis (TNA) by 31 May each year.  Additional – Will not apply for year 1(Due 31 May 2014) as all training will be initial training
18	CPD for Medical Personnel: Deliver Training Programme by 31 July each year. (x-ref SLA SC13)	Lot. Annual	CPD for Medical Personnel: Deliver Training Programme by 31 July each year.  Additional – Won't apply for year 1 (Due 31 July 2014)as all training will be initial training
19	Training for Medical Personnel: Deliver Training Plan by 31 July each year. (x-ref SLA 4)	Lot. Annual	Training for Medical Personnel: Deliver Training Plan by 31 July each year.  HWD will work with Providers separately on this.
20	Annual training evaluation report: Deliver a training evaluation report by 30 November each year (x-ref SLA 5)	Lot. Annual	Annual training evaluation report: Deliver a training evaluation report by 30 November each year

No	MI Information	Report Level & Duration	Definition/further information
			Will not apply for year 1 (Due 30 November 2014) as all training will have been initial training
21	<p>Complaints</p> <p>a) Response Times (x-ref SLA 1):-  i) number and clearance times of acknowledgements made;  ii) number and clearance times of full responses made</p> <p>b) Quality of Responses - % of all responses that are 'fit for purpose' (x-ref SLA 2)</p> <p>c) Complaints against HP after a consultation - % of consultations conducted that result in a complaint against HP (x-ref SLA 6).</p> <p>d) Serious complaints against HP after consultation – Number of consultations conducted that result in a serious complaint against the HP (x-ref SLA 7).</p> <p>e) Complaints and serious complaints, with reasons and outcomes – Number of HPs with more than 3 complaints in 3 months (x-ref SLA 8)</p> <p>f) Total number of outstanding complaints.(x-ref SLA 1)</p> <p>g) Total number of days associated to all outstanding complaints. (x-ref SLA1)</p>	<p>a) Lot, Region and Sub-Region. Monthly with a weekly breakdown</p> <p>b) Lot, Region and Sub-Region. Monthly with a weekly breakdown.. (subject to agreement of audit processes)</p> <p>c) Lot &amp; Individual HP. Monthly for first 12 months, then Rolling 12 Months</p> <p>d) Lot &amp; Individual HP. Monthly for first 12 months, then rolling 12 months.</p> <p>e) Lot &amp; Individual HP. Monthly.</p> <p>f) Lot. Monthly.</p> <p>g) Lot. Monthly</p>	<p>a, i). The Provider must provide the number of complaint acknowledgements issued by the Provider and provide listings of clearance times of complaint acknowledgements made</p> <p>ii) The Provider must provide the number of full complaint responses issued and provide listings of clearance times of full responses issued.</p> <p>Total Acknowledgements Complaints received x %</p> <p>b). The Provider must calculate the percentage of full responses to complaints that are 'fit for purpose.</p> <p>c). Percentage of face to face consultations that result in a complaint against the assessing HP</p> <p>d). Number of face to face consultations that result in a serious complaint against the assessing HP.</p> <p>All MI around serious complaints must contain reasons for complaint and outcomes.</p> <p>e). The number of serious complaints with reasons and outcomes and the number of HP's with more than 3 complaints in a rolling 3</p>

No	MI Information	Report Level & Duration	Definition/further information
			<p>monthly basis. Must be broken down by individual HP.</p> <p>f) The Provider must provide the total number of all complaints outstanding. IE - that have not had a response issued.</p> <p>g) The Provider must provide a count of the total number of days associated to all of the complaints that are outstanding in f).</p>
22	<p>Payment of claimant (companion) travelling expenses (x-ref SLA 14):-</p> <p>a) Number of claims received  b) Number of claims cleared  c) Number of claims paid  d) Number of days taken to pay each claim that Provider has agreed to pay</p>	<p>a) Lot. Monthly  b) Lot. Monthly  c) Lot. Monthly  d) Lot. Monthly</p>	<p>a). The Provider must provide a count of the number of travelling expenses requests received</p> <p>b) The Provider must provide listings of clearance times of processing payment of claimant travelling expenses</p> <p>c). The Provider must provide a count of the number of travelling expenses payments issued</p> <p>d) The Provider must provide the number of days taken to pay each claim</p>
23	No longer used		
24	% of TI referrals advised TI at paper based review	Lot, Region and Sub-Region. Also by individual HP if requested. Monthly	Calculate the percentage of TI referrals that are deemed TI
25	% of paper based reviews where the advice is that claimant is subsequently called for face to face consultation (prior to DM decision)	Lot, Region and Sub-Region. Also by individual HP if requested. Monthly	Percentage of Initial Reviews (not paper based reviews) that result in a face to face consultation required.
26	No longer used		
27	% of paper based reviews and consultations where different reassessment periods are advised (prognosis) (prior to DM decision).	Lot, Region and Sub-Region. Also by individual HP if requested. Monthly	Percentage of completed assessment reports where recommended case reviews are within each defined planned intervention period group.

No	MI Information	Report Level & Duration	Definition/further information
			<p>Defined intervention periods are as follows:</p> <p>Different reassessment periods are defined as:</p> <p>&lt;9 months (PT)</p> <p>&gt;9 - 12 months</p> <p>&gt;12 - 24 months</p> <p>&gt;2 - 5 years</p> <p>&gt; 5 years</p> <p>Change unlikely</p> <p>Functional restriction Daily Living activities present more than 3 months (QP)</p> <p>Functional restriction Mobility activities present more than 3 months (QP)</p> <p>Functional restriction not present at recommended point of review (fixed award)</p>
28	Provide a medical quality report; specifics to include information relating to items 1, 24, 25 and 27.	Lot, Region and Sub-Region. Also by individual HP if requested. Monthly	<p>Providers must provide report that will include information relating to MI requirement 1, 24, 25, and 27. It should include analysis and action taken against under-performance</p> <p>Granularity of the report should include any granularity relevant to that which is being reported.</p>
29	<p>Outputs by unique identifier:-</p> <p>a) Number of FME paid by name of GP.</p> <p>b) Number of paper based review</p>	<p>a) Lot, Region and Sub-Region. Monthly.</p>	<p>Unique identifier – working assumption provided - NINO</p> <p>a) A count of the number of payments for FME made, with a break down of GP name.</p> <p>. Agreed that travelling expenses will be removed.</p>

No	MI Information	Report Level & Duration	Definition/further information
	<p>assessments completed</p> <p>c) Number of Face to Face consultation assessments completed.</p>	<p>b) Lot, Region and Sub-Region. Monthly.</p> <p>c) Lot, Region and Sub-Region. Monthly.</p>	<p>b) A count the number of paper based review assessments completed by a HP.</p> <p>c) A count of the number of face-to-face consultation assessments completed by a HP</p>
30	<p>Quality of assessment reports derived from the audit of reports: unacceptable (x-ref SC1).</p> <p>a) Number of reports completed b) Number of reports audited c) Number of reports classed as unacceptable d) Percentage of reports classed as unacceptable</p> <p>Quality of assessment reports derived from the National audit of reports:</p> <p>5% or less unacceptable reports in SC1 Transition Q1</p> <p>3.5% or less unacceptable reports in SC1 Transition Q2</p> <p>3% or less unacceptable reports in SC1 Transition Q3</p> <p>3% or less unacceptable reports in and after the Month of December 2016 (calculated on a rolling 3 Monthly basis)</p> <p>This target relates to the quality of assessment reports derived from agreed audit procedures where an unacceptable report fails to meet professional standards.</p>	Lot, Region and Sub-Region. Monthly.	Providers to use the Lancaster Model for sample sizing.
31	<p>Quality of assessment reports derived from the audit of reports: acceptable, acceptable HP learning required and acceptable report amendment required (x-ref SLA15)</p> <p>a) Number of reports completed b) Number of reports audited c) Number of reports classed as: - acceptable</p>	Lot, Region and Sub-Region. Monthly.	Providers to use the Lancaster Model for sample sizing.

No	MI Information	Report Level & Duration	Definition/further information
	<ul style="list-style-type: none"> <li>- acceptable HP learning required</li> <li>- acceptable report amendment required</li> </ul> <p>d) Percentage of reports classed as:</p> <ul style="list-style-type: none"> <li>- acceptable</li> <li>- acceptable HP learning required</li> <li>- acceptable report amendment required</li> </ul> <p>Quality of assessment reports derived from the National audit of reports:</p> <p>A minimum of 85% of reports must be assessed as acceptable or acceptable HP learning required.</p> <p>This target relates to the quality of assessment reports derived from agreed audit procedures where there are elements of the report that require amendment.</p>		
32	<p>PIP assessment End to End Process (x-ref SLA SC4(a) and SC4(b))</p> <ul style="list-style-type: none"> <li>a) The Provider must supply a count of the total number of 'normal rules' assessment referrals cleared, within the reporting period.</li> <li>b) The Provider must supply a count of the total number of Working Days it took for all 'normal rules' assessment referrals which are cleared within the reporting period, to be so cleared.</li> <li>c) The Provider must supply the AACT for 'normal rules' assessment referrals cleared during the Month.</li> <li>d) The Provider must supply a total count of all 'normal rules' referrals outstanding with the AP.</li> <li>e) The Provider must supply the total number of Working Days associated to all 'normal rules' referrals that are outstanding with the AP.</li> </ul>	<ul style="list-style-type: none"> <li>a) Lot, Region and Sub-Region. Monthly, with Weekly Dashboard sub-report</li> <li>b) Lot, Region and Sub-Region. Monthly, with Weekly Dashboard sub-report</li> <li>c) Lot, Region and Sub-Region as at the end of the Month, with Weekly Dashboard sub-report.</li> <li>d) Lot, Region and Sub-Region. Monthly, with Weekly Dashboard sub-report.</li> <li>e) Lot, Region and</li> </ul>	<p>The Average Actual Clearing Time (<b>AACT</b>) is calculated in accordance with the formula set out in the AACT definition.</p>

No	MI Information	Report Level & Duration	Definition/further information
	<p>f) The Provider must supply the total number of 'normal rules' assessment referrals, which, as at the end of the Month are:</p> <ul style="list-style-type: none"> <li>- fifty six (56) to sixty four (64) Working Days' old (inclusive)</li> <li>- sixty five (65) to seventy four (74) Working Days' old (inclusive)</li> <li>- seventy five (75) to eighty four (84) Working Days' old (inclusive);</li> <li>- eighty five (85) to ninety four (94) Working Days' old (inclusive);</li> <li>- ninety five (95) to one hundred and four (104) Working Days' old (inclusive); and</li> <li>- one hundred and five (105) Working Days' old or more</li> </ul> <p>g) The Provider must supply the total number of Referrals actually made by the Authority within the reporting period, expressed as a percentage of the forecast number for the reporting period as set out in the Operative Forecast</p> <p>h) The Provider must supply the total number of Referrals actually made by the Authority for the reporting period</p>	<p>Sub-Region as at the end of the Month, with Weekly Dashboard sub-report.</p> <p>f) Lot, Region and Sub-Region as at the end of the Month, with Weekly Dashboard sub-report.</p> <p>g) Lot, as at the end of the Month for that Month and as at the end of the last Month in any Over-Referral Period</p> <p>h) Lot Level, at the end of each three-Month rolling period</p>	
33	<p>TI Cases End to End Assessment Process (SC5(a))</p> <p>a) The Provider must supply a count of the total number of 'T.I.' assessment referrals cleared within the Month.</p> <p>b) The Provider must confirm the total number of Working Days spent on each and every 'T.I.' assessments cleared within the Month.</p> <p>TI Cases End to End Assessment Process (SC5(b))</p> <p>c) The Provider must supply a count of the number of 'T.I.' assessment referrals cleared in 5 Working Days, within the</p>	<p>a) Lot, Region and Sub-Region. Monthly</p> <p>b) Lot, Region and Sub-Region. Monthly</p> <p>c) Lot, Region and Sub-Region. Monthly</p> <p>d) Lot, Region and Sub-Region. Monthly</p>	<p>SC5(a) is calculated in accordance with Appendix 14 (Annex 1).</p> <p>SC5(b)100% target is calculated as the number of c) divided by the number of a) x 100</p>

No	MI Information	Report Level & Duration	Definition/further information
	<p>Month.</p> <p>d) The Provider must supply a count of the number of 'T.I' assessment referrals cleared in 6 Working Days or more, within the Month.</p>	<p>Monthly</p>	
34	<p>Re-work of assessment reports Deemed Not Fit For Purpose (x-ref SLA SC3).</p> <p>a) The Provider must supply a count of the total number of assessment referrals cleared, within the reporting period.</p> <p>b) The Provider must supply a count of the number of re-work requests received, within the reporting period.</p>	<p>a) Lot, Region and Sub-Region. Monthly</p> <p>b) Lot, Region and Sub-Region. Monthly</p>	<p>'%' target is calculated as the number of b) divided by the number of a) x 100</p>
35	<p>Re-Work (x-ref SLA SC7(a) and SC7(b)) Clearance Times</p> <p>a) The Provider must supply a count of the total number of re-work referrals cleared, within the reporting period.</p> <p>b) The Provider must supply a count of the number of re-work referrals cleared in 2 Working Days or less, within the reporting period.</p> <p>c) The Provider must supply a count of the number of re-work referrals cleared in 3 Working Days or more, within the reporting period.</p> <p>d) The Provider must supply a total count of all re-work referrals outstanding with the AP.</p> <p>e) The Provider must supply the total number of Working Days associated to all re-work referrals that are outstanding with the AP at the end of the Month.</p>	<p>a) Lot, Region and Sub-Region. Monthly</p> <p>b) Lot, Region and Sub-Region. Monthly</p> <p>c) Lot, Region and Sub-Region. Monthly</p> <p>d) Lot, Region and Sub-Region. Monthly</p> <p>e) Lot, Region and Sub-Region, as at the end of the Month</p>	<p>% is calculated as the number of b) divided by the number of a) x 100</p>

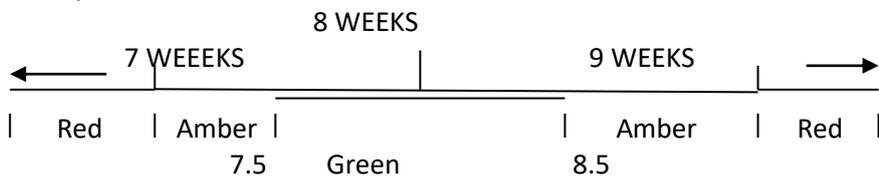
No	MI Information	Report Level & Duration	Definition/further information
36	<p>Re-work where face to face re-examination is required.( x-ref SLA SC14)</p> <p>a) The Provider must supply a count of the number of re-work cases that require face to face re-examinations received, within the reporting period.</p> <p>b) The Provider must supply a count of the number of re-work cases that require face to face re-examinations cleared, within the reporting period.</p> <p>c) The Provider must supply a count of the number of re-work cases that require face to face re-examination cleared in 20 Working Days or less, within the reporting period.</p> <p>d) The Provider must supply a count of the number of re-work cases that require face to face re-examination cleared in 21 Working Days or more, within the reporting period.</p> <p>e) The Provider must supply a total count of all re-work cases that require face to face re-examination outstanding with the AP, within the reporting period.</p> <p>f) The Provider must supply the total number of Working Days associated to all re-work cases that require face to face re-examination that are outstanding with the AP, within the reporting period</p> <p>g) The Provider must supply a total count of all re-work cases older than twenty five (25) Working Days as at the end of the Month</p>	<p>a) Lot, Region and Sub-Region. Monthly</p> <p>b) Lot, Region and Sub-Region. Monthly</p> <p>c) Lot, Region and Sub-Region. Monthly</p> <p>d) Lot, Region and Sub-Region. Monthly</p> <p>e) Lot, Region and Sub-Region. Monthly</p> <p>f) Lot, Region and Sub-Region. Monthly</p> <p>g) Lot, Region and Sub-Region, as at the end of the Month</p>	<p>New Service Credit added to contract after agreement with Atos and Commercials on 7<sup>th</sup> January 2013.</p> <p>99% cleared within twenty (20) Working Days (% is calculated as the number of c) divided by the number of a) x 100)</p> <p>No cases older than twenty five (25) Working Days as at the end of the Month.</p>

\* **Explanatory note for MI No. 4 above – EXAMPLE.** Note – Actual ranges will differ from example given below.

The optimum head of work (HOW) will be calculated in terms of a range on actual weekly intake. The optimum HOW range will be the sum of the last 7 weeks intake to the sum of the last 9 weeks intake and will be RAG rated as follows:-

- Green – the sum of the last 7.5 to 8.5 weeks actual intake
- Amber – the sum of the last 7 weeks intake and the sum of the last 7.5 weeks actual intake OR the sum of the last 8.5 and the sum of the last 9 weeks
- Red – the sum of the last 7 weeks intake OR more than the sum of the last 9 weeks

Example Timeline;



## **Annex H – Authority Obligations**

### **Introduction**

*The Authority agrees to comply with the obligations set out in this Annex H. Notwithstanding the foregoing, any breach of or other failure by the Authority to comply with the obligations in this Annex H shall not constitute a Default for the purposes of this Agreement nor shall any such breach or failure entitle the Provider to bring any claim against the Authority, including for breach of contract (including repudiatory breach).*

*In the event the Authority does not meet the obligations set out in this Annex H, and the Provider can demonstrate:*

- *that the Provider's ability to comply with its performance obligations under this Contract have been directly and adversely impacted by the failure of the Authority to meet its obligations under this Annex H;*
- *that the Provider's failure to comply with its performance obligations under this Contract would not have occurred but for the failure of the Authority to meet its obligations under this Annex H; and*
- *that the Provider has taken all reasonable steps to prevent or otherwise mitigate or minimise the impact of the Authority's failure to meet its obligations under this Annex H on the Provider's ability to comply with its performance obligations,*

*then the Provider shall be entitled to raise the Authority's failure to meet its obligations under this Annex H at the Contract Delivery Board meeting which reviews the Provider's performance which is impacted by the Authority's failure, and such failure may be taken into account in relation to the consideration of any Service Credits.*

### **General**

*The parties acknowledge and accept that the successful delivery of the Authority's business objectives and customer service obligations will require a high degree of co-operation and professionalism from both parties.*

*To the extent that a Service to be performed by the Provider involves obtaining the Authority's prior approval, such approval shall not be unreasonably withheld and shall be given in a timely fashion enabling the Provider to meet its targets and not cause a negative impact or reputational damage to either party.*

## OBLIGATIONS

No.	Obligation
AO1	<p><i>The Authority shall use reasonable endeavours to:</i></p> <ul style="list-style-type: none"> <li><i>a) provide all Further Medical Evidence (FME) at the point of referral to the Provider.</i></li> <li><i>b) ensure that any additional relevant FME received by the Authority after the initial referral is sent, is notified and submitted to the Provider within 24 hours of receipt.</i></li> </ul>
AO2	<p><i>The Authority shall use reasonable endeavours to respond within five (5) Working Days to all requests from the Provider for approval of healthcare professionals to be appointed by the Provider (and/or their sub-contractor) to undertake PIP Assessments and to notify the Provider in writing of its decision in accordance with the timeframe (including any caveats) detailed in the PIP Assessment Guide. In the event that the Authority decides not to approve an appointment, it will, where reasonably possible, provide the Provider with reasons for such rejection in writing.</i></p>
AO3	<p><i>Up until the point in time at which IF7 (IT Integration) is implemented, the Authority shall use reasonable endeavours to:</i></p> <ul style="list-style-type: none"> <li><i>a) identify different assessment types for the accurate registration of referrals (New Claims, Natural Reassessments, Award Reviews and Full PIP Roll out.)</i></li> <li><i>b) correctly identify Reworks and Advice referrals to the Provider .</i></li> </ul> <p><i>For the avoidance of doubt, from the date of implementation of IF7 (IT Implementation) this Authority Obligation (number 3) shall cease to apply.</i></p>
AO4	<p><i>The Authority shall use reasonable endeavours to:</i></p> <ul style="list-style-type: none"> <li><i>a) provide all known telephone numbers for all cases referred to the Provider.</i></li> <li><i>b) authorise the Provider to search for and to use the telephone numbers of Claimants as the Provider deems necessary for providing the Services and provide the Provider with Claimants' preferred communication needs when available.</i></li> </ul>

<b>No.</b>	<b>Obligation</b>
A05	<p><i>The Authority shall use reasonable endeavours to notify the Provider:</i></p> <ul style="list-style-type: none"> <li><i>a) of the following change of circumstance details within five (5) working days after receipt of such information:</i> <ul style="list-style-type: none"> <li><i>i. Change of address</i></li> <li><i>ii. New or amended external party</i></li> <li><i>iii. Change of medical evidence</i></li> <li><i>iv. Absence abroad</i></li> <li><i>v. Admittance to hospital/ residential care</i></li> <li><i>vi. Detention in legal custody/ prison</i></li> </ul> </li> <li><i>b) of the following change of circumstance details as soon as is reasonably possible but not longer than two (2) Working Days after receipt of such information:</i> <ul style="list-style-type: none"> <li><i>i. Death</i></li> </ul> </li> <li><i>c) as soon as reasonably practicable of notification of any referrals required to be withdrawn e.g. claim closed to prevent further nugatory work.</i></li> </ul>

<b>No.</b>	<b>Obligation</b>
A06	<p><i>The Authority shall use reasonable endeavours to provide forecasts of workflow profiles at agreed intervals at Lot, Region and Postcode levels.</i></p>
A07	<p><i>Not used.</i></p>
A08	<p><i>Where applicable, the Authority shall use reasonable endeavours to:</i></p> <ul style="list-style-type: none"> <li><i>a) provide the Provider with information on the initial and ongoing clinical training strategy.</i></li> <li><i>b) provide the PIP Assessment Guide and ensure all future updates required are issued to the Provider promptly via the CCN process.</i></li> <li><i>c) provide the final version of the revised PIP Assessment Guide to the Provider at each revision ahead of publication to allow the Provider to adequately prepare its communications to HPs; the Authority will aim to provide this at least four (4) weeks in advance, unless the Authority considers a shorter period of time is appropriate or necessary, for example in the event of an urgent change.</i></li> <li><i>d) provide details of the Quality Audit requirements and any future changes proposed by the Authority to the Provider to enable effective service provision and maintenance of professional standards.</i></li> </ul>

No.	Obligation
A09	<p><i>Subject to planned outages, details of which will be made available to the Provider with as much advance notice as possible*, the Authority shall use reasonable endeavours to:</i></p> <p><i>a) make available to the Provider users:</i></p> <p style="padding-left: 40px;"><b>PIPAT for SRTI cases</b> Mon-Sun 7:00am to 8:00pm</p> <p style="padding-left: 40px;"><b>PIPAT Mobile for SRTI cases (available for sync)</b> Mon-Sun 7:00am to 8:00pm</p> <p style="padding-left: 40px;"><b>PIP CS**</b> Monday to Sunday between the hours of 07:00 to 20:00</p> <p style="padding-left: 40px;"><b>DRS</b> Monday to Friday between the hours of 07:00 to 21:00; and Saturday 08:00 to 14:00 (excluding Good Friday, Easter Monday, Christmas Day, Boxing Day and New Years Day).</p> <p><i>b) procure that the CSC Service desk provides user support for PIP CS users:</i></p> <p style="padding-left: 40px;"><i>Monday to Friday between the hours of 06:45 to 21:00</i></p> <p style="padding-left: 40px;"><i>Saturday and Sunday between the hours of 07:15 to 17:15 (excluding English Bank Holidays).</i></p> <p style="padding-left: 40px;"><i>This will be the Provider's only point for raising IT related incidents and additional support for out of hours Major Incidents. Additional support hours for major incidents is 24/7, excluding Christmas Day.</i></p> <p style="padding-left: 40px;"><i>The Provider will raise any DWP IT related incident to the AP Helpdesk.</i></p> <p><i>c) arrange for third parties to provide systems which are resilient to a level prescribed by industry best practice and provide Authority Disaster Recovery / Business Continuity Framework guidance and support to the Provider in the event of system failure.</i></p> <p><i>Notify the Assessment Providers of planned IT change as specified in the "Assessment Providers' Service Management Guide".</i></p> <p><i>*DWP will seek to provide no less than twenty eight (28) days advance notice, but reserves the right at its absolute discretion to provide a shorter notice period for example where an outage is required to address an urgent or critical issue that is relevant to PIP.</i></p> <p><i>**The other DWP internal dependent systems will be available but do not have the same level of enhanced support and may be subject to planned outages. Notification of these planned outages will be provided via the CSC to the AP Helpdesk.</i></p>

<b>No.</b>	<b>Obligation</b>
AO10	<p><i>Where applicable, the Authority shall use reasonable endeavours to:</i></p> <ul style="list-style-type: none"> <li><i>a) provide Press Office support for media enquiries and both the Authority and the Provider will work jointly in replying to media enquiries, and each of them will only issue any such joint reply if the terms of the joint reply are first agreed between the Authority and the Provider.</i></li> <li><i>b) seek input from the Provider for relevant requests for information to reply to official correspondence, PQs, FOI requests.</i></li> <li><i>c) use opportunities to explain publicly the differences between the Authority and the Provider, with the Authority taking management of all publicity surrounding benefit entitlement.</i></li> <li><i>d) use opportunities to explain publicly the value of different delivery models.</i></li> <li><i>e) actively seek feedback from the Appeals Service on any referrals which may identify potential improvements to the Provider processes for PIP assessments and collate relevant information as to why appeals are upheld.</i></li> <li><i>f) communicate with professional and representative professional bodies, including but not limited to the GMC, BMA, RCGP, NMC, RCN, HCPC, to inform them about PIP and the supporting further evidence process with the aim of increasing general awareness and compliance with FME requests.</i></li> </ul>
AO11	<p><i>The Authority shall use reasonable endeavours to keep the Provider informed of progress and timetable for the PIP Programme.</i></p>

## APPENDIX 2 – ADMINISTRATION REQUIREMENTS

### 1 Authority's Authorisation

- 1.1 The following person is the Authority's Representative and is authorised to act on behalf of the Secretary of State for Work and Pensions on all matters relating to the Contract, contact details are shown in the Schedule 3 (Order Form) of the Framework Agreement.

Name; [REDACTED]  
Title; Authority's Representative

- 1.2 The Authority's Representative may approve deputy Authority's Representatives to exercise on his / her behalf such powers as are contained in this Contract.

### 2 Provider's Authorisation

- 2.1 The person holding the position stated below, shall be the Provider's Representative and is authorised to act on behalf of the Provider on all matters relating to the Contract:

Position Held: Client Executive  
Title: Provider's Representative

- 2.2 The person holding the position stated below, shall be the Provider's Contract Manager and is authorised to act on behalf of the Provider on all matters relating to the Contract:

Position Held: Commercial Director  
Title: Contract Manager

### 3 Payment Information

- 3.1 The Authority shall issue a purchase order to the Provider prior to commencement of the Service.

- 3.2 All invoices payable in compliance with the requirements of clause C2, must include the appropriate purchase order number shall be sent to the following address;

DWP  
Shared Services  
Purchase to Pay,  
3rd Floor, Companies House  
Crown Way  
Maindy  
Cardiff  
CF14 3UW

Shared Services Helpline: 0845 602 8244

- 3.3 The following MI and a PDF copy invoice shall be forwarded to the following contacts:

- a) [REDACTED] and
- b) [REDACTED]

#### **4 Disputed Claims**

- 4.1 Notwithstanding paragraph 4.5 of this Appendix, payment by the Authority of all or any part of any invoice rendered or other claim for payment by the Provider shall not signify approval of such invoice/claim. The Authority reserves the right to verify invoices/claims after the date of payment and subsequently to recover any sums which have been overpaid.
- 4.2 If any part of a claim rendered by the Provider is disputed or subject to question by the Authority either before or after payment then the Authority may call for the Provider to provide such further documentary and oral evidence as it may reasonably require to verify its liability to pay the amount which is disputed or subject to question and the Provider shall promptly provide such evidence in a form satisfactory to the authority.
- 4.3 If any part of a claim rendered by the Provider is disputed or subject to question by the Authority, the Authority shall not withhold payment of the remainder.
- 4.4 If any invoice rendered by the Provider is paid but any part of it is disputed or subject to question by the Authority and such part is subsequently agreed or determined not to have been properly payable then the Provider shall forthwith repay such part to the Authority.
- 4.5 The Authority shall be entitled to deduct from sums due to the Provider by way of set off any amounts owed to it or which are in dispute or subject to question either in respect of the invoice for which payment is being made or any previous invoice, or other sum due to the Authority from the Provider under any other agreement between the parties.

#### **5 Final Claims**

- 5.1 Provided all previous claims have been paid, the authority shall have no further liability to make payment of any kind to the Provider once the final claims have been paid.

## APPENDIX 3 – MONITORING REQUIREMENTS

This Appendix sets out the contract management requirements which are applicable to the delivery of the Services.

### **1 Reviewing Contract Performance**

- 1.1 The Provider shall work with the Authority to establish and maintain an effective and beneficial working relationship to ensure the Contract is delivered to at least the minimum required standard as specified in the Appendix 1 (The Services).
- 1.2 The Provider shall work with the Authority to establish suitable administrative arrangements for the effective management and performance monitoring of the Contract and shall provide information as requested to monitor and evaluate the success of the Contract and the Provider's management and delivery of it.
- 1.3 The Provider shall supply information requested relevant to the delivery of the Services to the Authority, using formats and to timescales specified by the Authority in Annex G.
- 1.4 The Authority intends, wherever it can, to capture and collate information through its IT system(s). However, the Authority does reserve the right to make reasonable requests for information (at no additional charge) from the Provider including ad-hoc requests for information from time to time.
- 1.5 The Authority or the Authority's representatives shall have a right to observe any Consultation between a Participant and the Provider's Health Professional (regardless of location) at any time, subject to the Authority giving reasonable notice to the Provider and the Provider obtaining the relevant Participant's consent on behalf of the Authority, which the Provider shall make reasonable endeavours to obtain.
- 1.6 Any additional requests for information shall be considered in consultation with the Provider as shall the process of defining the methods of collection.
- 1.7 Where an ongoing, short term or one off requirement is agreed, both Parties agree that it shall be included, or deemed to be included within this Appendix 3.
- 1.8 The Provider will be responsible for managing and reporting on any sub-contractual arrangements. Arrangements shall include mechanisms for the provision of management information, feedback to and from customers and stakeholder, change control procedures and the prompt resolution of any problems. The Authority will agree with the Provider day-to-day relationship management, contact points, communication flows and escalation procedures.
- 1.9 Review meetings between the Authority and the Provider shall also cover, as appropriate, resolving disputes and/or dealing with contractual breaches in accordance with the terms and conditions of this Contract.

- 1.10 The Authority may undertake spot checks at any time to ensure that the Provider is complying with its obligations under this Contract and the Provider shall co-operate fully, at its own cost, with the Authority.
- 1.11 The Provider will be expected to continuously improve the quality of the provision including that delivered by Sub-contractors. Where quality falls below acceptable levels the Provider will be expected to have suitable escalation procedures in place and, in respect of sub-contracted provision, take action where necessary to terminate the contract.

## **2 Access**

- 2.1 In all instances, the Provider shall co-operate and provide such reasonable assistance as may be necessary to facilitate such monitoring. Failure to provide such reasonable assistance shall be deemed a material Default for the purposes of clause H2 (Termination on Default).

## **3 Sustainable Development**

- 3.1 The Authority will review the Provider's Sustainable Development Policy Statement and Sustainable Development Plan submitted by the Provider in accordance with the Appendix 7 (Sustainable Development Requirements) and then at least annually thereafter.
- 3.2 Sustainable Procurement Risk Assessment Methodology (SPRAM) is a tool used by the Authority to identify and mitigate any potential risks to sustainability in contracts. The process requires that each Contract be assessed for its potential social, economic and environmental risks, throughout the various stages of its lifetime. Where risks are identified, appropriate mitigation action is required to reduce or eliminate the risk to sustainability. The Authority may at times require input from the Provider in order to ensure that this process is given the required levels of consideration.

## **4 Diversity and Equality**

- 4.1 The Authority will review the Provider's Diversity and Equality Delivery Plan and completed workforce monitoring data template when submitted in accordance with the Appendix 8 (Diversity and Equality Requirements) and then annually thereafter. The Authority can request full policy/procedure documents at any time throughout the Contract.

## **5 Apprenticeships and Skills**

- 5.1 The Authority will review the Provider's Apprenticeships and Skills Report when submitted by the Provider in accordance with the Appendix 10 (Apprenticeships and Skills Requirements) and then annually thereafter.

## **6 Security Requirements**

- 6.1 The Authority will review the Provider's Security Plan when submitted by the Provider in accordance with the Appendix 6 (Security Requirements and Plan) and at least annually thereafter.

## **7 HMG Baseline Personnel Security Standards**

- 7.1 The authority will review the Provider's HMG Baseline Personnel Security Standards Declaration in accordance with HMG Baseline Personnel Security Standard – A Guide For DWP Contractors.

## **8 Health and Safety Responsibilities of the Authority Visiting Officers**

- 8.1 The Authority representatives visit Providers and its Sub-contractors for a variety of reasons. In the course of their normal duties such representatives of the Authority shall adopt an 'eyes and ears' approach to monitoring health and safety. In doing this the Authority representatives shall not be conducting a health and safety inspection, nor shall they be in a position to offer advice on whether something is safe or not. Instead they shall approach this from the position of any lay person. If, however, the Authority representative does notice something on which they require assurance or clarification, they shall raise this with the Provider or the Provider's Sub-contractor's representative at the location where they are visiting. In no event are the Authority representatives to be seen as offering professional advice on health and safety matters and as such, shall not be liable for any advice or comments or otherwise given to the Provider or its Sub-contractors or any omission to give such advice, comments or otherwise.

**Annex I – Not Used**

## APPENDIX 4 – PRICES AND RATES

### 1. GENERAL

1.1 There are four parts to this appendix:

- A. PRICING METHODOLOGY
- B. INVOICING
- C. FINANCIAL MODEL, TRANSPARENCY AND AUDIT
- D. PROFIT SHARE

### PART A – PRICING METHODOLOGY

#### 2. PURPOSE OF THIS PART OF THE APPENDIX

The purpose of this Part A of this Appendix is to set out the provisions relating to the Contract Price applicable to the Services.

#### 3. PRICES AND RATES APPLICABLE FOR SERVICES

3.1 The pricing methodology set out in this appendix governs the prices and rates payable in respect of the Services provided by the Provider pursuant to this Contract

3.2 The payments specified in this paragraph 3.2 shall be payable to the Provider for the Services on and from the Second Variation Effective Date and for the remaining Contract Period, and shall be payable monthly in arrears:

3.2.1 The fixed unit price payments (as set out in Tables A, B and C of Annex 1 and further described in paragraphs 4.1 and 4.2 and Annex 1) for the delivery of assessment reports according to the following types:

- Paper Based Reviews
- Consultation (Face to Face/F2F) Assessments

3.2.2 the fixed unit price payments (as set out in Table D of Annex 1 (Rates Payable)) made for the cost of Further Medical Evidence Reports, which will be paid by the Provider and subsequently invoiced to the Authority on a “pass through” basis

less,

3.2.3 any Service Credits payable in accordance with the arrangements set out in Appendix 14 (Service Credits); and

3.2.4 any No Pay Amount payable in accordance with paragraph 5A of this Appendix.

3.3 The payments set out at 3.2 above shall relate to and shall constitute full consideration for the provision of the Services by the Provider except for payments in the case of any of the following:

3.3.1 If otherwise stated in this Appendix 4 (Prices and Rates);

3.3.2 NOT USED; or

3.3.3 If the payments are to be made pursuant to any Variation, in which case such Variation shall set out the payments and they will be additional consideration

#### **VOLUME BASED TOLERANCE BANDS**

4.1 The unit prices for the delivery of assessment reports are set out in Tables A, B and C of Annex 1 (Rates Payable).

4.2 The rates applicable to the delivery of assessment reports in each Month will be determined by calculating the percentage variance between actual and baseline volumes in the relevant Month in accordance with the formula set out in Annex 1 (Rates Payable).

#### **5 SERVICE CREDITS**

5.1 Service Credits will be calculated in accordance with the provisions of Appendix 14 (Service Credits).

5A No Pay Mechanism for Unacceptable Reports

5A.1 The Parties agree that the Authority shall be entitled to a No Pay Amount for each SC1 Transition quarter during the SC1 Transition Period and for each Month from 1 December 2016 for all assessment reports under this Contract which are determined as unacceptable according to the Acceptable/Unacceptable Criteria and in excess of the Agreed Tolerance or SC1 TP Tolerance (as applicable), subject to and in accordance with this paragraph 5A.

5A.2 Subject to the remaining paragraphs of this paragraph 5A, for the purposes of determining the number of assessment reports which the Authority shall be entitled to a No Pay Amount for each Month on and from 1 December 2016, the Parties agree the following:

5A.2.1 the Provider shall monitor performance against Service Level SC1, and shall provide the Authority with Management Information required in accordance with Annex G to Appendix 1 of the Contract and such other information and evidence as the Authority may require in order to give effect to this paragraph 5A;

5A.2.2 on a Monthly basis and using the Lancaster Model and Acceptable/Unacceptable Criteria, the Provider shall identify and audit a sample of assessment reports completed in the relevant Month under the Contract (the size of which sample will be determined in accordance with the Lancaster Model) and ascertain the number of acceptable and unacceptable assessment reports in that Month within the sample (the total number of assessment reports within the sample being the

**"Total Reports"** and the number of unacceptable reports within the sample being the **"Unacceptable Reports"**);

5A.2.3 as soon as possible and in any case within five (5) Working Days of the end of each Month, the Provider shall calculate and report to the Authority in writing on performance against Service Level SC1 (i) during the previous Month (**"Month 3"**) and (ii) on an aggregated basis over the Assessment Period (for the avoidance of doubt, the last Month of the Assessment Period for these purposes being Month 3) (**"AP Report"**) as follows:

- (a) the Total Reports for each Month of the Assessment Period shall be aggregated (**"AP Total Reports"**);
- (b) the Unacceptable Reports for each Month of the Assessment Period shall be aggregated (**"AP Unacceptable Reports"**); and
- (c) the overall performance during the Assessment Period shall be determined by dividing the AP Unacceptable Reports by the AP Total Reports (**"Aggregated Performance"**);

**Formula:**

$$\text{Aggregated Performance} = \text{[REDACTED]}$$

**(Y)** AP Unacceptable Reports (Unacceptable Reports in Month 1 + Month 2 + Month 3 of the Assessment Period)

**(Z)** AP Total Reports (Total Reports for Month 1 + Month 2 + Month 3 of the Assessment Period)

5A.2.4 In respect of each Assessment Period, the Aggregated Performance value shall be split into a maximum of four (4) Tranches, up to the upper limit of each tranche in order, less the portion that has fallen into the previous Tranche, as follows:

AP	By way of working example, within each Tranche if [REDACTED]	By way of working example, within each Tranche if [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

A provisional No Pay Amount shall be calculated in respect of each of the four (4) tranches above as follows:

**Formula:**

provisional [REDACTED]

**(AP)** Aggregated Performance for Tranche

**(TMP)** Total Monthly Price for assessment reports in Month 3 of the relevant Assessment Period

The provisional No Pay Amount shall be subject to a final adjustment by the Provider in accordance with clause 5A.2.5 below to determine the No Pay Amount which the Provider shall notify to the Authority, along with any further information as the Authority may reasonably require in relation to the calculation.

5A.2.5 In respect of each Assessment Period, the provisional No Pay Amount shall be adjusted by the Provider to determine the No Pay Amount to be notified to the Authority, based on the Aggregated Performance during the relevant Assessment Period. In order to calculate the No Pay Amount from the provisional No Pay Amount, the provisional No Pay Amount shall be adjusted using the following table:

AP	Calculation	No Pay Amount per Tranche (£)
[REDACTED]	[REDACTED]	[REDACTED]

5A.2.6 this paragraph 5A.2 shall be interpreted and applied in accordance with the following worked examples:

**Worked Example 1:**

	Assessment Period			Refund/Credit in Month 4 (Mar 17)
	Month 1 (Dec 16)	Month 2 (Jan 17)	Month 3 (Feb 17)	
Total Reports	[REDACTED]	[REDACTED]	[REDACTED]	
AP Total Reports	[REDACTED] [REDACTED]			

Unacceptable Reports	[REDACTED]	[REDACTED]	[REDACTED]	
AP Unacceptable Reports	[REDACTED] [REDACTED]			
Aggregated Performance (AP)	[REDACTED] [REDACTED]			
Total Monthly Price (£) (TMP)	£[REDACTED]m	£[REDACTED]m	£[REDACTED]m	
<b>Tranche 1 calculation</b>				
provisional No Pay Amount for Tranche 1	[REDACTED]			£[REDACTED] (from Month 3) x 0.03 = £[REDACTED]
No Pay Amount for Tranche 1				£[REDACTED] x 0% = [REDACTED]
<b>Tranche 2 calculation</b>				
provisional No Pay Amount for Tranche 2	[REDACTED]			£[REDACTED] (from Month 3) x 0.01 = £[REDACTED]
No Pay Amount for Tranche 2				£[REDACTED] x 25% =£[REDACTED]
<b>Tranche 3 calculation</b>				
provisional No Pay Amount for Tranche 3	[REDACTED]			£[REDACTED] (from Month 3) x 0.01 = £[REDACTED]
No Pay Amount for Tranche 3				£[REDACTED] x 50% =£[REDACTED]
<b>Tranche 4 calculation</b>				

provisional No Pay Amount for Tranche 4	[REDACTED]	$\pounds[\text{REDACTED}]$ (from Month 3) $\times 0.012 = \pounds[\text{REDACTED}]$
No Pay Amount for Tranche 4		$\pounds[\text{REDACTED}] \times 100\% = \pounds[\text{REDACTED}]$
Total No Pay Amount (£)	$\pounds[\text{REDACTED}] + \pounds[\text{REDACTED}] + \pounds[\text{REDACTED}]$	$= \pounds[\text{REDACTED}]$

	Assessment Period 1 (Period 1)			
		Assessment Period 2 (Period 2)		
	Month 1 (Jun 17)	Month 2 (Jul 17)	Month 3 (Aug 17)	N/A
	N/A	Month 1 (Jul 17)	Month 2 (Aug 17)	Month 3 (Sept 17)
Total Reports	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
AP Total Reports for Period 1	[REDACTED] [REDACTED]			N/A
AP Total Reports for Period 2	N/A	[REDACTED] [REDACTED]		
Unacceptable Reports	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
AP Unacceptable Reports for Period 1	[REDACTED]			N/A
AP Unacceptable Reports for Period 2	N/A	[REDACTED] [REDACTED]		
Aggregated Performance for Period 1 ("AP")	[REDACTED] [REDACTED]			N/A
Aggregated Performance for	N/A	[REDACTED]		

Period 2 ("AP")		[REDACTED]		
Total Monthly Price (£)	£[REDACTED]	£[REDACTED]	£[REDACTED]	£[REDACTED]
No Pay Amount for Tranche 1 of Period 1	Always NIL			
No Pay Amount for Tranche 2 of Period 1	[REDACTED] provisional No Pay Amount: [REDACTED] x £[REDACTED] (from Month 3) = £[REDACTED] No Pay Amount: £[REDACTED] x [REDACTED] = £[REDACTED]			
No Pay Amount for Tranche 3 of Period 1	[REDACTED] provisional No Pay Amount: [REDACTED] x £[REDACTED] (from Month 3) = £[REDACTED] No Pay Amount: £[REDACTED] x [REDACTED] = £[REDACTED]			
No Pay Amount for Tranche 4 of Period 1	[REDACTED] provisional No Pay Amount: [REDACTED] x £[REDACTED] (from Month 3) = £[REDACTED] No Pay Amount: £[REDACTED] x [REDACTED] = £[REDACTED]			
Total No Pay Amount for Period 1 which shall be due in Month 4	£[REDACTED] + £[REDACTED] + £[REDACTED] = £[REDACTED]			
No Pay Amount for Tranche 1 of Period 2		Always NIL		
No Pay Amount for Tranche 2 of Period 2		[REDACTED] provisional No Pay Amount: [REDACTED] x £[REDACTED] (from Month 3) = £[REDACTED] No Pay Amount: £[REDACTED] x [REDACTED] = £[REDACTED]		
No Pay Amount for Tranche 3 of Period		[REDACTED]		

2		provisional No Pay Amount: [REDACTED] x £[REDACTED] (from Month 3) = £[REDACTED]  No Pay Amount: £[REDACTED] x [REDACTED] = £[REDACTED]
No Pay Amount for Tranche 4 of Period 2		[REDACTED]  provisional No Pay Amount: [REDACTED] x £[REDACTED] (from Month 3) = £[REDACTED]  No Pay Amount: £[REDACTED] x [REDACTED] = £[REDACTED]
Total No Pay Amount for Period 2 which shall be due in Month 5		£[REDACTED] + £[REDACTED] + £[REDACTED] = £[REDACTED]

5A.3 Subject to the remaining paragraphs of this paragraph 5A, for the purposes of determining the number of assessment reports which the Authority shall be entitled to a No Pay Amount for each SC1 Transition quarter during the SC1 Transition Period, the Parties agree the following: forum

5A.3.1 the Provider shall monitor performance against Service Level SC1, and shall provide the Authority with Management Information required in accordance with Annex G to Appendix 1 of the Contract, paragraph 10 of Appendix 14 of the Contract and such other information and evidence as the Authority may reasonably require in order to give effect to this paragraph 5A. For the purposes of this paragraph 5A.3.1, “evidence” shall be limited to any information recorded in any form and held by or on behalf of the Provider at the time of the Authority request;

5A.3.2 as soon as possible and in any case within five (5) Working Days of the end of each SC1 Transition quarter, the Provider shall calculate and report on performance against Service Level SC1 (i) during each Month of the relevant SC1 Transition quarter and (ii) on an aggregated basis over the relevant SC1 Transition quarter (“**SC1 TP Report**”) as follows:

(a) the total number of assessment reports and unacceptable reports in each Month of the SC1 Transition quarter shall be determined in accordance with paragraph 5A.2.2;

(b) the Aggregated Performance for the SC1 Transition quarter shall be calculated in accordance with paragraph 5A.2.3;

(c) for each SC1 Transition quarter:

- (1) any underperformance shall be identified and a value for such underperformance determined by deducting the relevant SC1 TP Tolerance from the Aggregated Performance ("**SC1 TP Underperformance**"); and
- (2) in respect of any underperformance, a No Pay Amount shall be determined by multiplying the SC1 TP Underperformance for the relevant SC1 Transition quarter by the Total Quarterly Price for that SC1 Transition quarter.

**Formula to calculate the value of the No Pay Amount for each SC1 Transition quarter:**

**SC1 Transition Q1 No Pay Amount [REDACTED]**

**NB.** Only applies where the value of A is greater than B1

**SC1 Transition Q2 No Pay Amount [REDACTED]**

**NB.** applies where the value of A is greater than B2

**SC1 Transition Q3 No Pay Amount = [REDACTED]**

**NB.** Only applies where the value of A is greater than B3

**(A)** Aggregated Performance

**(B1)** SC1 TP Tolerance for SC1 Transition Q1

**(B2)** SC1 TP Tolerance for SC1 Transition Q2

**(B3)** SC1 TP Tolerance for SC1 Transition Q3

**(C1)** Total Quarterly Price for SC1 Transition Q1

**(C2)** Total Quarterly Price for SC1 Transition Q2

**(C3)** Total Quarterly Price for SC1 Transition Q3

5A.3.3 if, in respect of any SC1 Transition quarter, the Aggregated Performance does not exceed the SC1 TP Tolerance, for the purposes of paragraph 5A.3.2, above, the No Pay Amount shall be deemed to be "0" (zero); and

5A.3.4 this paragraph 5A.3 shall be interpreted and applied in accordance with the following worked examples:

**Worked Example 1:**

<b>SC1 Transition Q1</b>			<b>Refund/Credit in June 2016</b>
<b>March 2016</b>	<b>April 2016</b>	<b>May 2016</b>	

<b>Aggregated Performance</b>	[REDACTED]	
<b>SC1 TP Tolerance</b>	[REDACTED]	
<b>SC1 TP Underperformance</b>	[REDACTED]	
<b>Total Quarterly Price (£)</b>	£[REDACTED] (C1)	
<b>No Pay Amount (£)</b>	£[REDACTED]	£[REDACTED]

**Worked Example 2:**

	<b>SC1 Transition Q1</b>			<b>Refund/Credit in June 2016</b>
	<b>March 2016</b>	<b>April 2016</b>	<b>May 2016</b>	
<b>Aggregated Performance</b>	[REDACTED]			
<b>SC1 TP Tolerance</b>	[REDACTED]			
<b>SC1 TP Underperformance</b>	[REDACTED]			
<b>Total Quarterly Price (£)</b>	£[REDACTED] (C1)			
<b>No Pay Amount (£)</b>	£[REDACTED]			£[REDACTED]

**Worked Example 3:**

	<b>SC1 Transition Q2</b>			<b>Refund/Credit in September 2016</b>
	<b>June 2016</b>	<b>July 2016</b>	<b>August 2016</b>	
<b>Aggregated Performance</b>	[REDACTED]			
<b>SC1 TP Tolerance</b>	[REDACTED]			
<b>SC1 TP</b>	[REDACTED]			

<b>Underperformance</b>		
<b>Total Quarterly Price (£)</b>	£[REDACTED] (C2)	
<b>No Pay Amount (£)</b>	£[REDACTED] x [REDACTED] = £[REDACTED]	£[REDACTED]

5A.4 The Parties agree and acknowledge that the mechanism set out in this paragraph 5A and any resultant No Pay Amounts, given the Authority's legitimate interest (and the legitimate interest of Claimants) in receiving assessment reports of adequate quality under this Contract:

(a) represent a proportionate price adjustment to reflect the reduced quality of assessment reports provided under this Contract; and

(b) are without prejudice to the Authority's other rights and remedies under this Contract or at law.

5A.5 No Pay Amounts are exclusive of VAT.

5A.6 Subject to paragraph 5A.14, and without prejudice to paragraph 5A.8 below, the No Pay Amount calculated in accordance with paragraph 5A.2 or with paragraph 5A.3 (in this paragraph 5A.6, the "**NPA Due Amount**") shall be applied as follows:

(a) the Provider shall within ten (10) Working Days of the approval by the Authority (such approval to be issued in writing or at the Contract Delivery Board) of the amount of the NPA Due Amount (plus VAT, where applicable) issue a credit note (in this paragraph 5A.6, "**Credit Note**") which credits the NPA Due Amount (plus VAT, where applicable); and

(b) the Authority shall set off the value of the Credit Note against the Provider's next invoice submitted to the Authority in accordance with Appendix 4 Part B after the date of the Credit Note.

5A.7 Subject to paragraph 5A.9, the Authority shall have the right to validate and/or conduct its own audit and/or sampling in respect of the Provider's determination of the total number of assessment reports, the number of acceptable and/or unacceptable assessment reports and/or any amount identified or referred to in or relating to any invoice and/or credit invoice, including to check and verify that:

5A.7.1 the Provider has carried out its audit properly, including in respect of the random sample selected, application of the Lancaster Model, and the basis of the calculations under paragraph 5A.2 or paragraph 5A.3;

5A.7.2 assessment reports have been duly and properly determined as acceptable or unacceptable according to the Acceptable/Unacceptable Criteria; and

5A.7.3 the amounts being claimed or any adjustments being applied to any invoice, including the Total Monthly Price, Total Quarterly Price and the No Pay Amount are validly calculated,

and the Provider shall in a timely manner provide the Authority with all reasonable cooperation and assistance in relation to any audit, including the provision of information and evidence.

5A.8 Subject to paragraph 5A.9 below, in the event the Authority's validation or audit determines that any amount or adjustment in any invoice or credit invoice is incorrect, the Authority will notify the Provider, and the findings of the Authority shall be final and binding on the Provider unless there is a material error in the results or in the application of the audit criteria. Any incorrect amounts are payable by the Provider as soon as possible and in any case within thirty (30) Working Days of the Authority's notification. Without prejudice to the Authority's right to recover any such amounts as sums due from the Provider, or deduct such amounts from any sums due under clause C3.1 (Recovery of Sums Due), the Provider shall issue a credit note in respect of such amounts within thirty (30) Working Days of the Authority's notification and the Authority shall set off the value of the credit note against the Provider's next invoice submitted to the Authority in accordance with Appendix 4 Part B after the date of the credit note;

5A.9 The Authority agrees and acknowledges that in order to determine that an amount or adjustment in any invoice or credit invoice is incorrect pursuant to paragraph 5A.8 above, it must have based its:

(a) validation exercise on a statistically valid sample size selected at random from the same sample of assessment reports which were audited by the Provider in the relevant Assessment Period. For these purposes, the Parties agree and acknowledge that a statistically valid sample size shall include a minimum number of assessment reports which represents 60% or more of the sample audited by the Provider in the relevant Assessment Period, e.g. if the Provider audited 500 assessment reports, the Authority's sample would need to be a minimum of 300; or

(b) audit on a statistically valid sample size (calculated in accordance with the Lancaster Model) selected at random from the assessment reports which were completed by the Provider in the relevant Assessment Period.

Any activity in relation to the validation of the Provider's audit must be completed and communicated to the Provider no later than 120 Working Days from receipt of the relevant AP Report or SC1 TP Report, as applicable. The process set out in this clause 5A.9 shall be the exclusive means by which the Authority may challenge the Provider's No Pay Amount calculated in accordance with paragraph 5A.2 or paragraph 5A.3.

5A.10 The Parties agree and acknowledge their intention for the following to apply at the end of the Contract Period in respect of Service Level SC1:

5A.10.1 a Retention Amount shall be calculated by multiplying the Total Monthly Price for the last Month of the Contract Period by the Aggregated Performance for the Last Validated SC1 Period

**Formula:**

[REDACTED]

(A) Total Monthly Price for the last Month of the Contract Period

(B) Aggregated Performance for the Last Validated SC1 Period

5A.10.2 if the Aggregated Performance for the Last Validated SC1 Period is [REDACTED] [REDACTED] of the Contract Period by [REDACTED];

5A.10.3 without prejudice to the Authority's right to recover such amounts as sums due from the Provider, or make deductions from any sums due under clause C3.1 (Recovery of Sums Due), the Provider shall deduct the following from its invoice for the last Month of the Contract Period:

- (a) the Retention Amount; and
- (b) any No Pay Amount, which shall be calculated in accordance with paragraphs 5A.2.4, 5A.2.5 and 5A.2.6;

5A.10.4 the Provider shall not be entitled to invoice the Authority for the Retention Amount nor shall the Authority be under any obligation to pay the Provider the Retention Amount unless and until such time as any and all of the outstanding No Pay Amounts and other amounts due to the Authority under the Contract or any other agreement or contract with the Authority have been paid to the Authority or duly credited in a valid invoice. Without prejudice to the Authority's right to recover any and all amounts due to the Authority under the Contract or any other agreement or contract with the Authority and provided no monies are owed by the Provider to the Authority, the Provider shall be entitled to invoice the Authority for the Retention Amount if the Authority has not completed an audit by the date which is four (4) Months after the last day of the Contract Period.

**Worked Example:**

In this example, July is the last Month of the Contract Period and August is the Month in which the invoice for July is raised.

**Step 1: Calculate No Pay Amount**

	Assessment Period			August
	May	June	July	
Total Reports	[REDACTED]	[REDACTED]	[REDACTED]	

AP Total Reports	[REDACTED] [REDACTED]			
Unacceptable Reports	[REDACTED]	[REDACTED]	[REDACTED]	
AP Unacceptable Reports	[REDACTED] [REDACTED]			
Aggregated Performance (AP)	[REDACTED] [REDACTED]			
Total Monthly Price (£) (TMP)	[REDACTED]	[REDACTED]	[REDACTED]	
<b>Tranche 1 calculation</b>				
Provisional No Pay Amount for Tranche 1	AP for Tranche 1 = [REDACTED]			£[REDACTED] (from Month 3) x [REDACTED] = £[REDACTED]
No Pay Amount for Tranche 1				£[REDACTED] x [REDACTED] =[REDACTED]
<b>Tranche 2 calculation</b>				
Provisional No Pay Amount for Tranche 2	AP for Tranche 2 = [REDACTED]			£[REDACTED] (from Month 3) x [REDACTED] = £[REDACTED]
No Pay Amount for Tranche 2				£[REDACTED] x [REDACTED] =£[REDACTED]
<b>Tranche 3 calculation</b>				
provisional No Pay	AP for Tranche 3 = [REDACTED]			£[REDACTED] (from Month 3)

<b>Amount for Tranche 3</b>		x [REDACTED] = £[REDACTED]
<b>No Pay Amount for Tranche 3</b>		£[REDACTED] x [REDACTED] =£[REDACTED]
<b>Tranche 4 calculation</b>		
<b>Provisional No Pay Amount for Tranche 4</b>	AP for Tranche 4 = [REDACTED]	£[REDACTED] (from Month 3) x [REDACTED] = £[REDACTED]
<b>No Pay Amount for Tranche 4</b>		£[REDACTED] x [REDACTED] = £[REDACTED]
<b>Total No Pay Amount (£)</b>	£[REDACTED] + £[REDACTED] + £[REDACTED]	= £[REDACTED]

**Step 2: Calculate Retention Amount**

	Last Validated SC1 Period			July	August
	April	May	June		
<b>Total Reports</b>	[REDACTED]	[REDACTED]	[REDACTED]		
<b>AP Total Reports</b>		[REDACTED] [REDACTED]			
<b>Unacceptable Reports</b>	[REDACTED]	[REDACTED]	[REDACTED]		
<b>AP Unacceptable Reports</b>		[REDACTED] [REDACTED]			
<b>Aggregated Performance</b>		[REDACTED]			

(B)	[REDACTED]				
Total Monthly Price (£) (A)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
Retention Amount (£)					$\pounds$ [REDACTED] $\times$ [REDACTED] $=$ $\pounds$ [REDACTED]

**August Invoice (for July outputs) =  $\pounds$ [REDACTED], i.e.  $\pounds$ [REDACTED] – ( $\pounds$ [REDACTED] +  $\pounds$ [REDACTED])**

5A.11 The Parties agree and acknowledge the following:

5A.11.1 there shall not be any cap or other limitation on No Pay Amounts or the Retention Amount; and

5A.11.2 No Pay Amounts and the Retention Amount are separate and distinct from Service Credits under the Contract and will therefore not count towards the Service Credit Cap.

5A.12 In the event of a dispute arising between the Authority and the Provider over any matter relating to No Pay Amounts or the Retention Amount under this Appendix, such dispute shall be dealt with in accordance with the Dispute Resolution procedure set out in clause I2 of the Contract.

5A.13 In any case where the result of the calculation made under this paragraph 5A goes to four or more decimal places, the result shall be rounded to the nearest three decimal places, save for any result where the fourth decimal point is a value of five (5) in which case the result shall be rounded up to three decimal places.

**Worked example:**

0.0464 – rounded down to 0.046

0.0465 - rounded up to 0.047

0.0466– rounded up to 0.047

5A.14 The Authority’s rights in this paragraph 5A shall be without prejudice to its other rights, including (1) the right to recover sums equivalent to any No Pay Amounts as sums due from the Provider, (2) the right to deduct sums equivalent to No Pay Amounts pursuant to clause C3.1 (Recovery of Sums Due), and (3) rights to require any review or variation of the terms and conditions of the Contract to take account of Independent Audit.

**6 PRICES FOR CONTRACT VARIATIONS**

6.1 The Provider shall use the Financial Model to demonstrate how any proposed Variation or Provider Initiated Variation will impact on costs, revenues and margins.

- 6.2 Where a Variation is requested by the Authority or a Provider Initiated Variation is proposed by the Provider then the Provider shall at no charge prepare a quotation for the cost which shall:
- 6.2.1 be based on and reflect the principles of and underpinning the Financial Model having regard to any stated price affecting assumptions stated in the Financial Model;
  - 6.2.2 include an estimate of the resources required (including numbers by role);
  - 6.2.3 include full disclosure of any assumptions underlying such quotation; and
  - 6.2.4 include evidence of the cost of any assets required for the Variation or Provider Initiated Variation (as applicable).
- 6.3 If a Variation or Provider Initiated Variation is adopted by the Authority in accordance with Clause F3 (Variation) or F3A (Provider Initiated Variations) (as applicable) then the Provider shall ensure that the Financial Model is updated to reflect the impact of such Variation.
- 6.4 Time and Material Prices for Variations
- 6.4.1 Where Time and Material Prices are agreed for a Variation or Provider Initiated Variation in accordance with Clause F3 (Variation) or F3A (Provider Initiated Variation) (as applicable), then the following provisions of this paragraph 6.4 shall apply.
  - 6.4.2 Time and Material Prices shall be calculated as the aggregate Rate Card Resource consumed and approved for payment in each Month by the Authority based on the relevant rates as set out in the Rate Card.
  - 6.4.3 The Provider shall provide a breakdown of any Time and Materials Price.
  - 6.4.4 The Rate Card Resources are based upon the completion of a Professional Day.

## **7 INDEXATION**

- 7.1 Indexation shall not apply to the Contract Price under this Contract.

## **PART B – INVOICING**

### **1. PURPOSE OF THIS PART OF THE APPENDIX**

- 1.1 This Part B of the Appendix sets out the method by which the Provider shall raise invoices to the Authority for payment, together with the requirements which apply to such invoices, and the payment terms thereof.

## 2. Provider Invoices

- 2.1 The Provider shall prepare and provide to the Authority for approval a draft pro forma invoice within 10 Working Days of the date of contract award which shall include, as a minimum, the details set out in paragraph 2.3 of Part B to this Appendix together with such other information as the Authority may reasonably require. If the draft pro-forma invoice is not approved by the Authority the Provider shall amend it within (10) days
- 2.2 The Provider shall be entitled to raise an invoice in respect of any payment which falls payable to the Provider pursuant to the Contract, provided that each invoice is delivered to the Authority within ten (10) Working Days of the payment becoming due:
- 2.3 Each invoice shall comply with the requirements in clause C2 of the Contract. Each invoice shall at all times be accompanied by sufficient information ("Supporting Documentation") to enable the Authority to reasonably assess whether the Charges detailed thereon are properly payable. Any such assessment by the Authority shall not be conclusive. The Provider undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.
- 2.4 The Provider shall use best endeavours to submit, as soon as possible and in any case within fifteen (15) Working Days after the end of each Month, all invoices and Supporting Documentation in such format as the Authority may specify from time to time, for the rates in respect of the Contract Price incurred during that Month. Invoices and Supporting Documentation shall be submitted:

Invoice only:  
Department for Work and Pensions  
Medical Services Commercial  
Room 306, Norcross  
Thornton, Cleveleys  
Blackpool  
FY5 3TA

MI and a PDF copy invoice shall be forwarded to the following contacts:

- a) [REDACTED] and
- b) [REDACTED]

with a copy (again including any Supporting Documentation) to such other person and at such place as the Authority may notify to the Provider from time to time.

- 2.5 All Provider invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
- 2.6 The Authority shall only regard an invoice as valid if it complies with the provisions of clause C2 and this part B of this Appendix. Where any invoice does not conform to the Authority's requirements set out in Clause C2 and paragraph 2 of Part B to this Appendix, the Authority will reject the disputed invoice. The Provider shall promptly issue a replacement invoice which shall comply with the same.

### 3. PAYMENT TERMS

3.1 Subject to the provisions of paragraph 2 of Part B to this Appendix, the Authority shall make payment to the Provider in accordance with clause C2.

### 4. February 2018 SIDE LETTER DISCOUNT

4.1 The Provider shall:

- a) deduct the December Amount from its invoice for the Month of December 2017, which shall constitute settlement of all Service Credits and No Pay Amounts arising during the period from and including 1 April 2017 up to and including 31 December 2017;
- b) apply a discount of [REDACTED] off the fixed unit price payment (the "Discount") for the first [REDACTED] assessment reports delivered on and from 1 January 2018 and this Discount shall be applied irrespective of whether an assessment report is a Paper Based Review or a Consultation (Face to Face/F2F) Assessment; and
- c) alongside each Monthly invoice submitted in accordance with the Contract, issue a credit note to the Authority and each credit note shall detail the total value of the Discount to be applied to the invoice for that Month;

4.1A For the avoidance of doubt, the Provider shall only be required to comply with paragraph 4.1(b) and 4.1(c) above until the Total Discount Amount has been paid in full to the Authority or the 28 February 2019 whichever event occurs first. Thereafter the fixed unit price payments shall be calculated in accordance with Annex 1 (Rates Payable) of this Appendix 4 (Prices and Rates) with no Discount applied.

4.2 In the event that the Total Discount Amount has not been paid in full to the Authority as at the 28 February 2019, the Provider shall deduct the remaining amount from its invoice for the Month of February 2019.

4.3 This Paragraph 4 of this Appendix 4 (Prices and Rates) is without prejudice to the Authority's right to recover any of the December Amount and/or the Total Discount Amount as sums due from the Provider or the Authority's right to make deductions from any sums due under clause C3.1 (Recovery of Sums Due) of the Contract.

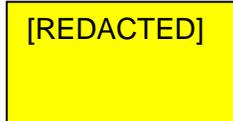
4.4 In the event that the Contract is terminated before the December Amount and/or the Total Discount Amount has been paid in full to the Authority, the remaining amount shall become due and payable, and the Provider shall immediately pay the remaining amount to the Authority.

4.5 For the purposes of this Paragraph 4, "**December Amount**" means the sum of £2,353,401.89 and "**Total Discount Amount**" means the sum of 4,489,948.80, both of which shall be paid to the Authority in accordance with this Paragraph 4.

## **PART C – FINANCIAL MODEL, TRANSPARENCY AND AUDIT**

### **1. FINANCIAL MODEL**

- 1.1 The Provider shall provide an updated Financial Model using the template agreed and embedded below within twenty (20) Working Days after the end of the quarter which provides a Month by Month view of the actual costs incurred since the Commencement Date and the costs forecast for the remaining Contract Period, including revenues and margins.



- 1.2 Each update of the Financial Model shall:

- (a) be completed using all reasonable skill and care and using the same approach and methodology;
- (b) be completed on an accruals basis and in accordance with the Provider's internal financial reporting. The Provider shall add additional cost category lines to the Financial Model template to ensure consistency with its internal financial reporting.
- (c) incorporate and use the same defined terms as are used in the Contract;
- (d) quote all monetary values in pounds sterling;
- (e) quote all costs as exclusive of any VAT;
- (f) be certified by the Provider's Finance Director (or equivalent if the Authority has provided Approval in advance), as being:
  - (i) accurate and not misleading;
  - (ii) prepared in conformity with generally accepted accounting principles within the UK; and
  - (iii) being a true and fair reflection of:
    - (1) the information included within the Provider's own internal financial reports; and
    - (2) the costs and revenue incurred and forecast by the Provider.

- 1.3 During the Contract Period and for a period of twelve (12) Months afterwards, the Provider will:

- (a) answer any reasonable queries the Authority may have in respect of any version of the Financial Model and shall use best endeavours to do so

within five (5) Working Days of receipt of the query; and

- (b) provide any additional data and/or information which the Authority may reasonably request to understand any version of the Financial Model and/or otherwise achieve the Transparency Objectives, including further breakdowns or sub-categories of cost and shall use best endeavours to do so within ten (10) Working Days of receipt of the request. In the event the Authority is consistently asking for the same data/information/breakdown, the Parties will discuss and seek to agree (acting reasonably and in good faith) changes to the Financial Model template to include such data/information/breakdown.

1.4 For the purpose of paragraphs 1.3(a) and 1.3(b) above, the Parties shall use best endeavours to close off all queries and requests relating to any Financial Model update prior to the release of the next Financial Model update for the following quarter, which may include attendance of both Parties at a meeting to resolve outstanding issues as may be necessary.

1.5 For the avoidance of doubt, the Authority may raise a query or request additional data and/or information in respect of any version of the Financial Model at any time during the Contract Period and for a period of twelve (12) Months thereafter and the Provider shall respond to any such query or request in accordance with paragraph 1.3(a) or 1.3(b) as applicable.

1.6 During the Contract Period and for a period of twelve (12) Months afterwards, the Provider shall nominate and make available an individual (the "**Financial Representative**") as the go-to person for queries or requests for additional information in respect of the Financial Model. The Financial Representative will be a reasonably skilled and experienced member of the Provider's Staff who has specific responsibility for preparing, maintaining, facilitating access to, and discussing and explaining the Financial Model and/or providing supporting data and information.

## **2. AUDIT**

2.1 The Authority (acting by itself or through its Audit Agents) has the right during the Contract Period and for a period of twelve (12) Months afterwards to carry out an audit to:

- (a) verify the accuracy, integrity and content of any version of the Financial Model;
- (b) subject to any Third Party Confidentiality, verify the costs incurred by the Provider by testing a sample of transactions from their financial ledger (including amounts paid to subcontractors) which shall be based on an audit plan agreed between the Parties in advance of the relevant audit, provided that in the event the Parties are unable to agree the audit plan within two (2) Months of the Authority providing notice of its intention to conduct an audit, the audit plan shall be determined by the Authority (acting reasonably);
- (c) understand the methodology, financial control process and systems which

underpin the Financial Model, as reported in its financial ledger.

- 2.2 The Authority (including its Audit Agents) will provide at least two (2) Month's notice of its intention to conduct an audit and will not be entitled to audit more than once a year and shall be based upon a period ending on the Provider's quarterly accounting periods.
- 2.3 When carrying out audits, the Authority will comply with the Provider's security, sites, systems and facilities operating procedures as reasonably directed by the Provider and use its reasonable endeavours to ensure that the conduct of each audit does not cause unreasonable disruption.
- 2.4 The Provider shall in a timely manner provide the Authority and/or the Audit Agents with all reasonable cooperation and assistance in relation to each audit, including:
  - (a) providing all information reasonably requested by the Authority and/or Audit Agents within the permitted scope of the audit as set out in paragraph 2.1;
  - (b) reasonable access to sites and any equipment used (whether exclusively or non-exclusively) in the latter case subject to any Third Party Confidentiality) in the performance of the Services; and
  - (c) reasonable access to personnel, including the Financial Representative.
- 2.5 The Parties will bear their own costs and expenses of an audit.
- 2.6 Following any audit:
  - (a) the Provider shall rectify any material errors, inaccuracies or other deficiencies identified in respect of any version of the Financial Model; and
  - (b) the Parties will challenge and discuss with each other ideas for efficiencies and improvements.

## **PART D - PROFIT SHARE**

### **1. THRESHOLD PROFIT MARGIN**

- 1.1 No later than twenty (20) Working Days after the end of each Profit Share Period, the Provider shall provide an updated Financial Model (in accordance with and subject to Part C (Financial Model, Transparency and Audit) of this Appendix) from which the Costs, Profit and Profit Margin during such Profit Share Period can be determined, and the Parties shall use best endeavours to close off all queries and requests relating to such updated Financial Model and agree the cumulative Costs, Profit and Profit Margin for such Profit Share Period within fifty (50) Working Days of the end of such Profit Share Period.
- 1.2 The Second Variation Parties agree and acknowledge that in respect of Profit during each Profit Share Period:

- 1.2.1 the Provider shall be entitled to retain [REDACTED] of any Profit up to and including the Threshold Profit Margin; and
- 1.2.2 if the Profit Margin exceeds the Threshold Profit Margin, the Parties shall share the excess Profit subject to and in accordance with paragraph 2 (Profit Share) below; and.
- 1.2.3 for the avoidance of doubt, the Threshold Profit Margin during Profit Share Period 4 shall be calculated post the application of the Target Chargeable Clearances Discount in accordance with Appendix 4, Annex 1.

## **2. PROFIT SHARE**

- 2.1 If at the end of any Profit Share Period, the Profit Margin exceeds the Threshold Profit Margin (the amount of Profit which exceeds the Threshold Profit Margin being the "Excess Profit"), the Parties shall share the Excess Profit on an equal [REDACTED] basis.
- 2.2 The Provider shall pay to the Authority the Authority's share of the Excess Profit within sixty (60) days of the Financial Model and cumulative Costs, Profit and Profit Margin for the relevant Profit Share Period being agreed under paragraph 1.1 of Part D (Profit Share) of Appendix 4 (Prices and Rates). Without prejudice to the foregoing, the Authority shall be entitled to recover its share of Excess Profit under clause C3.1 (Recovery of Sums Due)

## **3. RISK SHARE**

- 3.1 The Parties shall share the Risk Impact Value in relation to all Risks identified in the Risk Report less a sum equal to any costs reasonably and properly incurred by the Provider in relation to any Risks which are identified on the Risk Report as having materialised (provided that the Provider has mitigated such costs to the fullest extent possible) on an equal 50/50 basis and the Provider shall pay the Authority the Authority's share of such Risk Impact Value within [30 days] of the end of the Contract Period and the Authority may at its discretion set off the value of its share of any such Risk Impact Value from any invoice due and payable by the Authority.
- 3.2 For the avoidance of doubt nothing in this paragraph 3 shall oblige the Authority to make any additional payment to the Provider.

## Annex 1 – Rates Payable

### Annex 1 – Rates Payable

#### Table A – Not Used

#### Table B – rates applicable on and from 1 January 2018 up to and including 31 July 2018

Face to face (F2F) assessment report rate (£)	Paper based review (PBR) report rate (£)
[REDACTED]	[REDACTED]

#### Table C – rates applicable on and from 1 August 2018 up to and including 30 November 2018

Face to face (F2F) assessment report rate (£)	Paper based review (PBR) report rate (£)
[REDACTED]	[REDACTED]

#### Table CA – rates applicable on and from 1 December 2018 up to and including 31 July 2019

Face to face (F2F) assessment report rate (£)	Paper based review (PBR) report rate (£)
[REDACTED]	[REDACTED]

#### Table CB – rates applicable on and from 1 August 2019 up to the end of Contract Period

Face to face (F2F) assessment report rate (£)	Paper based review (PBR) report rate (£)
[REDACTED]	[REDACTED]

\*such rates to be subject to the Target Chargeable Clearance Discount in accordance with paragraph 1 below

## Table D

The following rates apply for Further Medical Evidence:

	Cost (£)
GP Factual Report	[REDACTED]

### 1. Target Chargeable Clearance Discount

The Provider shall deduct from the rates set out in Table CB above a discount of £[REDACTED] from the first [REDACTED] Chargeable Clearances invoiced in the period from 1 August 2019 up to the end of the Contract Period.

### 2 Chargeable Clearance Commitment

2.1 The Provider shall during the Extension Period deliver Chargeable Clearances which number not less the Target Chargeable Clearances.

2.2 If, at the expiry or termination of the Contract, the total Chargeable Clearances which are Cleared are less than the Target Chargeable Clearances, then the Provider shall pay to the Authority a sum (the "**Target Chargeable Clearance Credit**") calculated in accordance with the following formula:

$$\begin{array}{l} \text{Target} \\ \text{Chargeable} \\ \text{Clearance} \\ \text{Credit} \end{array} = \text{£}[\text{REDACTED}] \times [\text{REDACTED}] [\text{REDACTED}] [\text{REDACTED}]$$

2.3 Immediately following the expiry or termination of this Contract, the Provider shall, notify the Authority of the Actual Chargeable Clearances and of any Target Chargeable Clearance Credit payable.

2.4 The Target Chargeable Clearance Credit shall be payable by the Provider immediately following the expiry or termination of this Contract, and the Authority may, at its discretion, set off the value of any such Target Chargeable Clearance Credit from any invoice due and payable by the Authority.

2.5 For the avoidance of doubt:

2.5.1 The figure for Target Chargeable Clearances during the Extension Period shall not be affected or varied:

2.5.1.1 By virtue of any occurrence of an Over-Referral Period(s) or Under-Referral Period(s); or

2.5.1.2 Because of any change to the Latest Forecast or Operative Forecast; or

2.5.1.3 Because of any proposed updated Service Transfer Plan following issue of the Detailed Transition Requirements, or issue of a Transition Notice, or in any Transition Pricing Review; and

2.5.2 this paragraph 2 shall survive the termination or expiry of the Contract.

2.6 The parties acknowledge and agree that this paragraph 2 is included to protect the legitimate business interests of the Authority and the parties regard this paragraph as proportionate to those interests.

## Annex 2 – Rate Card

<b>Senior Manager</b>	£ [REDACTED]
<b>Middle Manager</b>	£ [REDACTED]
<b>Junior Manager</b>	£ [REDACTED]
<b>Administrative Staff</b>	£ [REDACTED]
<b>Senior Doctor</b>	£ [REDACTED]
<b>Healthcare Professional Manager</b>	£ [REDACTED]
<b>Doctor</b>	£ [REDACTED]
<b>Healthcare Professional</b>	£ [REDACTED]
<b>Project Manager</b>	£ [REDACTED]
<b>Contract Manager</b>	£ [REDACTED]
<b>Administrative Trainer/Guidance Writer</b>	£ [REDACTED]
<b>Medical Auditor</b>	£ [REDACTED]
<b>Medical Trainer/Guidance Writer/Project Manager</b>	£ [REDACTED]
<b>Healthcare Professional Trainer/Guidance Writer/Project Manager</b>	£ [REDACTED]
<b>Programme Office Support/ Tester</b>	£ [REDACTED]
<b>Programmer/Developer</b>	£ [REDACTED]
<b>Analyst</b>	£ [REDACTED]
<b>Junior Technical Consultant</b>	£ [REDACTED]
<b>Consultant</b>	£ [REDACTED]
<b>Technical Consultant</b>	£ [REDACTED]
<b>Project Manager</b>	£ [REDACTED]

<b>Senior Consultant</b>	£ [REDACTED]
<b>Principal Consultant</b>	£ [REDACTED]

## APPENDIX 5 – COMMERCIALLY SENSITIVE INFORMATION

1 The Authority acknowledges that the Provider has requested that the following information be treated as Commercially Sensitive Information;

Page Number (in your tender)	Clause/paragraph numbered (or other identification)	Explanation of harm which may result from disclosure and time period applicable to any sensitivity
Atos IT Services UK Ltd Finance Pricing Proposal Lot 3		<p>The pricing proposal contains highly confidential pricing and costing information which would provide the competitive assessment services market with information which would undermine Atos' ability to bid for similar contracts in the future.</p> <p>Duration: Date of tender submission to expiry of any resulting contract plus 5 years.</p>
Annex 2- Schedule of Approved Sub- Contractors Lot 3 (Document 4 Part 6)		<p>The information regarding the proposed Atos supply chain is confidential and should such information be released it may undermine Atos' ability to deliver the current contract and to bid for similar contracts.</p> <p>Duration: Date of tender submission to 1 year after the commencement date</p>
Atos IT Services UK Ltd Doc Part 5 Tender Form 4 2 Lot 3		<p>The information regarding the proposed Atos supply chain is confidential and should such information be released it may undermine Atos' ability to deliver the current contract and to bid for similar contracts.</p> <p>Duration: Date of tender submission to 1 year after the commencement date</p>
Atos IT Services UK		The information regarding the proposed Atos supply chain is

Ltd Doc Part 5 Tender Form 4 1 Lot 3		confidential and should such information be released it may undermine Atos' ability to deliver the current contract and to bid for similar contracts.  Duration: Date of tender submission to 1 year after the commencement date
Atos IT Services UK Ltd Doc Part 5 Tender Form 8 1 Lot 3		The information regarding the proposed Atos supply chain is confidential and should such information be released it may undermine Atos' ability to deliver the current contract and to bid for similar contracts.  Duration: Date of tender submission to 1 year after the commencement date

- 2 The Authority will consult with the Provider on any request for information, identified as Commercially Sensitive, under the FOIA.
- 3 The Authority reserves the right to disclose any Commercially Sensitive Information held within this Contract in response to a request under the FOIA as set out at clause E5 of this Contract.
- 4 The Authority will automatically publish all information provided by the Provider **not** identified in this Appendix as constituting Commercially Sensitive Information provided that it satisfies the requirements of the FOIA.
- 5 The Authority reserves the right to determine whether any information provided in this Appendix does constitute Commercially Sensitive Information prior to publication.

## APPENDIX 6 – SECURITY REQUIREMENTS AND PLAN

### **1 Introduction**

1.1 This appendix covers;

- a) Principles of security for the Provider System, derived from the Security Policy, including without limitation principles of physical and information security;
- b) The creation of the Security Plan;
- c) Audit and testing of the Security Plan;
- d) Conformance to ISO/IEC: 27002 (Information Security Code of Practice) and ISO/IEC 27001 (Information Security Requirements Specification) (Standard Specification); and
- e) Breaches of Security.

### **2 Principles of Security**

2.1 The Provider acknowledges that the Authority places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Provider System. The Provider also acknowledges the confidentiality of the Authority's Data.

2.2 The Provider shall be responsible for the security of the Provider System and shall at all times provide a level of security which;

- a) is in accordance with Good Industry Practice and Law;
- b) complies with the Security Policy;
- c) meets any specific security threats to the Provider System; and
- d) complies with ISO/IEC27002 and ISO/IEC27001 in accordance with paragraph 5 of this Appendix.

2.3 Without limiting paragraph 2.2, the Provider shall at all times ensure that the level of security employed in the provision of the Services is appropriate to minimise the following risks:

- a) loss of integrity of Authority Data;
- b) loss of confidentiality of Authority Data;
- c) unauthorised access to, use of, or interference with Authority Data by any person or organisation;
- d) unauthorised access to network elements and buildings;

- e) use of the Provider System or Services by any third party in order to gain unauthorised access to any computer resource or Authority Data; and
- f) loss of availability of Authority Data due to any failure or compromise of the Services.

### **3 Security Plan**

#### **Introduction**

- 3.1 The Provider shall develop, implement and maintain a Security Plan to apply during the Contract Period which will be approved by the Authority, tested, periodically updated and audited in accordance with this Appendix.
- 3.2 A draft Security Plan will have been provided by the Provider as part of its bid for the Contract and will be set out in the Order Form.

#### **Development**

- 3.3 Within twenty (20) Working Days after the Commencement Date (unless some other date is agreed in writing by the parties) and in accordance with paragraphs 3.10 to 3.12 (Amendment and Revision), the Provider will prepare and deliver to the Authority for approval the full and final Security Plan
- 3.4 If the Security Plan is approved by the Authority it will be adopted immediately. If the Security Plan is not approved by the Authority the Provider shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit to the Authority for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with clause 12 Dispute Resolution. No approval to be given by the Authority pursuant to this paragraph 3.4 of this appendix may be unreasonably withheld or delayed. However any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 3.1 to 3.9 shall be deemed to be reasonable.

#### **Content**

- 3.5 The Security Plan will set out the security measures to be implemented and maintained by the Provider in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with:
  - a) the provisions of this contract; this appendix (including the principles set out in paragraph 2);
  - b) the provisions of the Appendix (The Services) relating to security;
  - c) ISO/IEC27002 and ISO/IEC27001;

- d) the data protection compliance guidance produced by the Authority;
- 3.6 The references to standards, guidance and policies set out in paragraph 3.5 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.
- 3.7 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Provider should notify the Authority's Representative of such inconsistency immediately upon becoming aware of the same, and the Authority's Representative shall, as soon as practicable, advise the Provider which provision the Provider shall be required to comply with.
- 3.8 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001.
- 3.9 Where the Security Plan references any document which is not in the possession of the Authority, a copy of the document will be made available to the Authority upon request. The Security Plan shall be written in plain English in language which is readily comprehensible to the staff of the Provider and the Authority engaged in the Services and shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this appendix.

#### **Amendment and Revision**

- 3.10 The Security Plan will be fully reviewed and updated by the Provider annually, or from time to time to reflect:
  - a) emerging changes in Good Industry Practice;
  - b) any change or proposed change to the Provider System, the Services and/or associated processes; and
  - c) any new perceived or changed threats to the Provider System.
  - d) a reasonable request by the Authority
- 3.11 The Provider will provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Authority.
- 3.12 Any change or amendment which the Provider proposes to make to the Security Plan as a result of an Authority request or change to the Appendix (The Services) or otherwise shall be subject to the Change Control Procedure and shall not be implemented until approved in writing by the Authority.

#### **4 Audit and Testing**

- 4.1 The Provider shall conduct tests of the processes and countermeasures contained in the Security Plan ("Security Tests") on an annual basis or as otherwise agreed by the

Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority.

- 4.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Provider shall provide the Authority with the results of such tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.
- 4.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to this Contract, the Authority shall be entitled at any time and without giving notice to the Provider to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Provider's compliance with and implementation of the Security Plan. The Authority may notify the Provider of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery Services. If such tests impact adversely on its ability to deliver the Services to the agreed Service Levels, the Provider shall be granted relief against any resultant under-performance for the period of the tests.
- 4.4 Where any Security Test carried out pursuant to paragraphs 4.2 or 4.3 above reveals any actual or potential security failure or weaknesses, the Provider shall promptly notify the Authority of any changes to the Security Plan (and the implementation thereof) which the Provider proposes to make in order to correct such failure or weakness. Subject to the Authority's approval in accordance with paragraph 3.12, the Provider shall implement such changes to the Security Plan in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan to address a non-compliance with the Security Policy or security requirements, the change to the Security Plan shall be at no additional cost to the Authority. For the purposes of this paragraph 4, a weakness means vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

## **5 Compliance With ISO/IEC 27001**

- 5.1 The Provider shall obtain independent certification of the Security Plan to ISO27001 as soon as reasonably practicable and will maintain such certification for the duration of the Contract
- 5.2 If certain parts of the Security Policy do not conform to good industry practice as described in ISO27002 and, as a result, the Provider reasonably believes that its certification to ISO 27001 would fail in regard to these parts, the Provider shall promptly notify the Authority of this and the Authority in its absolute discretion may waive the requirement to certification in respect of the relevant parts
- 5.3 The Provider shall carry out such regular security audits as may be required by the British Standards Institute in order to maintain delivery of the Services in compliance with security aspects of ISO 27001 and shall promptly provide to the Authority any associated security audit reports and shall otherwise notify the Authority of the results of such security audits.
- 5.4 If it is the Authority's reasonable opinion that compliance with the principles and practices of ISO 27001 is not being achieved by the Provider, then the Authority shall

notify the Provider of the same and give the Provider a reasonable time (having regard to the extent of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO 27001. If the Provider does not become compliant within the required time then the Authority has the right to obtain an independent audit against these standards in whole or in part.

5.5 If, as a result of any such independent audit as described in paragraph 5.4 the Provider is found to be non-compliant with the principles and practices of ISO 27001 then the Provider shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.

## **6 Breach of Security**

6.1 Either party shall notify the other immediately upon becoming aware of any Breach of Security including, but not limited to an actual, potential or attempted breach, or threat to, the Security Plan.

6.2 Upon becoming aware of any of the circumstances referred to in paragraph 6.1, the Provider shall;

- a) immediately take all reasonable steps necessary to;
  - i) remedy such breach or protect the Provider System against any such potential or attempted breach or threat; and
  - ii) prevent an equivalent breach in the future.

Such steps shall include any action or changes reasonably required by the Authority. In the event that such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Provider under this Contract, then the Provider shall be entitled to refer the matter to the change control procedure in clause F3 Variation.

- b) as soon as reasonably practicable provide to the Authority full details (using such reporting mechanism as may be specified by the Authority from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

## **Annex K – Security Policy for Providers**

1. The Department for Work and Pensions treats its information as a valuable asset and considers that it is essential that information must be protected, together with the systems, equipment and processes which support its use. These information assets may include data, text, drawings, diagrams, images or sounds in electronic, magnetic, optical or tangible media, together with any Personal Data for which the Department for Work and Pensions is the Data Controller.
2. In order to protect Departmental information appropriately, our Providers must provide the security measures and safeguards appropriate to the nature and use of the information. All Providers of services to the Department for Work and Pensions must comply, and be able to demonstrate compliance, with the Department's relevant policies and standards.
3. The Chief Executive or other suitable senior official of each Provider must agree in writing to comply with these policies and standards. Each Provider must also appoint a named officer who will act as a first point of contact with the Department for security issues. In addition all staff working for the Provider and where relevant Sub-contractors, with access to Departmental IT Systems, Services or Departmental information must be made aware of these requirements and must comply with them.
4. All Providers must comply with the relevant Standards from the DWP Information Systems Security Standards. The Standards are based on and follow the same format as International Standard 27001, but with specific reference to the Department's use.
5. The following are key requirements and all Providers must comply with relevant DWP policies concerning:
  6. **Personnel Security**
    - 6.1 Staff recruitment in accordance with government requirements for pre-employment checks;
    - 6.2 Staff training and awareness of Departmental security and any specific contract requirements.
  7. **Secure Information Handling and Transfers**
    - 7.1 Physical and electronic handling, processing and transferring of DWP Data, including secure access to systems and the use of encryption where appropriate.
  8. **Portable Media**
    - 8.1 The use of encrypted laptops and encrypted storage devices and other removable media when handling Departmental information.
  9. **Offshoring**
    - 9.1 The Department's Data must not be processed outside the United Kingdom without the prior written consent of DWP and must at all times comply with the Data Protection Act 1998.

**10. Premises Security**

10.1 Security of premises and control of access.

**11. Security Incidents**

11.1 Includes identification, managing and agreed reporting procedures for actual or suspected security breaches.

12. All Providers must implement appropriate arrangements which ensure that the Department's information and any other Departmental assets are protected in accordance with prevailing statutory and central government requirements. These arrangements will clearly vary according to the size of the organisation.

13. It is the Provider's responsibility to monitor compliance of any Sub-contractors and provide assurance to DWP.

14. Failure to comply with any of these Policies or Standards could result in termination of current contract.

## APPENDIX 7 – SUSTAINABLE DEVELOPMENT REQUIREMENTS

This appendix sets out the Sustainable Development Requirements which are applicable to the provision of the Services.

### **1. General**

- 1.1 The Provider acknowledges that the Authority must at all times be seen to be actively promoting Sustainable Development.
- 1.2 In delivering the Services, the Provider shall and shall procure that its Sub-contractors assist and cooperate with the Authority, by fully complying with the requirements of this Appendix.

### **2. Compliance**

- 2.1 The Provider shall produce a Sustainable Development Policy Statement and Sustainable Development Plan in accordance with paragraphs 2.2 and 2.3 of this Appendix, by 01/06/13 and annually thereafter. The Sustainable Development Policy Statement and Sustainable Development Plan must be specific to the Contract and include all Sub-contractors involved in delivery of the Contract. The Provider must obtain the required information from Sub-contractors and then collate and submit as stated above.
- 2.2 In delivering the Services, the Provider shall prepare a Sustainable Development Policy Statement giving, for each organisation involved in delivery of the contract:
  - a) full assurance of waste disposal by a registered waste collector in accordance with current government regulations; and
  - b) full assurance of the observation of Waste Electrical and Electronic Equipment (WEEE) regulations.
- 2.3 In delivering the Services, the Provider shall prepare a Sustainable Development Plan which as a minimum, detail how each organisation involved in delivery of the contract will:
  - a) minimise waste produced and promote recycling;
  - b) minimise energy consumption;
  - c) minimise use of transport and promote use of public transport where transport is unavoidable;

Also required for each organisation are:

- d) baseline assessment of current position in terms of waste minimisation, recycling and energy consumption (energy consumption only required if current energy usage is available to organisations)
- e) annual estimates of the progress of Sustainable Development actions;
- f) details of how Staff awareness of Sustainability will be increased in line with the Sustainable Development Plan.

## APPENDIX 8 – DIVERSITY AND EQUALITY REQUIREMENTS

### 1. General

- 1.1 The Provider acknowledges that the Authority has a 'duty to promote' equality and must at all times be seen to be actively promoting equality of opportunity for, and good relations between, all persons, irrespective of their race, gender, gender reassignment, disability, age, sexual orientation or religion/belief or in terms of pregnancy and maternity or marriage and civil partnership. The Provider must ensure that each of its Sub-contractors involved in delivery of the contract are aware of, and acknowledge, that the Authority has a 'duty to promote' equality.
- 1.2 In delivering the Services, the Provider shall, and shall procure that its Sub-contractors, assist and cooperate with the Authority in satisfying Equality duties by fully complying with the requirements of this Appendix.

### 2. Compliance

- 2.1 The Provider acknowledges the provisions of the Equality Legislation set out in clause D2 (Discrimination).
- 2.2 The Provider shall produce a Diversity and Equality Delivery Plan in accordance with paragraph 2.5 (and sub paragraphs) and paragraph 2.6 (and sub paragraphs) of this Appendix, by 10/05/13, and annually thereafter. The Diversity and Equality Delivery Plan must be specific to the Contract and include details for all Sub-contractors involved in delivery of the Contract.
- 2.3 The Provider will provide workforce monitoring data in accordance with paragraph 3 (and sub paragraphs) of this Appendix, within six (6) Months of the Commencement Date, (unless some other date is agreed in writing by the parties) and annually thereafter.
- 2.4 The Authority will consider and agree the submissions made by the Provider when complying with paragraph 2 (and sub paragraphs of paragraph 2) and paragraph 3 (and sub paragraphs of paragraph 3) of this Appendix. Any issues will be raised with the Provider by the Contract Manager acting on behalf of the Authority. If an issue relates to a Sub-contractor, the Provider must raise and resolve the issue with the Sub-contractor. Once submissions are agreed by the Authority the Provider will formally review, revise and resubmit all information required in paragraph 2.2 and paragraph 2.3 on an annual basis. Diversity and Equality aspects will also be discussed jointly by the Authority and the Provider as an ongoing item at the Contract review meetings.
- 2.5 In delivering the Services, the Provider shall prepare the Diversity and Equality Delivery Plan which as a minimum includes:
- a) an overview of Provider and any Sub-contractor's policy/policies and procedures for preventing unlawful discrimination and promoting equality of opportunity in respect of:
    - i) Race
    - ii) Gender

- iii) Gender reassignment
  - iv) Disability
  - v) Age
  - vi) Sexual orientation
  - vii) Religion/Belief
  - viii) Pregnancy and Maternity
  - ix) Marriage and Civil Partnerships;
- b) An overview of Provider and any Sub-contractor's policy/policies and procedures covering:
- i) Harassment
  - ii) Bullying
  - iii) Victimisation
  - iv) Recruitment procedures
  - v) Staff training and development

Full policy documents must be made available to the Authority on request;

- c) Details of the way in which the above policy/policies and procedures are, or will be (and by when), communicated to the Staff;
- d) Details of what general diversity and equality related training has been, or will be delivered (and by when), to Staff;
- e) Details of what structure is already in place, or will be in place (and by when) and what resources are, or will be (and by when), directed towards diversity and equality within the Provider and any Sub-contractor's organisation; and
- f) Details of any diversity and equality cases and tribunals (including volumes and outcomes) relating to the Provider and any Sub-contractors.

2.6 In delivering the Services, the Provider shall provide evidence, as required below, within the Diversity and Equality Delivery Plan as detailed at paragraph 2.2 of this Appendix:

- a) Where a Provider is delivering Services to customers on behalf of the Authority or Services to the Authority's staff, the Provider must provide written evidence that:
  - i) Equality Impact Assessments have been carried out in conjunction with the Authority prior to the Services being delivered and will be carried out in the event of any changes to the Services, in accordance with Equality Legislation;
  - ii) reasonable adjustments are made, as required by Equality Legislation to make those Services accessible to disabled people and that in the case of Information Technology services, those services are in accordance with the Authority's standards;
  - iii) all Staff have had appropriate training so that they understand the duties required by Equality Legislation, and where Services are being delivered on behalf of the Authority, the Provider shall provide evidence that Staff

understand the duties not to discriminate and to promote equality, in accordance with Equality Legislation.

2.7 The Authority may request further information and assurance relating to Diversity & Equality at any point during the duration of the Contract.

### **3. Monitoring and Reporting**

3.1 The Provider shall provide workforce monitoring data as detailed in paragraph 3.2 of this Appendix. A template for data collected in paragraphs 3.2, 3.3 and 3.4 will be provided by the Authority. Completed templates for the Provider and each Sub-contractor will be submitted by the Provider with the Diversity and Equality Delivery Plan within six (6) Months of the Commencement Date (unless some other date is agreed in writing by the parties) and annually thereafter. Providers are required to provide workforce monitoring data for the workforce involved in delivery of the Contract. Data relating to the wider Provider workforce and wider Sub-contractors workforce would however be well received by the Authority. Providers and any Sub-contractors are required to submit percentage figures only in response to paragraphs 3.2(a), 3.2(b) and 3.2(c).

3.2 The Provider and Sub-contractors will each provide separate information detailing:

a) the proportion of employees who are:

- i) female; and/or
- ii) disabled
- iii) those who prefer not to state gender and/or disability

b) the proportion of Staff who in terms of ethnicity are:

White

- i) white British;
- ii) white Irish;
- iii) of any other white background

Mixed

- iv) white and black Caribbean;
- v) white and black African;
- vi) white and Asian;
- vii) of any other mixed background

Asian or Asian British

- viii) Indian;
- ix) Pakistani;
- x) Bangladeshi;
- xi) of any other Asian background

Black or Black British

- xii) Caribbean;
- xiii) African;
- xiv) of any other Black background

Chinese or other ethnic group

- xv) Chinese;
- xvi) of any other ethnic group

Prefer not to state

- xvii) Prefer not to state ethnicity

For the avoidance of doubt, the seventeen (17) percentage figures submitted under categories i) to xvii) of this paragraph 3.2(b) (in each template in respect of the Provider's employees and each Sub-contractors employees) should total one hundred percent (100%).

- c) The Provider will provide details of the proportion of its Sub-contractors that are:
  - i) small to medium sized enterprises (meaning enterprises with less than two hundred and fifty (250) employees and a maximum annual turnover of forty (40) million pounds);
  - ii) ethnic minority enterprises (in each case meaning an enterprise fifty one percent (51%) or more of which is owned by members of one (1) or more ethnic minority groups, or, if there are few owners, where at least fifty percent (50%) of the owners are members of one (1) or more ethnic minority groups). For this purpose, ethnic minority groups means ethnic groups other than White as referred to at paragraph 3.2(b) of this Appendix: and
  - iii) black ethnic minority enterprises (in each case meaning an enterprise fifty one percent (51%) or more of which is owned by members of the Black or Black British ethnic group, or, if there are few owners, where at least fifty percent (50%) of the owners are members of the Black or Black British ethnic group). For this purpose, the Black or Black British ethnic group has the meaning referred to at categories xii) to xiv) in paragraph 3.2(b) of this Appendix.

For the avoidance of doubt, any given Sub-contractor may fall into one (1), two (2) or all of the categories i) to iii) listed in paragraph 3.2(c) of this Appendix, depending on its composition.

- 3.3 The Provider and any Sub-contractors will compare their figures, in all categories listed in paragraphs 3.2(a), 3.2(b) and 3.2(c) of this Appendix, and provide (where possible) comparisons against any official national/regional statistics that are publicly available.
- 3.4 The Provider and any Sub-contractors will provide evidence of activities undertaken, or planned, in order to try and improve their current position in the categories detailed in paragraphs 3.2(a), 3.2(b) and 3.2(c) of this Appendix.
- 3.5 The Provider shall, and shall procure that its Sub-contractors will ensure at all times that they comply with the requirements of the DPA in the collection and reporting of the information to the Authority.

## APPENDIX 9 – Not Used

## APPENDIX 10 – APPRENTICESHIPS AND SKILLS REQUIREMENTS

This Appendix sets out the Apprenticeships and Skills Requirements which are applicable to the provision of the Contract.

### **1. General**

- 1.1 Government is committed to addressing skills issues and promoting training opportunities through procurement, to maximise the potential for improvements provided by its considerable spend.
- 1.2 In order to support and drive economic growth, the Government announced that it has prioritised the key policy agendas to be promoted through public procurement. Supporting apprenticeships, skills and the fight against youth unemployment is one of these 'Policy through Procurement' priorities on which Departments must now focus.
- 1.3 The Provider acknowledges that the Authority is required to support the above apprenticeships and skills aims and targets.
- 1.4 In delivering the Services, the Provider shall, and shall procure that its Sub-contractors assist and cooperate with the Authority by fully complying with the requirements of this Appendix.

### **2. Compliance**

- 2.1 The Provider shall and shall procure that its Sub-contractors take all reasonable steps to employ apprentices, and report to the Authority the numbers of apprentices employed and wider skills training provided, during delivery of the Services.
- 2.2 The Provider shall and shall procure that its Sub-contractors shall take all reasonable steps to ensure that 5% of their employees are on a formal apprenticeship programme. This can include administration and support staff.
- 2.3 The Provider shall and shall procure that its Sub-contractors make available to employees information about the Government's Apprenticeship Programme and wider skills opportunities.
- 2.4 The Provider shall and shall procure that its Sub-contractors provide any appropriate further skills training opportunities for employees involved in delivery of the Contract.
- 2.5 The Provider will produce an Apprenticeships and Skills Report in accordance with paragraph 3 (and sub-paragraphs) of this Appendix.

### **3. Monitoring and reporting**

- 3.1 The Provider shall provide an Apprenticeships and Skills Report by 01/06/13 and annually thereafter. The Apprenticeships and Skills Report must be specific to the Contract and include details for all Sub-contractors involved in delivery of the Contract. The Provider must obtain the required information from Sub-contractors and collate and submit an Apprenticeships and Skills Report that relates specifically to the Contract.

The Apprenticeships and Skills Report will include:

- a) the number of Staff during the reporting period involved in delivery of the Contract, including administration and support staff;
- b) the number of existing apprentices involved in the delivery of the Contract;
- c) the number of new starts on apprenticeships initiated as a result of delivery of the Contract;
- d) if applicable, a robust explanation as to why it is not possible to meet the 5% target. (It may be that use of apprentices is not possible or appropriate in delivery of the Services);
- e) action being taken to improve the take up of apprenticeships. These could include issuing leaflets on apprenticeships to eligible existing staff, advertising apprenticeship vacancies with local Jobcentre Plus, schools and colleges, offering apprenticeships in administration/support roles or seeking advice from the National Apprenticeship Service; and
- f) other training/skills development being undertaken by staff involved in delivery of the Contract including:
  - i) Work experience placements for 14 to 16 year olds
  - ii) Work experience/work trial placements for other ages
  - iii) Student sandwich/gap year placements
  - iv) Graduate placements
  - v) Vocational training
  - vi) Basic skills training
  - vii) On site training provision/facilities.

3.2 The Provider shall, and shall procure that its Sub-contractors will ensure at all times that they comply with the requirements of the DPA in the collection and reporting of the information to the Authority.

# APPENDIX 11 – PARENT COMPANY GUARANTEE

**APPENDIX 11 – PARENT COMPANY GUARANTEE**  
**LOT 3**

**DATED 26 JULY 2012**

**PARENT COMPANY GUARANTEE**

**between**

**THE SECRETARY OF STATE FOR WORK AND PENSIONS**

**and**

**Atos SA**

THIS DEED is dated 26 July 2012

## PARTIES

- (1) **THE SECRETARY OF STATE FOR WORK AND PENSIONS** whose address is Caxton House, Tothill Street, Greater London, SW1H 9NA ("the **Authority**"); and
- (2) Atos SA incorporated and registered in France company number 323 623 603 RCS  
[REDACTED]

## BACKGROUND

- (1) By an agreement dated on or about the date of this guarantee ("the **Contract**", which term includes all amendments to, variations of, or supplements to such agreement, from time to time in force), the Authority has agreed to engage Atos IT Services UK Limited ("the **Provider**") to deliver Personal Independence Payment Assessment Service (Lot 3)  
  
Lot 3: London / Southern England.
- (2) It is a condition of the Contract **being awarded to the Provider** that the Provider procures the execution and delivery to the Authority of a parent company guarantee substantially in the form of this guarantee.
- (3) The Guarantor has agreed to guarantee the due performance of the Contract by the Provider.
- (4) It is the intention of the Parties that this document be executed as a deed.

## AGREED TERMS

### 1. Interpretation

- 1.1 Unless the context requires otherwise, the definitions and rules of interpretation in the Contract shall apply in this guarantee.
- 1.2 A reference in this deed to this guarantee shall be construed as a reference to this deed of guarantee.

### 2. Obligations Of The Guarantor

- 2.1 In consideration of the Authority entering into the Contract with the Provider, the Guarantor agrees:
  - 2.1.1 as primary obligor, to guarantee to the Authority the due and punctual performance by the Provider of each and all of the obligations, representations, warranties, duties and undertakings of the Provider under and pursuant to the Contract when and if such obligations, representations, warranties, duties and undertakings shall become due and performable according to the terms of the Contract;
  - 2.1.2 in addition to its obligations set out in clause 2.1.1, to indemnify the Authority against all losses which may be awarded against the Authority or which the Authority may otherwise incur arising out of, under or otherwise in connection with the Contract whether arising under statute, contract or at common law including without limitation by reason of any breach by the

Provider of its obligations, representations, warranties, duties and undertakings under and/or pursuant to the Contract save that, subject to the other provisions of this guarantee (including without limitation clause 2.1.3), this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are imposed on the Provider under the Contract; and

- 2.1.3 to indemnify the Authority against all losses whether arising under statute, contract or at common law which may be awarded against the Authority or which the Authority may otherwise incur if any obligation guaranteed by the Guarantor is or becomes totally or partially unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Provider's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

### **3. Liability**

- 3.1 The Guarantor agrees that it shall not in any way be released from liability under this guarantee by any act, omission, matter or other thing whereby (in absence of this provision) the Guarantor would or might be released in whole or in part from liability under this guarantee including, without limitation and whether or not known to the Guarantor:

- 3.1.1 any arrangement made between the Provider and the Authority;
- 3.1.2 any alteration in the obligations undertaken by the Provider whether by way of any addendum or variation referred to in clause 4 or otherwise;
- 3.1.3 any waiver or forbearance by the Authority whether as to payment, time, performance or otherwise;
- 3.1.4 the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Provider or any other person;
- 3.1.5 any unenforceability, illegality or invalidity of any of the provisions of the Contract or any of the Provider's obligations under the Contract, so that this guarantee shall be construed as if there were no such unenforceability, illegality or invalidity;
- 3.1.6 any legal limitation, disability, incapacity or other circumstances relating to the Provider, or any other person; or
- 3.1.7 the dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation or the appointment of an administrator or receiver of the Provider or any other person.

### **4. Addendum Or Variation**

- 4.1 The Guarantor by this guarantee authorises the Provider and the Authority to make any addendum or variation to the Contract, the due and punctual performance of which addendum and variation shall be likewise guaranteed by the Guarantor in accordance with the terms of this guarantee.

### **5. Guarantee**

- 5.1 This guarantee shall be a primary obligation of the Guarantor and accordingly the Authority shall not be obliged before enforcing this guarantee to take any action in any court or arbitral proceedings against the Provider, to make any claim against or

any demand of the Provider, to enforce any other security held by it in respect of the obligations of the Provider under the Contract or to exercise, levy or enforce any distress, diligence or other process of execution against the Provider. In the event that the Authority brings proceedings against the Provider, the Guarantor shall be bound by any findings of fact, interim or final award or judgment made by an arbitrator or the court in such proceedings.

- 5.2 This guarantee is a continuing guarantee and accordingly shall remain in full force and effect (notwithstanding any intermediate satisfaction by the Provider, the Guarantor or any other person) until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Provider under the Contract have been satisfied or performed in full and is not revocable and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Authority may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security.

**6. Outstanding Payments**

- 6.1 Until all amounts which may be or become payable under the Contract or this guarantee have been irrevocably paid in full, the Guarantor shall not as a result of this guarantee or any payment or performance under this guarantee be subrogated to any right or security of the Authority or claim or prove in competition with the Authority against the Provider or any other person or demand or accept repayment of any monies or claim any right of contribution, set-off or indemnity and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in breach of this provision shall be held by the Guarantor in trust for and shall be promptly paid to the Authority.

- 6.2 The Guarantor shall not hold any security from the Provider in respect of this guarantee and any such security which is held in breach of this provision shall be held by the Guarantor in trust for and shall promptly be transferred to the Authority.

- 6.3 Until all amounts which may be or become payable under the Contract or this guarantee have been irrevocably paid in full, if (notwithstanding the provisions of clause 6.1 and clause 6.2) the Guarantor has any rights of subrogation against the Provider or any rights to prove in a liquidation of the Provider, the Guarantor agrees to exercise such rights in accordance with the directions of the Authority.

**7. Change Of Control**

- 7.1 The Guarantor shall not be discharged of its obligations under this Guarantee in the event there is a change of control of the Provider within the meaning of section 1124 of the Corporation Tax Act 2010, save unless the Authority gives its prior written consent to an assignment of the guarantee by the Guarantor to another entity of comparable financial standing.

**8. Payment And Expenses**

- 8.1 Each payment to be made by the Guarantor under this guarantee shall be made in pounds sterling, free and clear of all deductions or withholdings of any kind, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor shall pay that additional amount which is necessary to ensure that the Authority receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

- 8.2 The Guarantor shall pay interest on any amount due under this guarantee from the day after the date on which payment was due up to and including the date of payment in full (whether before or after judgment) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

- 8.3 The Guarantor shall reimburse the Authority for all legal and other costs (including VAT) incurred by the Authority in connection with the enforcement of this guarantee.

**9. Settlement**

- 9.1 Any settlement or discharge between the Authority and the Provider and/or the Guarantor shall be conditional upon no settlement with security or payment to the Authority by the Provider or the Guarantor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force and accordingly (but without limiting the Authority's other rights hereunder) the Authority shall be entitled to recover from the Guarantor, as if such settlement or discharge had not occurred, the value which the Authority has placed upon such settlement or security or the amount of any such payment.

**10. Warranties**

- 10.1 The Guarantor warrants and confirms to the Authority that:

- 10.1.1 it is either a company or a body corporate duly organised and validly existing under the Laws of France and has all power and authority to enter into and perform the obligations contemplated by this Deed of Guarantee and to be performed by it and that this Deed of Guarantee constitutes its legal valid and binding obligation.
- 10.1.2 it has full power to perform the obligations expressed to be assumed by it or contemplated by this guarantee;
- 10.1.3 it has been duly authorised to enter into this guarantee;
- 10.1.4 it has taken all necessary corporate action to authorise the execution, delivery and performance of this guarantee;
- 10.1.5 this guarantee when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;
- 10.1.6 all necessary consents and authorisations for the giving and implementation of this guarantee have been obtained; and
- 10.1.7 it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which may affect its ability to perform under this guarantee.

- 10.2 The Guarantor warrants and undertakes to the Authority that it will take all necessary action directly or indirectly to perform the obligations expressed to be assumed by it or contemplated by this guarantee and to implement the provisions of this guarantee.

- 10.3 The Guarantor warrants and confirms to the Authority that it has not entered into this guarantee in reliance upon, nor has it been induced to enter into this guarantee by any representation, warranty or undertaking made by or on behalf of the Authority (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this guarantee.

**11. Assignment**

- 11.1 The Authority shall be entitled by notice in writing to the Guarantor to assign the benefit of this guarantee at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this guarantee.





**17. Entire Agreement**

17.1 This guarantee contains the whole agreement between the Parties relating to the transactions contemplated by this guarantee and supersedes all previous agreements between the Parties relating to the subject matter of this deed.

17.2 Each party acknowledges that in entering into this guarantee it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this guarantee and the documents referred to in it) made by or on behalf of any other party before the date of this guarantee. Each party waives all rights and remedies which, but for this clause 17.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

17.3 Nothing in clause 17.2 limits or excludes any liability for fraud.

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

**Executed as a deed by:**

[REDACTED]

**Executed as a deed by:**

**The Department for Work and Pensions**

Signed by *TS* .....

Name [REDACTED] .....

Date *31 July 2012* .....

Position in Organisation *Head of Sourcing* .....

For and on behalf of The Secretary of State for Work and Pensions ("the Authority")

In the presence of [REDACTED] .....

Name [REDACTED] .....

Date *31.7.12* .....

**APPENDIX 11 - PART 2**

**Form of New PCG**

**DATED**

**PARENT COMPANY GUARANTEE**

**between**

**THE SECRETARY OF STATE FOR WORK AND PENSIONS**

**and**

**ATOS SE**

**THIS DEED** is dated [DATE]

## **PARTIES**

- (1) **THE SECRETARY OF STATE FOR WORK AND PENSIONS** whose address is Caxton House, Tothill Street, Greater London, SW1H 9NA (“the **Authority**”); and
- (2) **ATOS SE**, a European public limited liability company ('Societas Europaea') organised and validly existing under the laws of France with company number at the Commercial Registry of Pontoise is 323 623 603 whose registered office is [REDACTED] (“the **Guarantor**”).

## **BACKGROUND**

- (1) By an agreement dated on [INSERT DATE OF CONTRACT] (“the **Contract**”, which term includes all amendments to, variations of, or supplements to such agreement, from time to time in force, including without limitation those referenced in Appendix 1 of this Deed of guarantee which are applicable to Lot 3), the Authority engaged Atos IT Services UK Limited incorporated and registered in England and Wales with company number 01245534 whose registered office is at Second Floor, Mid City Place, 71 High Holborn, London, United Kingdom, WC1V 6EA trading as Independent Assessment Services, (“the **Provider**”) to deliver Personal Independent Payment Assessment Service (Lot 3)

**Lot 3:** London/Southern England

- (2) Pursuant to the Contract variation [REFERENCE], the Provider is under a contractual obligation to procure the execution and delivery to the Authority of a parent company guarantee substantially in the form of this guarantee from the Guarantor.
- (3) The Guarantor has agreed to guarantee the Provider's due performance of its duties and obligations under the Contract.
- (4) It is the intention of the Parties that this guarantee be executed as a deed.

## **AGREED TERMS**

### **1. Interpretation**

The following definitions and rules of interpretation apply in this Deed of guarantee.

#### **1.1 Definitions**

##### **Insolvency Event**

a party suffers an insolvency event if:

- (a) it suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of

the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;

- (b) it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with its winding up;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over it;
- (e) the holder of a qualifying floating charge over its assets has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over all or any of its assets or a receiver is appointed over all or any of its assets;
- (g) a creditor or encumbrancer of it attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (h) any event occurs, or proceeding is taken, with respect to it in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive); or

it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

1.2 Unless the context requires otherwise, the definitions and rules of interpretation in the Contract shall apply in this guarantee.

1.3 A reference in this Deed to this guarantee shall be construed as a reference to this Deed of guarantee.

## 2. **Extent of guarantee**

2.1 Clause 2.2 shall take effect from the date of this guarantee. The remaining terms of this guarantee shall take effect in accordance with clause 2.2.

2.2 The Parties agree that:

2.2.1 the parent company guarantee previously entered into between the Parties, dated 26 July 2012 ("the **2012 Guarantee**") is hereby extinguished and replaced *ab initio* with this guarantee, the remaining terms of which shall take effect from the Commencement Date of the Contract; and

2.2.2 nothing in this clause 2 shall affect or prejudice any claim or demand (regardless of when the cause of action for the claim or demand arose) that the Authority may have against the Guarantor, whether under or in connection with the 2012 Guarantee or this guarantee and whether known or unknown to either or both Parties as at the date of this guarantee, provided that any such claim or demand has a valid cause of action under the terms of this guarantee.

### 3. **Obligations Of The Guarantor**

3.1 The Guarantor agrees:

3.1.1 .as primary obligor, to guarantee to the Authority the due and punctual performance by the Provider of each and all of the obligations, representations, warranties, duties and undertakings of the Provider under and pursuant to the Contract when and if such obligations, representations, warranties, duties and undertakings shall become due and performable according to the terms of the Contract;

3.1.2 in addition to its obligations set out in clause 3.1.1:

- (a) to indemnify the Authority against all losses, sums, debts, damages, interest, payments, charges, costs and expenses ("the **Losses**") which may be awarded against the Authority or which the Authority may otherwise incur arising out of, under or otherwise in connection with the Contract whether arising under statute, contract or at common law including without limitation by reason of any breach by the Provider of its obligations, representations, warranties, duties and undertakings under and/or in connection with the Contract save that, subject to the other provisions of this guarantee (including without limitation the remainder of this clause 3.1), this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are imposed on the Provider under the Contract;
- (b) to indemnify the Authority against all losses whether arising under statute, contract or at common law which may be awarded against the Authority or which the Authority may otherwise incur if any obligation guaranteed by the Guarantor is or becomes totally or partially unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Provider's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal;
- (c) that if the Provider suffers an Insolvency Event, the Guarantor shall indemnify the Authority against all Losses incurred by the Authority by reason of such Insolvency Event; and

(d) shall, on first written demand, pay to the Authority, without any deduction or set-off, the amount of any Loss incurred and referred to in this clause 3.1.2.

#### 4. **Liability**

4.1 The Guarantor agrees that its liability under this guarantee shall not in any way be released, reduced or adversely affected by any act, omission, matter or other thing whereby (in absence of this provision) the Guarantor would or might be released in whole or in part from liability under this guarantee including, without limitation and whether or not known to the Guarantor:

- 4.1.1 any arrangement made between the Provider and the Authority;
- 4.1.2 any alteration in the obligations undertaken by the Provider whether by way of any addendum or variation referred to in clause 5 or otherwise;
- 4.1.3 any waiver or forbearance (in part or otherwise) by the Authority whether as to payment, time, performance or otherwise;
- 4.1.4 the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Provider or any other person;
- 4.1.5 any unenforceability, illegality, invalidity, avoidance or termination of any of the provisions of the Contract or any of the Provider's obligations under the Contract, so that this guarantee shall be construed as if there were no such unenforceability, illegality, invalidity, avoidance or termination;
- 4.1.6 any legal limitation, disability, incapacity or other circumstances relating to the Provider, or any other person; or
- 4.1.7 (without prejudice to clause 3.1.2(c) above) the dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation or the appointment of an administrator or receiver of the Provider or any other person.

#### 5. **Addendum Or Variation**

5.1 The Guarantor by this guarantee authorises the Provider and the Authority to make any addendum or variation to the Contract without the Guarantor's consent, the due and punctual performance of which addendum and variation shall be likewise guaranteed by the Guarantor in accordance with and on the same terms of this guarantee as set out herein.

#### 6. **Guarantee**

6.1 This guarantee shall be a primary obligation of the Guarantor and accordingly the Authority shall not be obliged before enforcing this guarantee to take any action in any court or arbitral proceedings against the Provider, to make any claim against or any demand of the Provider, to enforce any other security held by it in respect of the obligations of the Provider under the Contract or to exercise, levy or enforce any distress, diligence or other process of execution against the Provider. In the event that the Authority brings proceedings against the Provider, the Guarantor shall be bound by any findings of fact, interim or final award or judgment made by an arbitrator or the court in such proceedings.

6.2 This guarantee is a continuing guarantee and accordingly shall remain in full force and effect (notwithstanding any intermediate satisfaction by the Provider, the Guarantor or any other person) until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Provider under the Contract have been satisfied or performed in full and is not revocable and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Authority may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security.

## 7. **Outstanding Payments**

7.1 Until all amounts which may be or become payable under the Contract and/or this guarantee have been irrevocably paid in full, the Guarantor shall not as a result of this guarantee or any payment or performance under this guarantee be subrogated to any right or security of the Authority or claim or prove in competition with the Authority against the Provider or any other person or demand or accept repayment of any monies or claim any right of contribution, set-off or indemnity and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in breach of this provision shall be held by the Guarantor in trust for and shall be promptly paid to the Authority.

7.2 The Guarantor shall not hold any security from the Provider in respect of this guarantee and any such security which is held in breach of this provision shall be held by the Guarantor in trust for and shall promptly be transferred to the Authority.

7.3 Until all amounts which may be or become payable under the Contract and/or this guarantee have been irrevocably paid in full, if (notwithstanding the provisions of clause 7.1 and clause 7.2) the Guarantor has any rights of subrogation against the Provider or any rights to prove in a liquidation of the Provider, the Guarantor agrees to exercise such rights in accordance with the directions of the Authority.

## 8. **Change Of Control**

8.1 The Guarantor shall not be discharged of its obligations under this guarantee in the event there is a change of control of the Provider within the meaning of section 1124 of the Corporation Tax Act 2010, save unless the Authority gives its prior written consent to an assignment of the guarantee by the Guarantor to another entity of comparable financial standing.

## 9. **Payment And Expenses**

9.1 Each payment to be made by the Guarantor under this guarantee shall be made in pounds sterling, free and clear of all deductions or withholdings of any kind, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor shall pay that additional amount which is necessary to ensure that the Authority receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

9.2 The Guarantor shall pay interest on any amount due under this guarantee from the day after the date on which payment was due up to and including the date of payment in full

(whether before or after judgment) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

9.3 The Guarantor shall reimburse the Authority for all legal and other costs (including VAT) incurred by the Authority in connection with the enforcement of this guarantee.

## 10. **Settlement**

10.1 Any settlement or discharge between the Authority and the Provider and/or the Guarantor shall be conditional upon no settlement with security or payment to the Authority by the Provider or the Guarantor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force and accordingly (but without limiting the Authority's other rights hereunder) the Authority shall be entitled to recover from the Guarantor, as if such settlement or discharge had not occurred, the value which the Authority has placed upon such settlement or security or the amount of any such payment.

## 11. **Warranties**

11.1 The Guarantor warrants and confirms to the Authority that:

11.1.1 it is either a company or a body corporate duly organised and validly existing under the Laws of France and has all the power and authority to enter into and perform the obligations contemplated by this Deed of Guarantee and to be performed by it and that this Deed of Guarantee constitutes its legal valid and binding obligation;

11.1.2 it has full power to perform the obligations expressed to be assumed by it or contemplated by this guarantee;

11.1.3 it has been duly authorised to enter into this guarantee;

11.1.4 it has taken all necessary corporate action to authorise the execution, delivery and performance of this guarantee;

11.1.5 this guarantee when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;

11.1.6 all necessary consents and authorisations for the giving and implementation of this guarantee have been obtained; and

11.1.7 it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which may affect its ability to perform under this guarantee.

11.2 The Guarantor warrants and undertakes to the Authority that it will take all necessary action directly or indirectly to perform the obligations expressed to be assumed by it or contemplated by this guarantee and to implement the provisions of this guarantee.

11.3 The Guarantor warrants and confirms to the Authority that it has not entered into this guarantee in reliance upon, nor has it been induced to enter into this guarantee by any representation, warranty or undertaking made by or on behalf of the Authority (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this guarantee.

12. **Assignment**

- 12.1 The Authority shall be entitled by notice in writing to the Guarantor to assign the benefit of this guarantee at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this guarantee, nor shall the Guarantor contend that any person to whom the benefit of this guarantee is assigned may not recover any sum under this guarantee because that person is an assignee and not a named party to this guarantee.

13. **Notices**

- 13.1 Any notice to or demand on the Guarantor to be served under this guarantee may be by letter (sent by hand, post, registered post or by the recorded delivery service) or by facsimile transmission or electronic mail (confirmed in either case by letter) to the Guarantor at its address appearing in this guarantee or at such other address as it may have notified to the Authority in accordance with this clause 13.
- 13.2 Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

14. **Waiver**

- 14.1 No delay or omission of the Authority in exercising any right, power or privilege under this guarantee shall impair or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of such right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies of the Authority provided for in this guarantee are cumulative and not exclusive of any rights or remedies provided by law.
- 14.2 A waiver given or consent granted by the Authority under this guarantee will be effective only if given in writing and then only in the instance and for the purpose for which it is given.
- 14.3 A waiver by the Authority shall not constitute a continuing waiver and shall not prevent the Authority from subsequently enforcing any of the provisions of this guarantee.

15. **Severability**

- 15.1 The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this guarantee.

16. **Counterparts**

- 16.1 This guarantee may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one guarantee.

**17. Contracts (Rights Of Third Parties) Act 1999**

- 17.1 It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this guarantee is not intended to, and does not, give to any person who is not a party to this guarantee any rights to enforce any provisions contained in this guarantee except for any person to whom the benefit of this guarantee is assigned or transferred in accordance with clause 12.
- 17.2 The rights of the Parties to rescind or vary this guarantee are not subject to the consent of any other person.

**18. Governing Law**

- 18.1 This guarantee and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) is governed by and shall be construed in accordance with English law.
- 18.2 The Guarantor submits to the exclusive jurisdiction of the English courts for all purposes relating to this guarantee and any disputes or claims arising out of, or in connection with, its subject matter or formation (including non-contractual disputes or claims). The Guarantor hereby irrevocably consents to the service of process or any other legal summons out of such courts by mailing copies thereof by registered airmail postage prepaid to its address specified herein.

**19. Entire Agreement**

- 19.1 This guarantee contains the whole agreement between the Parties relating to the transactions contemplated by this guarantee and supersedes all previous agreements between the Parties relating to the subject matter of this deed.
- 19.2 Each party acknowledges that in entering into this guarantee it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this guarantee and the documents referred to in it) made by or on behalf of any other party before the date of this guarantee. Each party waives all rights and remedies which, but for this clause 19.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.
- 19.3 Nothing in clause 19.2 limits or excludes any liability for fraud.

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

Executed as a deed by the

<b>The Secretary of State for Work and Pensions, for and on behalf of the Authority.</b>	
<b>Signed by:-</b> Name:	<b>Secretary of State seal</b>

Signature:

Position in Organisation:

Executed as a deed by **Atos SE**, acting by )

Signature:

Name:

Position:

)

in the presence of )

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

Appendix 1

<b>Lot 3</b>		
<b>CV Number</b>	<b>Title of change</b>	<b>Effective Date</b>
PIPCV AL3 01	Baselining Variation	10.06.13
PIPCV AL3 02	Reimbursement of Claimant Travel Expenses	10.06.13
PIPCV AL3 03	Change of Contract Manager	01.08.13
PIPCV AL3 04	External Training Resources	01.10.13
PIPCV AL3 05	Atos Room Sizes	01.04.13
PIPCV AL3 06	Claimants Living Abroad	01.04.13
PIPCV AL3 07	Unacceptable Claimant Behaviour	17.07.14
PIPCV AL3 08	Re-Work	10.06.13
PIPCV AL3 09	Interim MI	Not Used
PIPCV AL3 10	90 Minute Travel Time	01.05.14
PIPCV AL3 11	Audio Recording	10.03.13
PIPCV AL3 12	Suspension of SLA10	01.02.14
PIPCV AL3 13	Adding a Subcontractor to the Delivery Option	03.03.14
PIPCV AL3 14	Atos Room Sizes (2nd Variation)	01.07.14
PIPCV AL3 15	Changes to Annex E and F	22.08.14
PIPCV AL3 15A	Changes to Annex E and F (September 2014)	30.09.14
PIPCV AL3 15B	Changes to Annex E and F (December 2014)	31.12.14
PIPCV AL3 15C	Changes to Annex E and F (March 2015)	31.03.15
PIPCV AL3 16	Changes to HP Criteria	02.06.14
PIPCV AL3 17	Not Used	Not Used
PIPCV AL3 18	Call-Off Terms and Conditions - Removal of Requirement to Supply Monthly Backup Data	08.12.14
PIPCV AL3 19	Atos Heads of Terms First Variation	16.04.15
PIPCV AL3 20	PA1	10.06.13
PIPCV AL3 21	Travel to Assessment Centres	15.03.15

PIPCV AL3 22	Atos Heads of Terms Second Variation	03.06.16
PIPCV AL3 127	Room Size Refund	23.2.17
PIPCV AL3 23	HP On Site Award Review	1.4.17
PIPCV AL3 24	HP approvals process	28.03.18
PIPCV AL3 25	Side Agreement - February 2018	01.01.18
PIPCV AL3 26	SLA5a Change in TI Target	01.04.18
PIPCV AL3 27	Change of Registered Address	28.02.18
PIPCV AL3 28	General Data Protection Regulation (GDPR)	25.05.18
PIPCV AL3 29	Change from local rate to freephone number	13.11.18
PIPCV AL3 30	Postcode Realignment	19.12.18

Executed as a deed by the

<b>The Secretary of State for Work and Pensions, for and on behalf of the Authority.</b>	
<b>Signed by:-</b> Name:  Signature:  Position in Organisation:	<b>Secretary of State seal</b>

Executed as a deed by **Atos IT Services UK Limited** acting by:

Signature: )  
)  
Name: )  
Position: )  
)

in the presence of

Witness Signature:  
Witness Name:  
Witness Address:

Witness Occupation:

Executed as a deed by **Atos SE** acting by:

Signature: )  
)  
Name: )  
Position: )  
)

in the presence of

Witness Signature:  
Witness Name:  
Witness Address:

Witness Occupation:

## APPENDIX 12 – EXIT AND SERVICE TRANSFER ARRANGEMENTS

### 1. INTRODUCTION

- 1.1. This Appendix describes the duties and responsibilities of the Provider to the Authority leading up to and covering the expiry or termination (howsoever arising) (including partial termination) of the Contract and the transfer of service provision on a phased basis to one or more Replacement Providers and/or the Authority. For the avoidance of doubt, the requirements set out in this Appendix do not exclude or override any other requirements, potential or otherwise, relating to the Provider's duties and responsibilities to the Authority leading up to and covering the Transition or expiry or termination (howsoever arising) (including partial termination) of the Contract as set out elsewhere in the Contract.
- 1.2. The objectives of the Exit and Service Transfer Arrangements are to ensure a smooth transition of the availability of the Services from the Provider to one or more Replacement Providers and/or the Authority in two or more Transitions and at the termination (howsoever arising) (including partial termination) or expiry of the Contract.

### 2. EXIT AND SERVICE TRANSFER ARRANGEMENTS

The Provider agrees to indemnify and keep the Authority fully indemnified for itself and on behalf of any Replacement Provider(s) in respect of any claims, costs (including reasonable legal costs), demands, and liabilities arising from the provision of incorrect information provided to the Authority by the Provider (other than information provided by the Provider pursuant to paragraph 2A.2.7 of this Appendix 12), to the extent that any such claim, cost, demand or liability directly and unavoidably arises from the use of the incorrect information in a manner that can reasonably be assumed to be proper in bidding for or providing services similar to the Services.

#### 2A. DURING THE CONTRACT PERIOD

2A.1 During the Contract Period the Provider shall:

- 2A.1.1 create and maintain a register (in such format to be agreed between the parties from time to time) (the "**Registers**") of all:
- (a) Equipment detailing make and model number, ownership, net book value, condition and physical location, and use (including detailing if such Equipment is used exclusively in the provision of the Services);
  - (b) Property provided by the Authority detailing condition and physical location;
  - (c) agreements with Sub-Contractors and other licences, maintenance agreements and support agreements utilised by the Provider in connection with the provision of the Services ("**Third Party Contracts**") detailing contractor names, payment terms, expiry dates and any relevant novation and early termination provisions;

- (d) Estate Leases in accordance with clause H4B.2;
  - (e) Provider Intellectual Property Rights necessary for use by the Authority in connection with the Services including details of any licences in accordance with (c) above.
- 2A.1.2 provide access to a database detailing the technical infrastructure and operating procedures, standards documentation and forms; complaint and incident reports; and service history records connected with the provision of the Services, which shall contain sufficient detail to permit the Authority and/or any Replacement Provider(s) to understand how the Provider processes the Services and to enable smooth transition of the Services with the minimum of disruption.
- 2A.1.3 ensure that all Equipment and Property is clearly marked to identify that they are used for the provision of the Services.
- 2A.2 Upon reasonable notice during the Contract Period the Provider shall provide to the Authority and/or any Replacement Provider(s) (subject to the Replacement Provider(s) entering into reasonable confidentiality undertakings), the following material and information (the "**Exit Information**"):
  - 2A.2.1 details of the Services;
  - 2A.2.2 copy of the Register (updated at the request of the Authority);
  - 2A.2.3 inventory of Authority Data in the Provider's possession or control;
  - 2A.2.4 details of any key terms in any Third Party Contracts (including without limitation charges, termination, assignment, novation);
  - 2A.2.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
  - 2A.2.6 to the extent permitted by Law any Employee Information in accordance with clause B11.1; and
  - 2A.2.7 such other information and material as the Authority may reasonably require.
- 2A.3 The Provider acknowledges that the Authority may disclose the Provider's Confidential Information to an actual or prospective Replacement Provider or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this Paragraph 2A.3 disclose any Provider Confidential Information relating to the prices, costs or revenue of the Provider or its Sub-contractors).
- 2A.4 The Provider shall:
  - 2A.4.1 notify the Authority within ten (10) Working Days of any material change to the Exit Information which may adversely impact upon any potential Transition or

continuance of the Services, and shall consult with the Authority regarding such proposed material changes;

- 2A.4.2 provide complete updates of the Exit Information on an as-required basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Authority;
- 2A.5 The Provider may charge the Authority for its reasonable additional costs to the extent that the Authority requests more than three (3) updates in any six (6) month period.
- 2A.6 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Provider shall be such as would be reasonably necessary to enable the Authority to prepare a sufficiently detailed procurement documents which would ensure that a third party would not be disadvantaged in any subsequent procurement process compared to the Provider (if the Provider is invited to participate).
- 2A.7 Following the issue of a Transition Notice by the Authority, the Provider shall not without the Authority's prior written consent:
  - 2A.7.1 terminate, enter into or vary any contract with a Sub-Contractor except to the extent that such change does not or will not affect the provision of the Services, Contract Price or Transition;
  - 2A.7.2 terminate, enter into or vary any licence for software in connection with the Services.

### **3. SERVICE TRANSFER PLAN**

- 3.1. By 30/05/13, and thereafter as specified in paragraph 3.2B and 3.3 of this Appendix, the Provider shall prepare a Service Transfer Plan (STP) for review by the Authority. The Authority shall review the STP and any Cost Model prepared by the Provider in accordance with this Appendix 12 within twenty (20) days of receipt from the Provider and shall notify the Provider of any suggested revisions to the STP. In this respect, the Authority will act neither unreasonably, capriciously nor vexatiously. Such suggested revisions shall be discussed and resolved within ten (10) days. The Provider shall meet with the Authority to discuss any such STP or Cost Model within five (5) days of a request to do so by the Authority and shall provide any further information as the Authority may reasonably require for the purposes of reviewing any such STP or Cost Model. The agreed STP shall be signed as approved by each party. In the event that the STP cannot be agreed between the parties within the periods outlined above the matter shall be referred to the dispute resolution procedure in clause 12 of the Contract.
- 3.1A As at the Variation Date, it is acknowledged and agreed by both parties that:
  - (a) the transition of Services up to expiry of the Contract is likely to be via one or more Transitions during the remainder of the Contract Period where Services are stepped down or reduced under this Contract and transferred to the Authority and/or one or more Replacement Providers; and

- (b) the profile of the Transitions and the structure of the Detailed Transition Requirements and Future Operating Model is yet to be determined by the Authority; and
  - (c) the Parties will each individually and collectively commit to deliver exit and transition under this Contract on this basis and in accordance with the structure, process and parameters set out in this Appendix 12.
- 3.2. The STP shall provide comprehensive proposals for the activities and the associated liaison and assistance that will be required for the successful transfer of the Services, including where applicable (but not limited to) the following details:
- 3.2.1. proposals for the transfer of documentation providing details of the Services, including (but not limited to): all operational procedures, standards documentation and forms used in the provision of the Services; complaint and incident reports; and service history records;
  - 3.2.2. proposals for the transfer of the database referred to in paragraph 2A.1.2 above.
  - 3.2.3. NOT USED
  - 3.2.4. proposals for the return of all Property in the possession of the Provider;
  - 3.2.5. proposals to enable the Authority or any Replacement Provider(s) to recruit suitably skilled personnel;
  - 3.2.6. proposals for knowledge transfer and, if requested by the Authority, the training of key members of any Replacement Provider's(s') personnel in connection with the continuation of the provision of the Services following the expiry or termination (howsoever arising) of the Contract charged at rates agreed between the parties at that time;
  - 3.2.7 proposals for the:
    - 3.2.7.1 granting of licences to use all software (including the Provider Software and Third Party Software) necessary for the delivery of and the Authority's receipt of the Services and the provision of copies of all related documentation; and
    - 3.2.7.3 assignment and delivery of any software (including the Provider Software and Third Party Software) belonging to the Authority under clause E8.2.
  - 3.2.8 proposals for the transfer of all Authority Data then in the Provider's possession to either the Authority or any Replacement Provider(s), including:
    - 3.2.8.1 an inventory of all Authority Data;
    - 3.2.8.2 details of the data structures in which the Authority Data is stored, in the form of an agreed data model together with information on other data structures in which the Authority Data could be stored;

- 3.2.8.3 proposed transfer methods, both physical and electronic; and
- 3.2.8.4 proposed methods for ensuring the integrity of the Authority Data on transfer.
- 3.2.9 proposals for providing the Authority or any Replacement Provider(s) with copies of all documentation:
  - 3.2.9.1 used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Provider; and
  - 3.2.9.2 relating to the use and operation of the Equipment and Property;
- 3.2.10 proposals for the methods of transfer of the Property and, where the Authority exercises its option to purchase Equipment in accordance with clause B2.7, Equipment to the Authority or any Replacement Provider(s);
- 3.2.11 proposals for the assignment or novation of all Ordered Goods, leases, maintenance agreements and support agreements utilised by the Provider in connection with the performance of the Services;
- 3.2.12 proposals for the disposal of any redundant Equipment and materials;
- 3.2.13 a detailed summary of all exit or transition activities;
- 3.2.14 a detailed exit or transition management timetable;
- 3.2.15. details of any nominated individuals of the Provider who will be involved in the Transition or Services transfer; and
- 3.2.16. proposals for the supply of any other information or assistance reasonably required by the Authority or any Replacement Provider(s) in order to effect an orderly hand over of the provision of the Services;
- 3.2.17 details of any Referrals which are forecasted to have been issued to the Provider (based on the Operative Forecast) but are not forecast to be Cleared by the Provider by the Transition or termination or expiry of the Contract (the "**Partially Completed Referrals**") and the proportion of such Partially Completed Referrals that is forecast to have been completed on Transition, termination or expiry (the "**% Completion Rate**");
- 3.2.18 details of the percentage of the unit Rate as set out in Annex 1 to Appendix 4 applicable to any Partially Completed Referrals based on the % Completion Rate.

- 3.2.19 a breakdown of Risks which have materialised and which have not materialised (along with evidence relating to the same) (the **Risk Report**) along with any costs reasonably incurred resulting from Risks which have materialised (along with evidence that such costs have been properly mitigated in accordance with Appendix 4, Part D, paragraph 3.1) which shall be agreed with the Authority as part of the STP.
- 3.2A The STP shall include an estimate of costs and cost cap for the Provider providing exit assistance pursuant to clause H6.2, including to deliver the STP.
- 3.2B The Authority shall provide to the Provider no later than 1 January 2020, proposed detailed transition requirements and the Future Operating Model which may include (without limitation):
- 3.2B.1 the profile of the services and contracts for provision of services that are similar to the Services as part of any Transition and post exit from this Contract;
  - 3.2B.2 details of the services to be provided by Replacement Provider(s) or by the Authority following any Transition and exit including any breakdown by geographical area or other contract breakdown;
  - 3.2B.3 whether single or multiple Transitions are likely to be requested;
  - 3.2B.4 specific requirements for collaboration between the Provider, Replacement Provider(s) and the Authority;
  - 3.2B.5 requirements for due diligence required in anticipation of Transition(s);
  - 3.2B.6 proposed timetable for Transition(s);
  - 3.2B.7 the Authority's expectation for TUPE transfers;
  - 3.2B.8 those other elements which are relevant to the Provider being able to make proposals in an updated STP referenced under paragraphs 3.2.1 to 3.2.16 inclusive;
- 3.2C The Provider shall promptly upon receipt of the Detailed Transition Requirements notify the Authority if it reasonably considers that the Detailed Transition Requirements is either missing material information or contains inaccurate information which is reasonably necessary for the preparation of detailed STP and Cost Model in accordance with 3.2D below. The Authority shall upon receipt of such notice, update the Detailed Transition Requirements where it reasonably considers it necessary to do so.
- 3.2D The Provider shall no later than the earlier of either 1 March 2020 or thirty (30) days from the date of the issue by the Authority of the Detailed Transition Requirements provide to the Authority:
- 3.2D.1 an updated STP setting out in detail the timetable and methodology for Transition(s) in order to meet any requirements of the Authority notified to it under paragraph 3.2B or 3.2C above;

- 3.2D.2 a Cost Model prepared on the following assumptions: (a) no Transition will take place and (b) the Provider continues to deliver 100% of volume of Referrals as set out in the Operative Forecast (the "**Baseline Cost Model**"); and
- 3.2D.3 a Cost Model prepared on the basis of the Detailed Transition Requirements; and
- 3.2D.4 full details of the differences in Charges, revenue and cost between the Baseline Cost Model and the Cost Model prepared in accordance with 3.2D.3 (the "**CM Delta**");

each of which shall be reviewed and agreed in accordance with paragraph 3.1 of this Appendix 12.

- 3.3. The STP shall be reviewed and updated annually and six (6) months before the expiry of the Contract Period by the Provider or where reasonably requested by the Authority. In this regard:
  - 3.3.1 the Provider shall provide a revised version of the STP to the Authority annually or more frequently as may be agreed between the parties, (for example in response to a Variation or an updated Future Operating Model or Detailed Transition Requirements);
  - 3.3.2 the Provider shall provide a revised version of the STP to the Authority in the event the Authority provides notice to terminate the Contract earlier under clause H3, provided that the Provider provides a revised STP within one (1) Month of the date of the Authority's notice to terminate, and;
  - 3.3.3 the revised STP shall be reviewed and agreed in accordance with the provisions of paragraph 3.1 of this Appendix.
- 3.4. Once the STP (or any revised version of the STP) has been reviewed and agreed in accordance with the provisions of paragraphs 3.2D, 3.3 and 3.1 of this Appendix, it shall be binding on the parties unless it is expressly varied or updated in accordance with the provisions of paragraphs 3.2D, 3.3 and 3.1 of this Appendix.
- 3.5 Each party shall bear its own costs in relation to updating and agreeing the STP any Cost Model or for any Transition Price Review.

### **3A. TRANSITION**

- 3A.1 The Authority may require the Provider to commence transition activities by issuing Transition Notice(s) providing not less than 6 months' notice of the commencement of the transition activities in accordance with this paragraph 3A.1. The parties agree that Transition shall be within the following parameters:
  - 3A.1.1 for the First Transition: the reduction of Services (under one or more Transition Notices) shall not apply prior to 1 September 2020, and; the Authority shall not be entitled to transition volumes of Referrals that would cause it (acting reasonably) to reduce its aggregated Operative Forecasts for this Contract and

the Lot 1 Agreement by more than 20% of the Combined Referral Volume Threshold;

3A.1.2 for the Second Transition: the reduction of Services (under one or more Transition Notices) shall not apply prior to 1 January 2021, and; the Authority shall not be entitled to transition volumes of Referrals that would cause it (acting reasonably) to reduce its aggregated Operative Forecasts for this Contract and the Lot 1 Agreement by more than a further 20% of the Combined Referral Volume Threshold;

3A.2 Each Transition Notice:

3A.2.1 shall include the following information:

3A.2.1.1 a detailed description of the Services/volume of Referrals to be transitioned; and

3A.2.1.2 the proposed timetable for Transition;

3A.2.2 may include (without limitation) the following information:

3A.2.2.1 the Replacement Provider(s) (or the Authority) to whom the Services/Referrals are to be transitioned; and

3A.2.2.2 those other elements which are relevant to the Provider being able to make proposals in an updated STP referenced under paragraphs 3.2.1 to 3.2.16 inclusive

3A.3 Within thirty (30) days (or such other shorter period as the parties may agree) of receipt of a Transition Notice the Provider shall:

3A.3.1 submit a Service Transfer Plan, updated in accordance with paragraph 3, for approval by the Authority (including evidence for any reasons for any change to the existing Service Transfer Plan);

3A.3.2 submit to the Authority any proposed Variations to this Contract arising out of the Transition Notice in accordance with clause F3 of the Contract;

3A.3.3 notify the Authority if the Provider wishes to conduct a Transition Pricing Review in accordance with Annex 1, and, if so, provide the requisite initial information and proposals as part of that review process.

3A.4 The parties shall work together in good faith to:

3A.4.1 agree any updated Service Transfer Plan in accordance with paragraph 3.1 of this Appendix 12;

3A.4.2 agree any Variation submitted by the Provider in accordance with paragraph 3A.2 above; and

3A.4.3 agree any Transition Price Review applying the process set out in Annex 1.

each within thirty (30) days of the date of receipt of the submission by the Provider under paragraph 3A.2 (or such other period as agreed between the parties. In the event that the parties are unable to agree any such Variation or the contents of the STP, the matter shall be referred to the dispute resolution procedure in clause I2 of the Contract.

- 3A.5 Any changes required to this Contract required as a result of the Transition Notice or Transition Pricing Review shall be documented as a Variation in accordance with clause F3 of the Contract.
- 3A.6 The Authority may at its discretion withdraw and resubmit or amend a Transition Notice at any time, provided that in the event of such withdrawal or amendment:
- 3A.6.1 any resubmitted Transition Notice shall be treated as a new Transition Notice for the purposes of Clause 3A (and the Parties may agree a shorter notice period for the commencement of Transition activities);
- 3A.6.2 if such withdrawal is made after the agreement of any STP or Variation in accordance with paragraph 3A, the Provider shall be entitled to its reasonable and properly incurred costs incurred in relation to any transition activities reasonably commenced further to a Transition Notice provided that the Provider takes all reasonable steps to mitigate such costs, and provides a fully itemised and costed list of such costs with supporting evidence to the Authority.
- 3A.6.3 if the Provider, acting reasonably considers that as a direct result of any such withdrawal or adjustment its ability to provide the Services is materially impacted, it shall notify the Authority and the Authority and the Provider shall work together to find and implement mitigations (through the variation process set out at Clause F3).

Provided that this paragraph 3A.6 shall not apply to changes agreed between the parties in respect of any STP

#### **4. COLLABORATION AND ASSISTANCE ON EXPIRY OR TERMINATION**

- 4.1 In the event that the Contract expires or is terminated the Provider shall, where so requested by the Authority, use all reasonable endeavours to assist the Authority to migrate the provision of the Services to the Authority and/or any Replacement Provider(s) including as set out in the STP and in accordance with the Collaboration Principles. Any costs incurred by the Provider in providing such assistance shall be dealt with in accordance with clause H6.2 of the Contract.
- 4.1A Where requested to do so, the Provider shall enter into a tri-partite agreement with the Authority and any Replacement Provider (on terms to be agreed between the parties in good faith acting reasonably) which shall include without limitation the Collaboration Principles.
- 4.1B The Authority shall work in good faith with any Replacement Provider(s) to facilitate the smooth migration of Services (including the transition of any Partially Completed Referrals) in accordance with the Collaboration Principles.

- 4.2 The STP will operate alongside the provision of the Services, which will continue to be provided on a business as usual basis until the appropriate termination or expiry dates.

## 5. EXIT MANAGEMENT ORGANISATION AND GOVERNANCE

- 5.1 The Authority, the Provider and any Replacement Provider(s) shall each appoint a transition manager to manage implementation of the STP. The parties' respective transition managers shall be the primary points of contact for all disengagement and exit-related matters.
- 5.2 Any Replacement Provider(s)' transition manager(s) shall report to the Authority's transition manager and liaise with the Provider's transition manager in respect of the Service transfer.
- 5.3 The Provider and the Authority shall hold regular Service transfer progress meetings, with the attendees, locations, times and dates to be stipulated by the Authority.
- 5.4 A risk, issue and action log shall be maintained by the Authority to record the outputs arising from the Service transfer progress meetings and shall be shared with the Provider and any Replacement Provider as determined necessary in the Authority's sole discretion.
- 5.5 The Provider shall work with the Authority and any Replacement Provider(s) to facilitate knowledge transfer activities, as set out in the STP. All agreed knowledge transfer activities are to be completed by the date of expiry or termination of the Contract. Such activities shall not affect the provision of the Services.

## 6 IT REFRESH AND TEST AND LEARN

- 6.1 The Provider shall by no later than 1 August 2019 (or such other date as agreed between the Parties) deliver all necessary IT development, data migration and infrastructure refresh activity to the Provider ICT System as further described in Option C within the "IAS IT Options Paper V2.0" provided by the Provider to the Authority under cover of a letter dated 10 September 2018 (the "**Refresh Activity**"). Within thirty (30) days of completion of the Refresh Activity the Provider shall:
- 6.1.1 notify the Authority that the Refresh Activity has been completed;
  - 6.1.2 without prejudice to paragraph 6.2 below, provide to the Authority details of any costs incurred by the Provider in completing the Refresh Activity;
  - 6.1.3 provide to the Authority details of the works undertaken in connection with the Refresh Activity, and details of any changes to the Provider ICT System resulting from the Refresh Activity.
- 6.2 The Provider shall deliver the Refresh Activity at no further cost to the Authority.
- 6.3 The Provider shall ensure that it shall undertake any further IT development activity that is required to the Provider ICT System for the delivery of the Services to the Authority during the Extension Period (other than where this is requested as a Variation by the

Authority in accordance with clause F3) and this shall also be delivered by the Provider at no further cost to the Authority.

- 6.4 Separate from the activity referenced in paragraphs 6.1 to 6.3 inclusive above, the Provider acknowledges that the Authority may require support in certain test and learn activities over the course of the Extension Period. Such activities may include, without limitation: the testing of changes to personal independence payment policy or operational procedures; or the testing and roll-out of new IT platforms including a new Authority IT solution replacing the current ICT Environment (in whole or in part); the testing and/or roll out of video recording; and the testing and/or roll out of improved access to audio recording, and the Provider agrees that will support the Authority in any such activities subject to the remainder of paragraphs 6.2-6.6 of this Appendix 12.
- 6.5 The Provider shall work with the Authority in good faith and acting reasonably in connection with any request issued by the Authority in accordance with clause F3 of the Contract and the remainder of this Appendix 12.
- 6.6 The price of any variation associated with any such test and learn activities, shall:
  - 6.6.1 be agreed in advance;
  - 6.6.2 reflect the costs to the Provider of providing such test and learn activities plus a margin which is no greater than the Agreed Gross Margin set out in Annex 1;
  - 6.6.3 ensure that any costs included are (a) limited only to costs which are incurred directly as a result of the test and learn activities; and (b) do not include any costs arising out of factors unconnected with the test and learn activities or pre-dating the request for the test and learn activities; and (c) are mitigated to the fullest extent possible; and
  - 6.6.4 ensure that any resources allocated to support the test and learn activities are reasonable.

and the Provider shall upon request prepare an updated Cost Model relating to such pricing.

## **7. AUTHORITY VARIATIONS DURING EXTENSION PERIOD**

- 7.1 Where, during the Extension Period, the Authority issues a notice under Clause F3.1 of the Contract (which does not form part of a Transition Notice), the parties agree that the price of any such variation shall:
  - 7.1.1 be agreed in advance;
  - 7.1.2 reflect the costs to the Provider of providing such test and learn activities plus a margin which is no greater than the Agreed Gross Margin set out at Annex 1;
  - 7.1.3 ensure that any costs included are (a) limited only to costs which are incurred directly as a result of the test and learn activities; and (b) do not include any costs arising out of factors unconnected with the test and learn activities or pre-

dating the request for the test and learn activities; and (c) are mitigated to the fullest extent possible; and

7.1.4 ensure that any resources allocated to support the test and learn activities are reasonable.

7.1.5 reflect any reduction to the Charges for F2F and PBR resulting from the variation.

and the Provider shall upon request prepare an updated Cost Model relating to such pricing and Clause F3 of the Contract shall be construed accordingly.

## Appendix 12, Annex 1

### Annex 1 - Transition Pricing Review

#### 1 Introduction

- 1.1 This Annex sets out the process for undertaking a Transition Pricing Review when one is instituted by the Provider under paragraph 3A.3.3 following issue by the Authority of a Transition Notice.
- 1.2 The purpose of the Transition Pricing Review is to ensure that following a Transition, the Provider is able to maintain its Agreed Gross Margin in percentage (%) terms for any increased costs associated with Transition calculated in accordance with the Process set out below.

#### 2 Process

- 2.1 When instituting a Transition Pricing Review under 3A.3.3, the Provider shall also submit to the Authority:
  - 2.1.1 An updated Cost Model showing the anticipated effect of the Transition for the remainder of the Contract Period, including, without limitation any:
    - (a) revenue and cost increases/decreases as a result of any Services Transition and/or reduction;
    - (b) revenue and cost increases/decreases as a result of any change in Transition activities and/or exit activities;
    - (c) other revenue and cost increases/decreases, including cost of stranded assets, including those relating to any Estate Lease as per paragraph 7.6.6 below;
  - 2.1.2 An updated Baseline Cost Model;
  - 2.1.3 Full details of the differences between the revenue and costs identified in the updated Cost Model prepared in accordance with paragraph 2.1.1 and the updated Baseline Cost Model prepared in accordance with paragraph 2.1.2 (the "TPR Delta")
  - 2.1.4 relevant evidence to support and justify the TPR Delta and the effects described in the updated Cost Model and any differences between the CM Delta and the TPR Delta;
  - 2.1.5 a proposal for any variation to the Charges for F2F and PBR to reflect any increase or decrease in the "Blended Cost Per Unit" identified in the TPR Delta (see worked example(s) below). As per the worked example(s), the Provider shall propose an increase or decrease in the Charges for F2F and PBR that is equal to:

[REDACTED] [REDACTED]

The Authority shall review the information and documentation submitted under 2.1 and may ask the Provider to further explain and/or provide further evidence in support of its analysis and proposal

- 2.2 As per paragraph 3A.3, within thirty (30) days of the date of receipt of the information and documentation submitted under paragraph 2.1, the parties, acting in good faith, shall work together in order to agree any Variation resulting from the Transition Pricing Review. In the event that the parties are unable to agree any such Variation, the matter shall be referred to the dispute resolution procedure in clause I2 of the Contract
- 2.3 The "**Agreed Gross Margin**" is [REDACTED] (made up of [REDACTED] overhead plus [REDACTED] margin).
- 2.4 When calculating revenue and cost for exit and transition activities for the purposes of the updated Cost Model, the Provider shall apply a margin which is no greater than the Agreed Gross Margin for all Services.
- 2.5 When compiling the updated Cost Model and preparing the proposal for any variation to the Charges for F2F and PBR, the Provider shall:
  - 2.5.1 only reference the anticipated effect of the Transition for the remainder of the Contract Period, N.B. impact on revenue shall not take into account any Target Chargeable Clearance Discount, No Pay Amount or Service Credit;
  - 2.5.2 not include effects arising out of factors not related to Transition, or to factors pre-dating the Transition Notice;
  - 2.5.3 ensure that any resources allocated to support the impact and effects of the Transition are reasonable;
  - 2.5.4 ensure that any additional costs included within the Cost Model are mitigated to the fullest extent possible;
  - 2.5.5 not include any costs relating to any Refresh Activity, Assistance Services, or test and learn activity further to paragraphs 6 and 7 of Appendix 12; and
  - 2.5.6 if as a result of Transition, any Estate Lease is no longer required but is not novated or assigned to the Authority or a Replacement Provider, the Transition Price Review may include the costs of running the Estate Lease until their next contractual break point, provided that:
    - (a) the Provider shall use best endeavours to mitigate its costs connected with any such Estate Lease;
    - (b) only costs described at clauses H4C.2 (b), H4C.(c) H4C(d) shall be included; and
    - (c) H4C.3 and H4C.4 shall apply to the inclusion of any costs of Estate Leases.
  - 2.5.7 ensure that any prices which are fixed in the Baseline Cost Model remain fixed.

2.6 Any Transition Price Review, once agreed shall update any cost estimate or cost cap included in the Service Transfer Plan, and any adjustment to the Rates contained in Annex 1 to Appendix 4 shall be fixed.

Worked example(s) in relation to this Annex 1 is set out below:

[REDACTED]

## **Appendix 12, Annex 2**

### **Annex 2 - Collaboration Principles**

#### **1 Introduction**

In order to deliver a smooth transition from the Provider to Replacement Provider(s) and/or the Authority, the Provider will be required to work closely with the Authority and any Replacement Provider(s). These collaboration principles set out how the Authority expects all suppliers to behave during any Transition or exit arising out of expiry or termination of this Contract.

#### **2 General Collaboration Principles**

- 2.1 The Provider shall be open and inclusive at all levels with the Authority and the Replacement Provider(s);
- 2.2 The Provider shall participate fully in any governance and transition or exit management activities anticipated or required by the Authority or Central Government Body as part of Transition;
- 2.3 The Provider shall be focussed on the strategic goals of the Authority in delivering a smooth Transition as the Authority may define from time to time;
- 2.4 The Provider shall provide early access to information, personnel and premises to the Authority and any Replacement Provider(s) in order to facilitate a smooth Transition (subject to the entry into appropriate non-disclosure agreements);
- 2.5 The Provider shall take all reasonable steps during Transition or during any period of exit arising out of the expiry or termination of this Contract to ensure that the Quality of Services is not adversely impacted by Transition, this may include working collaboratively with the Authority and/or the Replacement Provider(s) to solve problems quickly and with minimal disruption to Participants even where the problem is not directly caused by the Provider.

**Appendix 12, Annex 3**

**Annex 3 - Cost Model**

**[REDACTED]**

APPENDIX 13 – Not used

## APPENDIX 14 – SERVICE CREDITS

### SERVICE CREDITS

#### 1. OBJECTIVES

##### 1.1 The objectives of the Service Levels and Service Credits are to:

- *Ensure that the Services are of a consistently high quality and meet the requirements of the Authority;*
- *Provide a mechanism whereby the Authority can attain meaningful recognition of inconvenience and/or loss resulting from the Provider's failure to deliver the level of Service for which it has contracted to deliver; and*
- *Incentivise the Provider to meet the Service Levels and to remedy any failure to meet Service Levels expeditiously*

#### 2. GENERAL PROVISIONS

- 2.1 In the event of a failure by the Provider to achieve any Service Level, the Service Credits shall be applied to the Provider as prescribed in Clause F5.2 of the Contract and in this Appendix 14.
- 2.2 The Provider shall monitor the performance of its obligations under this Contract, and shall provide the Authority with Management Information required in accordance with Annex G of the contract in order for the Authority to determine the Service Credits applicable.
- 2.3 In the event of a dispute arising between the Authority and the Provider over any matter relating to Service Credits under this Appendix, such dispute shall be dealt with in accordance with the Dispute Resolution procedure set out in Clause I2 of the Contract.
- 2.4 In the event that new service levels are introduced, the Authority and the Provider shall agree the Service Credits which will apply for failures to meet such service levels. In the event of a dispute arising in matters relating to the introduction of new Service Credits such dispute shall be dealt with in accordance with the Dispute Resolution procedure set out in Clause I2 of the Contract.

#### 3. SERVICE LEVEL DEFAULT

- 3.1 The Service Credits shall be applied for failure to meet the Service Levels.

- 3.2 For the avoidance of doubt, Service Credits and Service Termination Thresholds will be applied at contract level.
- 3.3 Where the Service Level is stated with reference to Average Actual Outstanding Time (AAOT) it is calculated as follows:
  - 1.1 The AAOT is calculated by dividing the cumulative total of days outstanding by the number of cases (specific business activity) outstanding.
- 3.4 Where the Service Level is stated with reference to percentages, it shall be calculated, and rounded to the nearest 0.1%.
- 3.5 There will be a cap on the value of Service Credits to be applied to the Provider in any single Month. The maximum Service Credit to be paid by the Provider in any single Month shall not exceed [REDACTED]% of the Total Monthly Price (“the Service Credit Cap”).
- 3.6 For the purposes of monitoring and reporting on performance against Service Levels SC4(a), SC4(b), SC5(a), SC5(b), SC6(a), SC6(b), SC7(a), SC7(b), SC14(a) and SC14(b), and calculating any related Service Credits, the day on which the relevant case was referred by the Authority to the Provider shall be disregarded where the Provider can demonstrate that such referral occurred on or after 13:00 of such day.

#### 4. **ANNUAL REVIEW**

- 4.1 For the avoidance of doubt the unit value of Service Credits will not be subject to annual review.

#### 5. NOT USED

#### 6. **SERVICE CREDIT TERMINATION THRESHOLDS**

- 6.1 The Authority shall have the right to terminate the Contract pursuant to Clause H2 where the Service Credit Cap is applied either:

a) in each month over a rolling three (3) Month period ; or

b) in any six (6) Months in a rolling twelve (12) Month period.

#### 7. **SERVICE TERMINATION THRESHOLDS**

- 7.1 Notwithstanding the provisions of paragraph 6.1 and without prejudice to its rights to Terminate the Contract pursuant to Clause H2, the Authority reserves the right to exercise its remedies under Clauses F5.3 and F5.4 in the event that

the Service Termination Threshold is reached or exceeded by the Provider in relation to any individual Service Level;

a) over a rolling three (3) Month period ; or

b) in any six (6) Months in a rolling twelve (12) Month period.

## **8. SERVICE CONSISTENCY**

8.1 Notwithstanding Service Levels being measured across the whole Contract for the purpose of applying Service Credits the Authority requires consistency of service delivery across the Contract. For the purpose of assessing such consistency, Service Levels shall also be measured at regional and/or consultation centre level. Where the Provider fails to meet the Service Levels required under the Contract the Authority reserves the right to take any remedial action available to it under the Contract.

## **9. SERVICE CREDIT BOARD**

9.1 A Service Credit Board (SCB) will be established for the purpose of:

- Reviewing and considering whether any mitigation submitted by the Provider is relevant for the purpose of Clause F5.2.1 (Force Majeure or Default of the Authority) of the Contract
- Considering the application of Service Credit values and the performance achieved

9.2 The SCB will consist of the Authority and Provider senior management representatives, who will meet between the ninth and fifteenth Working Day of each month.

The Authority will be represented by:-

Head of Medical Services Contracts / Performance Account Manager / Head of Medical Services Commercials / Medical Services Commercial Manager

The Provider will be represented by:-

Operations Director / Commercial Director to be determined by the Provider.

9.3 Any proposed application and/or deferment of Service Credits will be determined as fully extinguished, partially extinguished or deferred/applied.

## **10. QUALITY IMPROVEMENT DURING SC1 TRANSITION PERIOD**

10.1 The provisions of this paragraph 10 shall only apply during the SC1 Transition Period and are subject to paragraph 5A.14 of Appendix 4 (Prices and Rates) of the Contract.

10.2 For the purposes of Service Level SC1 the Provider shall not exceed:

- (i) [REDACTED] unacceptable reports during SC1 Transition Q1;
- (ii) [REDACTED] unacceptable reports during SC1 Transition Q2; and
- (iii) [REDACTED] unacceptable reports during SC1 Transition Q3;

where, the relevant percentage of unacceptable reports is determined by dividing the total number of unacceptable reports identified by the sampling during the relevant SC1 Transition quarter by the total number of assessment reports sampled during the relevant SC1 Transition quarter and multiplying that product by 100, such percentage (in this paragraph 10, the “**Unacceptable Quarter Percentage**”) to be calculated within five (5) Working Days from and including the date on which the relevant SC1 Transition quarter ends.

10.3 In addition to paragraph 10.2, the Provider shall aim not to exceed the following notional monthly thresholds:

- (i) [REDACTED] unacceptable reports during the Month of March 2016;
- (ii) [REDACTED] unacceptable reports during the Month of April 2016;
- (iii) [REDACTED] unacceptable reports during the Month of May 2016;
- (iv) [REDACTED] unacceptable reports during the Month of June 2016;
- (v) [REDACTED] unacceptable reports during the Month of July 2016;
- (vi) [REDACTED] unacceptable reports during the Month of August 2016;

where, the relevant percentage of unacceptable reports is determined by dividing the total number of unacceptable reports identified by the sampling during the relevant Month by the total number of assessment reports sampled during the relevant Month and multiplying that product by 100, such percentage (in this paragraph 10, the “**Unacceptable Month Percentage**”) to be calculated within five (5) Working Days from and including the date on which the relevant Month ends.

10.4 For the avoidance of doubt, the notional monthly thresholds stated in paragraph 10.3 above are for monitoring and information purposes only. Any failure by the Provider to meet these notional monthly thresholds shall not constitute a Default.

10.5 From and including the date of the commencement of SC1 Transition Period the Provider shall:

10.5.1 each Month (in this paragraph 10, “**Relevant Month**”), select at random

samples (in this paragraph 10, each a “**Sample Case**”) of assessment reports from the Relevant Month (such sample size to be determined in accordance with the Lancaster Model);

- 10.5.2 within five (5) Working Days from the end of each Month, report to the Authority in writing (in this paragraph 10, the “**Provider’s Monthly Report**”) on the sampling exercise, confirming the number of Sample Cases, and the Unacceptable Month Percentage determined pursuant to paragraph 10.3 above.
- 10.6 From and including the date of the commencement of SC1 Transition Period the Provider shall, within five (5) Working Days from and including the end of each SC1 Transition quarter (in this paragraph 10, “**Relevant Quarter**”), using the Lancaster Model, report to the Authority in writing (in this paragraph 10, the “**Provider’s Quarterly Report**”) on the sampling exercise, confirming the aggregate number of Sample Cases for the Relevant Months in the Relevant Quarter, and the Unacceptable Quarter Percentage in the Relevant Quarter determined pursuant to paragraph 10.2 above.
- 10.7 The Provider shall promptly (and in any event within five (5) Working Days) respond to any reasonable questions and enquiries raised by the Authority in connection with the Provider’s Monthly Report and/or the Provider’s Quarterly Report.
- 10.8 In the event that the Authority determines the Provider’s Monthly Report and/or the Provider’s Quarterly Report has not been prepared in accordance with this paragraph 10 (for example including, but not limited to, where the Provider has incorrectly applied the Lancaster Model or has failed to select Sample Cases on a random basis), the Provider shall take such action as the Authority reasonably requires (including, if necessary, revising the Provider’s Monthly Report and/or the Provider’s Quarterly Report and/or conducting further sampling at the Provider’s own cost) to enable the Authority to approve a final version of each Provider’s Monthly Report and the Provider’s Quarterly Report (in this paragraph 10, the “**Final Report**”).
- 10.9 If any such question or enquiry (as referenced in paragraph 10.7) or action (as referenced in paragraph 10.8) cannot be resolved between the Parties, the Parties agree to invoke the Dispute Resolution Procedure in respect of those matters.



**Annex 1**

**Service Levels and Termination Thresholds**

**AAOT (Average Actual Outstanding Time) Definition:-**

A monthly snapshot (which is the position at one point in time) of the average length of time that non-cleared business activities have been outstanding. The AAOT is calculated by dividing the cumulative total of days outstanding by the number of cases (specific business activity) outstanding.

A No.	B SLA Service requirement	C Service Level	D Service Credit	E Management Information - Reporting Level and Duration	F Service Termination Threshold	G Supporting MI Requirements (Annex G to Appendix 1 of the Call-Off Terms and Conditions reference)	H Notes
SC1	Quality of assessment reports derived from the audit of reports	<p>[REDACTED] or less unacceptable reports in SC1 Transition Q1</p> <p>[REDACTED] or less unacceptable reports in SC1 Transition Q2</p> <p>[REDACTED]</p>	<p><b>No Service Credit, but No Pay Amount applied in accordance with paragraph 5A of Appendix 4 (Prices and Rates)</b></p>	<p>Regional / Lot calculated on fixed 3 Month quarters during the SC1 Transition Period and from 1 December 2016 on a rolling 3 Monthly basis</p>	<p>[REDACTED] or more of Grade C and/or unacceptable reports.</p> <p>In any SC1 Transition quarter, over a rolling three (3) Month period or Any six (6)</p>	30	<p>This target relates to the quality of assessment reports derived from agreed audit procedures where an unacceptable report fails to meet professional standards. Providers must use the Lancaster Model in relation to sample sizes.</p>

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information - Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (Annex G to Appendix 1 of the Call-Off Terms and Conditions reference)	Notes
		or less unacceptable reports in SC1 Transition Q3 <b>[REDACTED]</b> or less unacceptable reports in and after the Month of December 2016 (calculated on a rolling 3 Monthly basis)			Months in a rolling twelve (12) Months		
SC2	NOT USED	NOT USED	NOT USED	NOT USED	NOT USED	NOT USED	NOT USED

A No.	B SLA Service requirement	C Service Level	D Service Credit	E Management Information - Reporting Level and Duration	F Service Termination Threshold	G Supporting MI Requirements (Annex G to Appendix 1 of the Call-Off Terms and Conditions reference)	H Notes
SC3	<p>Re-work of assessment reports deemed not fit for purpose. To be 'fit for purpose' reports must be:-</p> <ul style="list-style-type: none"> <li>• Fair &amp; impartial</li> <li>• Legible and concise</li> <li>• In accordance with legislation</li> <li>• Comprehensive, clearly explaining medical issues raised</li> <li>• In plain English/free of medical jargon</li> <li>• Presented clearly</li> <li>• Complete with answers to all queries relating to</li> </ul>	<p>Non-compliant/re-work reports to be [REDACTED] or less in year one (1), reducing to [REDACTED] in year two (2) and [REDACTED] in year three (3) and for the duration of the Contract Period.</p>	<p>£[REDACTED] per report (the administration cost to the Authority).</p>	<p>Lot, Region and each Consultation Centre Calculated on a monthly basis.</p>	<p>[REDACTED] or more reports deemed not fit for purpose.</p> <p>Over a rolling three (3) Month period or</p> <p>Any Six (6) Months in a rolling Twelve (12) Months</p>	34	

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information - Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (Annex G to Appendix 1 of the Call-Off Terms and Conditions reference)	Notes
	disability/incapacity matters raised by DWP <ul style="list-style-type: none"> <li>Free of unexplained medical abbreviations</li> <li>Capable of Comprehensively providing information to the Authority</li> </ul>						
SC4(a)	PIP Assessment end to end assessment process (excluding TI cases).	All cleared within an AACT of 35 Working Days	<p><b>[REDACTED]</b></p> <p><b>Where I = value of the invoice issued immediately following the AACT calculation in respect of the Total Monthly Price.</b></p> <p><b>If AACT is less than or equal to [REDACTED], the Service Credit shall be deemed to be zero.</b></p>	Lot, Region and each Consultation Centre Weekly and Monthly	<b>An AACT of 40 Working Days over a rolling three (3) Month period or in any six (6) Months in a rolling twelve (12) Month Period where a Service Credit Let</b>	32	

A	B	C	D	E	F	G	H														
No.	SLA Service requirement	Service Level	<b>Service Credit</b>	Management Information - Reporting Level and Duration	<b>Service Termination Threshold</b>	Supporting MI Requirements (Annex G to Appendix 1 of the Call-Off Terms and Conditions reference)	Notes														
					has not been in place																
SC4(b)	PIP Assessment end to end assessment process (excluding TI cases).	No cases older than fifty five (55) Working Days as at the end of the Month.	<b>Service Credit payable per case older than 55 Working Days as at the end of the Month as follows:</b> <table border="1" data-bbox="690 808 1045 1284"> <thead> <tr> <th data-bbox="690 808 835 1013">Age of cases at end of Month (Working Days)</th> <th data-bbox="835 808 1045 1013">Service Credit (£)</th> </tr> </thead> <tbody> <tr> <td data-bbox="690 1013 835 1053">56 - 64</td> <td data-bbox="835 1013 1045 1053">[REDACTED]</td> </tr> <tr> <td data-bbox="690 1053 835 1094">65 - 74</td> <td data-bbox="835 1053 1045 1094">[REDACTED]</td> </tr> <tr> <td data-bbox="690 1094 835 1135">75 - 84</td> <td data-bbox="835 1094 1045 1135">[REDACTED]</td> </tr> <tr> <td data-bbox="690 1135 835 1175">85 - 94</td> <td data-bbox="835 1135 1045 1175">[REDACTED]</td> </tr> <tr> <td data-bbox="690 1175 835 1216">95 - 104</td> <td data-bbox="835 1175 1045 1216">[REDACTED]</td> </tr> <tr> <td data-bbox="690 1216 835 1284">105+</td> <td data-bbox="835 1216 1045 1284">[REDACTED]</td> </tr> </tbody> </table> <p data-bbox="690 1284 1045 1421">By way of worked example: A case is 56 Working Days old at the end of Month 1, resulting in</p>	Age of cases at end of Month (Working Days)	Service Credit (£)	56 - 64	[REDACTED]	65 - 74	[REDACTED]	75 - 84	[REDACTED]	85 - 94	[REDACTED]	95 - 104	[REDACTED]	105+	[REDACTED]	Lot, Region and each Consultation Centre Weekly and Monthly	<b>No termination threshold.</b>	32	
Age of cases at end of Month (Working Days)	Service Credit (£)																				
56 - 64	[REDACTED]																				
65 - 74	[REDACTED]																				
75 - 84	[REDACTED]																				
85 - 94	[REDACTED]																				
95 - 104	[REDACTED]																				
105+	[REDACTED]																				

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information - Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (Annex G to Appendix 1 of the Call-Off Terms and Conditions reference)	Notes
			<p>a £[REDACTED] Service Credit in respect of that case for that Month. At the end of the following Month (A+1), the case is still not cleared and is 77 Working Days old, resulting in a £[REDACTED] Service Credit in respect of that case for that Month. At the end of the following Month (A+2), the case is still not cleared and is 100 Working Days old, resulting in a £[REDACTED] Service Credit in respect of that case for that Month. At the end of the following Month, the case is cleared so no further Service Credit is due. Total SC4B Service Credits paid on that case is therefore £[REDACTED].</p>				
SC5(a)	Terminally III (TI) cases	All TI cases cleared within an average	£[REDACTED] for each Working Day which exceeds	Lot, Region and Sub	All TI cases cleared within an average	33	

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information - Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (Annex G to Appendix 1 of the Call-Off Terms and Conditions reference)	Notes
	<p>end to end assessment process.</p> <p><b>Formula:</b></p> <p><b>[REDACTED]</b></p> <p>where:</p> <p><b>[REDACTED]</b> means the sum of the total number of Working Days spent on each and every TI assessment cleared within the Month</p> <p><b>[REDACTED]</b> means the sum of the total number of TI</p>	<p>period of two (2) Working Days to be calculated on an in-Month basis.</p>	<p><b>the average period of 2 Working Days (Monthly)</b></p>	<p>Region Monthly</p>	<p><b>period of four (4) Working Days to be calculated on an in-Month basis.</b></p> <p><b>Over a rolling three (3) Month period or Any six (6) Months in a rolling twelve (12) Months</b></p> <p><b>Formula:</b></p> <p><b>[REDACTED]</b></p> <p>where:</p> <p><b>[REDACTED]</b> means the sum of the total number of TI assessment referrals cleared within the Month.</p> <p><u>Example 1:</u></p>		

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information - Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (Annex G to Appendix 1 of the Call-Off Terms and Conditions reference)	Notes
	<p>assessment referrals cleared within the Month.</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>				<p>In this example, the Provider cleared [REDACTED] TI assessment referrals in the relevant Month ("B"). The total sum of the number of Working Days for all cleared TI assessment referrals was [REDACTED].</p> <p>[REDACTED]</p> <p>The Provider cleared all TI assessment referrals within an average period of [REDACTED] in the relevant Month.</p> <p><u>Example 2:</u> In this example, the Provider cleared</p>		

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information - Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (Annex G to Appendix 1 of the Call-Off Terms and Conditions reference)	Notes
					<p>[REDACTED] TI assessment referrals in the relevant Month ("B"). The total sum of the number of Working Days for all cleared TI assessment referrals was [REDACTED]</p> <p>[REDACTED]</p> <p>The Provider cleared all TI assessment referrals within an average period of [REDACTED] in the relevant Month. Therefore the in-Month threshold is breached</p>		
SC5(b)	Terminally Ill (TI) cases end to end assessment process.	100% to be cleared within five (5) Working	£[REDACTED] per case below 100%. (Monthly)	Lot, Region and each Consultation Centre Weekly and monthly	<b>98% cleared within Five (5) Working Days</b>	33	

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information - Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (Annex G to Appendix 1 of the Call-Off Terms and Conditions reference)	Notes
		Days.			Over a rolling three (3) Month period or Any six (6) Months in a rolling twelve (12) Months		
SC6(a)	Authority referrals for advice	98% cleared within two (2) Working Days.	£[REDACTED] per case below 98% (Monthly)	Lot, Region and each Consultation Centre Weekly/Monthly	90% cleared within Two (2) Working Days Over a rolling three (3) Month period or Any six (6) Months in a rolling twelve (12) Months	10	Includes providing written or telephone advice.
SC6(b)	Authority referrals	No cases	£[REDACTED] per case,	Lot, Region and each	No	10	Includes

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information - Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (Annex G to Appendix 1 of the Call-Off Terms and Conditions reference)	Notes
	for advice	older than three (3) Working Days as at the end of the Month.	<b>older than three (3) Working Days as at the end of the Month</b>	Consultation Centre Weekly/Monthly	<b>termination threshold.</b>		providing written or telephone advice.
SC7(a)	Re-work of assessment reports deemed not fit for purpose.	98% cleared within two (2) Working Days.	£[REDACTED] per case <b>below 98% (Monthly)</b>	Lot, Region and each Consultation Centre Weekly/monthly	<b>90% cleared within two (2) Working Days Over a rolling three (3) Month period or Any six (6) Months in a rolling twelve (12) Months</b>	35	Links to SLA SC3 above.
SC7(b)	Re-work of assessment reports deemed not fit for purpose	No cases older than three (3) Working Days as at	£[REDACTED] per case <b>older than three (3) Working Days as at the end of the Month</b>	Lot, Region and each Consultation Centre Weekly/monthly	<b>No termination threshold.</b>	35	Links to SLA SC3 above.

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information - Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (Annex G to Appendix 1 of the Call-Off Terms and Conditions reference)	Notes
		the end of the Month.					
SC8(a)	Claimant call waiting time	80% of calls to be answered within thirty (30) seconds	£[REDACTED] per case below 80% (Monthly).	Lot, Region Daily/Weekly/monthly	No termination threshold.	11	This is in line with DWP standards.
SC8(b)	Claimant call waiting time	In total, 90% of all calls to be answered.	£[REDACTED] per case below 90% (Monthly)	Lot, Region Daily/Weekly/monthly	80% of all calls answered  Over a rolling three (3) Month period or Any six (6) Months in a rolling twelve (12) Months	11	This is in line with DWP standards.
SC9	Claimant Satisfaction Rate relating to the quality of service	Claimant Satisfaction Rate to be at least 90%.	£[REDACTED] per case below 90% (quarterly).	Lot, Region and each Consultation Centre Quarterly/Annually (Supported by MI	No Termination Threshold	12	Note – sample size to be determined by

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information - Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (Annex G to Appendix 1 of the Call-Off Terms and Conditions reference)	Notes
	provided.			provided monthly)			DWP.  Independent survey to be undertaken.
SC10	NOT USED	NOT USED	NOT USED	NOT USED	NOT USED	NOT USED	NOT USED
SC11(a)	Consultation Waiting Time	Consultation centre consultations – 90% of all Claimants to be examined within thirty (30) minutes of their appointment time.	£[REDACTED] per case below 90% (monthly).	Lot, Region and each Consultation Centre Monthly, Rolling 12 Months.	80% of Claimants examined within thirty (30) minutes of appointment.  Over a rolling three (3) Month period or Any six (6) Months in a rolling twelve (12)	14	

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information - Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (Annex G to Appendix 1 of the Call-Off Terms and Conditions reference)	Notes
					<b>Months</b>		
SC11(b)	Consultation Waiting Time	Home consultations – 90% of Claimants to be examined within sixty (60) minutes of their appointment time.	£[REDACTED] per case below 90% (monthly).	Lot, Region and each Consultation Centre Monthly, Rolling 12 Months.	<p><b>80% of Claimants examined within sixty (60) minutes of their appointment time.</b></p> <p><b>Over a rolling three (3) Month period or Any six (6) Months in a rolling twelve (12) Months</b></p>	14	
SC12	Claimants Sent Home Unseen – where onus is on the Provider includes:-	No more than 1% of Claimants who attend their	£[REDACTED] per case above 1% (monthly).	Lot, Region and each Consultation Centre Monthly, Rolling 12 Months.	<b>10% of Claimants sent home unseen.</b>	16	Note – this will not apply where onus is on the Claimant e.g.

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information - Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (Annex G to Appendix 1 of the Call-Off Terms and Conditions reference)	Notes
	<ul style="list-style-type: none"> <li>• Claimant called in error</li> <li>• Same gender not provided when requested</li> <li>• Special requirements not provided when requested in advance</li> <li>• Claimant arrived on time but would not wait more than 30 minutes</li> <li>• Number of Claimants attended exceeds capacity</li> <li>• HP unavailable</li> <li>• HP did not attend for session</li> <li>• System performance</li> </ul>	examination to be Sent home unseen.			Over a rolling three (3) Month period or Any six (6) Months in a rolling twelve (12) Months		<p>Claimant arrives late for their appointment.</p> <p>Provider to ensure management of overall HP availability and only under exceptional circumstances should HP unavailability/non-attendance be provided as mitigation with robust reasoning.</p>

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information - Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (Annex G to Appendix 1 of the Call-Off Terms and Conditions reference)	Notes
	problems						
SC13	Continuous Professional Development (CPD) for Medical Personnel: Delivery of Training Programme	By 31 July each year*, the Provider will have delivered completely all components of the agreed training programme to the Medical Personnel for that year.  *Note: 12 months after contract award and annually thereafter.	<b>Single annual credit of £[REDACTED] for failed delivery</b>	Delivery of Annual Report confirming achievement by Lot and Region.	<b>No termination threshold.</b>	17	
SC14(a)	Re-work where face to face re-examination is	99% cleared within twenty (20) Working	<b>£[REDACTED] per case below 99% (Monthly)</b>	Lot, Region and Sub-Region.	<b>No termination threshold.</b>	36	New Service Credit added to contract after

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	<b>Service Credit</b>	Management Information - Reporting Level and Duration	<b>Service Termination Threshold</b>	Supporting MI Requirements (Annex G to Appendix 1 of the Call-Off Terms and Conditions reference)	Notes
	required.	Days.		Monthly.			agreement with Commercials on 7 <sup>th</sup> January 2013.
SC14(b)	Re-work where face to face re-examination is required.	No cases older than twenty five (25) Working Days as at the end of the Month.	£[REDACTED] per case older than 25 Working Days as at the end of the Month	Lot, Region and Sub-Region. Monthly.	<b>No termination threshold.</b>	36	

**Service Levels that do not attract a Service Credit begin on the following page**

No.	SLA	Threshold Level	Supporting MI Requirements (Annex G to Appendix 1 of the Call-Off Terms and Conditions reference)	Notes
1	Complaints Response Times	<p>Acknowledged within 2 Working Days.</p> <p>90% of responses to be made within 20 Working Days.</p> <p>AAOT = 30 Working Days.</p>	21(a), 21(f) and 21(g)	
2	Complaints Quality of responses	95% of all responses must be Fit for Purpose	21(b)	
3	CPD for Medical Personnel Training Needs Analysis (TNA)	By 31 May each year, the Provider will deliver an agreed Training Needs Analysis.	18	
4	Training for Medical Personnel: Delivery of Training Plan.	By 31 July each year, the Provider will deliver an agreed Training Plan which sets out in detail the manner in which the agreed training Programme will be delivered during the following year.	19	

5	Annual training evaluation report	By 30 November each year, the Provider will have undertaken a training evaluation of the agreed training delivery/ Plan/Programme/ for that year.	20	
6	Number of complaints against HPs after a consultation	No more than 0.5% Consultations conducted will result in a complaint against the HP.	21(c)	Note – this does not include complaints against the decision outcome, it relates specifically to HPs.
7	Number of serious complaints against HPs after a consultation	No more than 10 Consultations per year conducted will result in a serious complaint against the HP.	21(d)	
8	Number of complaints and serious complaints, with reasons and outcomes.	Number of HPs with more than 3 complaints in 3 Months.	21(e)	
9	Number of cases selected for medical quality audit against agreed audit sample size	The numbers of cases audited must equal the agreed sample size (once volumes have been determined).	N/A	
10	Provision of Management Information Accuracy – Must be fully auditable	100% accurate reports received within the specified number of Working Days.	N/A	
11	Provision of Management Information Response Times	MI to be provided daily, weekly, monthly as required.	N/A	

12	Treat Official Correspondence (including MP Correspondence, Parliamentary Questions, Subject Access Requests, etc.)	Response Times for Treat Official Correspondence will be agreed on a case by case basis. Agreed deadlines for individual responses must be adhered to. The response provided within the required turnaround time must be a full response or, if a full response cannot be provided, an update on what stage the response has reached and the date the full response can be expected by the Authority.	N/A	
13	Claimant Special Requirements - Interpreters, Same Sex HP. (subject to Claimant's willingness to travel to an alternative assessment centre and to the Provider receiving 2 Working Days notice)	95% of referrals for special requirements must be met.	6	
14	Payment of Claimant (and companion where applicable) travelling expenses	100% of Claimants must be paid within 14 calendar days of receipt.	22	
15	Acceptable/Acceptable with HP Learning	A minimum of 85% of reports must be assessed as acceptable or acceptable HP learning required.	31	

**Appendix 14 – Annex 2**  
**Template Clearance Profile**

**Appendix 14 - Annex 3**

**Worked Example referred to at Clause C1E (Under-Referrals)**

**Appendix 14 - Annex 4**

**Worked Example referred to at Clause F5.2.F (Over-Referrals)**

## APPENDIX 15 - PERSONAL DATA , SPECIAL CATEGORIES OF PERSONAL DATA AND DATA SUBJECTS

### **DATA PROCESSING**

The Provider shall comply with any further written instructions with respect to processing by the Authority.

Any such further instructions shall be incorporated into this Appendix 15.

The Provider shall maintain an up-to-date record of this Appendix 15. Changes to this Appendix 15, which fall outside minor operational updates, shall be agreed by the Parties.