

DATED **2021**

THE SECRETARY OF STATE FOR (1)
WORK AND PENSIONS

AND

MITIE FM LIMITED (2)

PART A – JOINT SCHEDULES
AND
PART B – CALL-OFF SCHEDULES

to the CONTRACT FOR THE
PROVISION OF LIFE SYSTEMS
SERVICES

Joint Schedules

Joint Schedule 1	1
Definitions	1
Joint Schedule 2	49
Variation Control Procedure and Routine Variations.....	49
Joint Schedule 3	60
Insurance Requirements	60
Joint Schedule 4	71
Commercially Sensitive Information.....	71
Joint Schedule 5	72
Corporate Social Responsibility	72
Joint Schedule 6	75
Key Subcontractors	75
Joint Schedule 7	78
Financial Distress	78
Joint Schedule 8 (Optional).....	83
Guarantee	83
Joint Schedule 9	95
Order Form.....	95
Joint Schedule 10	97
Rectification Plan.....	97
Call-Off Schedule 1	99
Transparency Reports	99
Call-Off Schedule 2.....	100
Staff Transfer.....	100
Call-Off Schedule 3.....	125
Continuous Improvement.....	125
Call-Off Schedule 4	127
Not used.....	127
Call-Off Schedule 4A.....	128
Not used.....	128
Call-Off Schedule 5	129
Pricing 129	
Call-Off Schedule 6.....	140
TUPE Surcharge	140
Call-Off Schedule 7	142
Key Staff.....	142

Call-Off Schedule 8	144
Business Continuity and Disaster Recovery	144
Call-Off Schedule 9	150
Security	150
Call-Off Schedule 10	157
Exit Management	157
Call-Off Schedule 11	167
Personal Data	167
Call-Off Schedule 12	180
Not used	180
Call-Off Schedule 13	181
Mobilisation Plan	181
Call-Off Schedule 14	188
Key Performance Indicators	188
Call-Off Schedule 15	207
Not used	207
Call-Off Schedule 16	208
Not used	208
Call-Off Schedule 17	209
Not used	209
Call-Off Schedule 18	210
Not used	210
Call-Off Schedule 19	211
Collateral Warranty Agreements	211
Call-Off Schedule 20	227
Not used	227
Call-Off Schedule 21	228
Performance Bond	228
Call-Off Schedule 22 (Optional)	233
The Specification	233
Call-Off Schedule 23	234
Redundancy Surcharge	234

Joint Schedule 1

Definitions

- 1.1 In each Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Joint Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In each Contract, unless the context otherwise requires:
- 1.3.1 the singular includes the plural and vice versa;
 - 1.3.2 reference to a gender includes the other gender and the neuter;
 - 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
 - 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 1.3.5 the words “**including**”, “**other**”, “**in particular**”, “**for example**” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “**without limitation**”;
 - 1.3.6 references to “**writing**” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - 1.3.7 references to “**representations**” shall be construed as references to present facts, to “**warranties**” as references to present and future facts and to “**undertakings**” as references to obligations under the Contract;
 - 1.3.8 references to “**Clauses**” and “**Schedules**” are, unless otherwise provided, references to the clauses and schedules of the Special Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;
 - 1.3.9 references to “**Paragraphs**” are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided; and
 - 1.3.10 references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified.
 - 1.3.11 the headings in each Contract are for ease of reference only and shall not affect the interpretation or construction of a Contract.

- 1.4 In each Contract, unless the context otherwise requires, the following words shall have the following meanings:

Definitions

“Actuary” a Fellow of the Institute and Faculty of Actuaries;

“Additional Insurances” means the insurance requirements set out in Joint Schedule 3 (*Insurance Requirements*);

“Administering Authority” in relation to the Fund, the relevant administering authority (as shall be notified to the Supplier in writing by the Buyer) of that Fund for the purposes of the Local Government Pension Scheme Regulations 2013;

“Admission Agreement” means either or both of the CSPA Admission Agreement (as defined in Annex D1: CSPA of Call-Off Schedule 2 (*Staff Transfers*)) or the LGPS Admission Agreement) as defined in Annex D3: LGPS), as the context requires;

“Affected Employee” means an employee of the Supplier (or, if relevant, a notified Sub-Contractor) who is at risk of redundancy as a result of either of the occurrence of either of the events set out in Paragraph 1.1 of Call-Off Schedule 23 (*Redundancy Surcharge*);

“Affected Party” means the party seeking to claim relief in respect of a Force Majeure Event;

“Allowable Cost” means any:

- (a) Consumable Cost;
- (b) Equipment Cost;
- (c) Expenses;
- (d) Labour Cost; and
- (e) Subcontractor Labour Cost;

“Annex” means the extra information which supports a Schedule;

“Annual Pension Cost” means Employer Pension Contributions, subject to the Employer Pension Contribution Cap;

“Approval” means the prior written consent of the Buyer and **“Approve”** and **“Approved”** shall be construed accordingly;

“Asset” means any item or equipment owned by the Buyer which is maintained as part of the Services;

“At Risk %” means 6% of the Charges;

“At Risk Amount” means in respect of a Service Period, the amount calculated in accordance with Paragraph 3.1 of Part A of Call-Off Schedule 14 (*Key Performance Indicators*);

“Audit” means the Buyer’s right to:

- (a) verify the accuracy of the Charges and any other amounts payable by a Buyer under this Contract (including proposed or actual variations to them in accordance with the Contract);
- (b) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services;
- (c) verify the Open Book Data;
- (d) verify the Supplier’s and each Subcontractor’s compliance with the applicable Law;
- (e) identify or investigate actual or suspected breach of Clause 30 (*Health and Safety*), Clause 31 (*Environment*), Clause 32 (*Tax and Financial Matters*), Clause 33 (*Conflict of interest*), Clause 34 (*Reporting a breach of this Contract*), Clause 35 (*Resolving disputes*), Clause 36 (*Which law applies*) and/or Joint Schedule 5 (*Corporate Social Responsibility*), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- (f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Subcontractors or their ability to provide the Deliverables;
- (g) obtain such information as is necessary to fulfil the Buyer’s obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Controller and Auditor General;
- (h) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
- (i) carry out the Buyer’s internal and statutory audits and to prepare, examine and/or certify the Buyer’s annual and interim reports and accounts; and
- (j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer has used its resources;

“Auditor” means the:

- (a) the Buyer’s internal and external auditors;
- (b) the Buyer’s statutory or regulatory auditors;
- (c) the Controller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (d) HM Treasury or the Cabinet Office;
- (e) any party formally appointed by the Buyer to carry out audit or similar review functions; and
- (f) successors or assigns of any of the above;

“Availability Test” shall mean the activities performed by the Supplier to confirm the availability of any or all components of any relevant ICT system as specified by the Authority;

“BCDR Plan” means the plan which shall contain the information as per Call-Off Schedule 8 (*Business Continuity and Disaster Recovery*);

“Bedding-In Period” means a period of three (3) Months commencing on the Start Date;

“Beneficiary” means the Party having (or claiming to have) the benefit of an indemnity under this Contract;

“Breach of Security” means the occurrence of:

- (a) any unauthorised access to or use of the Deliverables, the Sites and/or any Information and Communication Technology (“ICT”), information or data (including the Confidential Information and the Government Data) used by the Buyer and/or the Supplier in connection with this Contract; and/or
- (b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Government Data), including any copies of such information or data, used by the Buyer and/or the Supplier in connection with this Contract,

in either case as more particularly set out in the Security Policy;

“Brexit” means the United Kingdom ceasing to be a member state of the European Union or, if later, ceasing to be subject to any transitional arrangements which substantively treat the UK as a Member State of the European Union;

“Broadly Comparable” means:

- (a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary’s Department of a broad comparability certificate; and
- (b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme’s certificate of broad comparability issued by the Government Actuary’s Department,

and **“Broad Comparability”** shall be construed accordingly;

“Business Continuity Plan” means the plan which shall contain the information as per Paragraph 3.2 of Call-Off Schedule 8 (*Business Continuity and Disaster Recovery*);

“Buyer Assets” means the Buyer’s infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Deliverables;

“Buyer Asset Register” means the list of Buyer Assets set out at in the LS2 Deliverables Matrix, which forms part of the Specification (as may be amended in accordance with this Contract);

“Buyer CAFM System” means the computer aided facilities management system (or any replacement) operated by the principal supplier to the Buyer of the Supply Chain Integrator Services in connection with the provision of the Deliverables;

“Buyer Cause” means:

- (a) an omission or default of the Buyer, the Supply Chain Integrator, or any employee, contractor (save for the Supplier) or agent of the Buyer; or
- (b) a failure of a Buyer Supply Chain Member or a supplier (save for the Supplier) employed by the Buyer to:
 - (i) provide information required by Law;
 - (ii) be in delay in carrying out of work; or
 - (iii) comply with its obligations under their respective contract;

“Buyer Equipment” means any Buyer Assets at any Site on the Start Date;

“Buyer Premises” means property portfolio as more particularly described in the Specification and as the same may change, vary or adapt from time to time during the Contract Period;

“Buyer Premises Variation” means any Variation which is processed in accordance with Paragraph 10 of Joint Schedule 2 (*Variation Control Procedure*);

“Buyer Supply Chain Member” means the principal suppliers to the Buyer of the Supply Chain Integrator Services, the Security Services, the LLM Services, the FM Services (where such services are not provided by the Supplier) and the Project Services notified to the Supplier from time to time and/or of which the Supplier should have been aware and references to Buyer Supply Chain Members shall be construed accordingly;

“Buyer Variation Manager” the Buyer’s Authorised Representative or any other person appointed to that position by the Buyer from time to time and notified in writing to the Supplier;

“Buyer System” means the Buyer’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by the Buyer or a Buyer Supply Chain Member or licensed to the Buyer or a Buyer Supply Chain Member by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Deliverables including without limitation the Buyer CAFM System;

“Buyer’s Authorised Representative” means the Supply Chain Integrator unless otherwise notified in writing by the Buyer to the Supplier;

“Buyer’s Confidential Information” means:

- (a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Buyer (including all Buyer Existing IPR and New IPR);

(b) any other information clearly designated as being confidential (whether or not it is marked “confidential”) or which ought reasonably be considered confidential which comes (or has come) to the Buyer’s attention or into the Buyer’s possession in connection with this Contract; and

(c) information derived from limb (a) and limb (b) of this definition;

“**CCS**” means the Minister for the Cabinet Office as represented by Crown Commercial Service, which is an executive agency and operates as a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;

“**Category A Remedial Work**” means that Remedial Work where the value of such work is less than the Inclusive Repair Threshold and excluding:

(a) any Category D Remedial Work

(b) those works set out in Paragraph 3.1 of Call-Off Schedule 5 (*Pricing*);

“**Category A Remedial Work Fee**” means the fixed costs of Category A Remedial Work provided in accordance with Paragraph 3 of Annex F in the Specification;

“**Category B Remedial Work**” means that Remedial Work where the value of such work is greater than the Inclusive Repair Threshold but less than £1,500 and excluding any Category D Remedial Work

“**Category B Remedial Work Fee**” means in relation to any Category B Remedial Work, any Allowable Cost less any Disallowed Cost;

“**Category C Remedial Work**” means that Remedial Work where the value of such work is greater than £1,500 and excluding any Category D Remedial Work ;

“**Category C Remedial Work Fee**” means the fixed costs of Category C Remedial Work provided in accordance with Paragraph 3 of to Annex F in the Specification and as set out in any Remedial Work Proposal;

“**Category D Remedial Work**” means that Remedial Work, which is categorised as Routine;

“**Category D Remedial Work Fee**” means the fixed costs of Category D Remedial work provided in accordance with Paragraph 3 of Annex F in the Specification and as set out in any Remedial Work Proposal;

“**Category E Remedial Work**” means that Remedial Work which is categorised as Urgent and/or Critical and where the value is greater than £500;

“**Category E Remedial Work Fee**” means in relation to any Category E Remedial Work, any Allowable Cost less any Disallowed Cost;

“**Central Government Body**” means 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;

“Change in Law” means any change in Law which impacts on the supply of the Deliverables and performance of the Contract which comes into force after the Start Date;

“Change of Control” means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;

“Charges” means for a Service Period the relevant:

- (a) Fixed Monthly Fee;
- (b) Variable Fee; and
- (c) Mobilisation Payment,

less any sums due to the Buyer under this Contract including, without limitation, Deductions;

“CHECK” shall mean the scheme for authorised penetration tests which scheme is managed by the NCSC;

“Claim” means any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;

“Cloud” shall mean an off-premise network of remote ICT servers on the Internet to store, process, manage and transmit data;

“Commercially Sensitive Information” means the information in Joint Schedule 4 (*Commercially Sensitive Information*) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Buyer that, if disclosed by the Buyer, would cause the Supplier significant commercial disadvantage or material financial loss;

“Comparable Supply” means the supply of Deliverables to another Buyer of the Supplier that are the same or similar to the Deliverables;

“Completion” means PPM Task Completion and/or Completion of Remedial Work (as the case may be) by the relevant time period required in this Contract;

“Completion of Remedial Work” means in relation to the relevant Remedial Work, where the Supplier has:

- (a) carried out all the work which the Specification, Remedial Work Programme, the Remedial Backlog Programme and/or any other part of this Contract states is to be carried out and/or completed by the Supplier by the relevant date set out in the Remedial Work Programme and/or the Remedial Backlog Programme;

- (b) Uploaded all relevant documents associated with the relevant Remedial Work;
and
- (c) complied with all of the requirements of this Contract to the extent they relate to such Remedial Work;

“Condition Survey” means a periodic lease-driven survey and/or formal periodic survey;

“Confidential Information” means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Buyer or the Supplier, including IPRs, together with 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;

“Conflict of Interest” means the a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to any Buyer under a Contract, in the reasonable opinion of the Buyer;

“Consumable Cost” means:

- (a) for Category B Remedial Work and Category E Remedial Work (as relevant), the reasonable and proper cost of any consumables and materials used by or on behalf of the Supplier in carrying out Category B Remedial Work and Category E Remedial Work (as relevant); or
- (b) for Category C Remedial Work and Category D Remedial Work, the forecast reasonable and proper cost of any necessary consumables and materials which the Supplier considers are necessary to carry out the Category C Remedial Work and Category D Remedial Work as set out in the Remedial Work Fixed Cost Quotation;

“Contract Period” means the term of this Contract from the earlier of the:

- (a) Start Date; or
- (b) the Effective Date,

until the End Date;

“Contract Value” means the higher of the expected Contract value and the total Charges paid or payable under this Contract where all obligations are met by the Supplier;

“Contract Year” means the at the start of the Initial Period, a consecutive period of twelve (12) Months commencing on the Start Date or each anniversary thereof;

“Control” means the control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and **“Controlled”** shall be construed accordingly;

“Controller” has the meaning given to it in the GDPR;

“Corporate Management Fixed Fee” means the relevant fixed fee payable to the Supplier by the Buyer as set out in the Pricing Matrix and such fee shall be deemed to

include all the Supplier's costs, expenses, disbursements or otherwise incurred in relation to complying with its obligations under this Contract save for:

- (a) the Remedial Work Management Fixed Fee;
- (b) the Variable Fee; and
- (c) other costs which the Contract expressly allows for,

provided that:

- (d) there shall be no double counting between the Corporate Management Fixed Fee and any costs, expenses, disbursements or otherwise included as part of the Remedial Work Management Fixed Fee; and/or
- (e) the Buyer shall not be entitled to include any such costs, expenses, disbursements or otherwise as part of any Remedial Work Fee;

"Cost of Change" means any costs that will be incurred in managing the transition of an individual who is listed as a TUPE employee (whether a Transferring Former Supplier Employee or Transferring Buyer Employee or otherwise), and will not be required to fulfil a role as part of the new contract, within the Call Off Pricing Matrix. Examples could include but not be limited to: staff consultation, redeployment costs, short-term salary cover associated with redeployment or release of labour, and temporary staffing;

"Credit Rating Threshold" the minimum credit rating level for the Supplier and the Guarantor as set out in Annex 1 of Joint Schedule 7 (*Financial Distress*) and for each Key Sub-Contractor (where included in Annex 1 of Joint Schedule 7); and

"Critical" means the Remedial Work which is defined as such in Annex F of the Specification;

"Critical Failure Event" means:

- (a) a failure by the Supplier to provide the PPM Tasks identified as "S" on the PPM Plan; and/or
- (b) a failure to provide Deliverables in accordance with this Contract and the Buyer considers that such failure results in or may result in:
 - (i) imminent risk of danger to persons;
 - (ii) imminent risk of full or partial loss of a Buyer Premises or part of Buyer Premises; and/or
 - (iii) a material adverse effect upon the Buyer's business within the relevant Buyer Premises (where applicable);

"Crown Body" means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

"CRTPA" means the Contract Rights of Third Parties Act 1999;

“CSPS” the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; the Designated Stakeholder Pension Scheme (which is scheduled to close to new members in September 2018) and “alpha” introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;

“CSPS Admission Agreement” an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the Services;

“CSPS Eligible Employee” any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPS Admission Agreement;

“Cyber Essentials” shall mean the Government-backed, industry-supported scheme managed by the NCSC to help organisations to protect themselves against online threats or the relevant successor or replacement scheme which is published and/or formally recommended by the NCSC;

“Cyber Security Information Sharing Partnership” or **“CiSP”** shall mean the cyber security information sharing partnership established by the NCSC or the relevant successor or replacement scheme which is published and/or formally recommended by the NCSC;

“Data Loss Event” means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;

“Data Protection Legislation” means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) the Data Protection, Privacy and Electronic Communications (Amendment etc.) (EU Exit) Regulations 2019 (the **“Data Protection Regulations”**) and the UK GDPR as defined in the Data Protection Regulations (iv) all applicable Law about the processing of personal data and privacy;

“Data Protection Impact Assessment” means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

“Data Protection Officer” has the meaning given to it in the GDPR;

“Data Subject” has the meaning given to it in the GDPR;

“Data Subject Access Request” 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;

“Deductions” means all KPI Credits and any other deduction which the Supplier is required to pay or allow to the Buyer under this Contract;

“Default” means any breach of the obligations of the Supplier (including abandonment of this Contract in breach of its terms) or any other default, act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of a Contract and in respect of which the Supplier is liable to the Buyer;

“Deliverables” means the Goods and/or Services that may be ordered under this Contract including the Documentation;

“Direct Award TUPE Risk Premium” means the % of the total price of the Deliverables as submitted by the Supplier within Framework Schedule 3 – Annex 1 (*Rates and Prices*) to cover the risk of employees transferring on terms which are protected by Employment Regulations;

“Direction Letter” an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Subcontractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Subcontractor in the NHSPS in respect of the NHSPS Eligible Employees;

“Disallowed Costs” means, in relation to the Category B Remedial Work Fee and the Category E Remedial Work Fee:

- (a) any costs incurred by the Supplier in providing the Deliverables to the extent that the same arise out of or in connection with any default, negligence and/or breach of any provision of this Contract by the Supplier and/or any Supplier Staff and/or any relevant Subcontractor, including in connection with:
 - (i) any failure to:
 - (A) follow an acceptance or procurement procedure stated in this Contract;
 - (B) give the Supplier reasonable notice of a Buyer Cause and/or a Persistent Buyer Cause;
 - (C) take into account and apply Good Industry Practice; and/or
 - (ii) costs arising in connection with the preparation, revision and/or implementation of a Rectification Plan;
- (b) any costs (including without limitation any internal and/or external management costs (including without limitation any management costs incurred by any Subcontractor)) incurred by the Supplier in repeating the same element of Category B Remedial Work and/or Category E Remedial Work;
- (c) any costs that are deemed to be included within the Fixed Monthly Fee;
- (d) any costs incurred by the Supplier in the performance of Category B Remedial Work and/or Category E Remedial Work, where it has been agreed, proven, demonstrated or determined that such works have not been completed in accordance with this Contract, and in an appropriate, correct and/or efficient manner;

- (e) any costs arising out of or in connection with any matter, event or circumstance for which either Party is responsible to indemnify or otherwise compensate the other Party (or any third party) pursuant to this Contract where the exclusion of such costs would amount to double counting;
- (f) any costs, disbursements and/or expenses incurred by the Supplier and/or Subcontractor arising out of or in connection with:
 - (i) any Dispute save to the extent that such costs are awarded against the Buyer;
 - (ii) the preparation and issuing of a notification of any Identified Risks;
 - (iii) any internal arrangements put in place by the Supplier to ensure compliance with the requirements of this Contract relating to independence and/or conflicts of interest, including ethical walls or other safeguarding measures;
- (g) any costs which
 - (i) are not justified by the Supplier's accounts and/or records;
 - (ii) should not have been paid to the Supplier, a Key Sub-Contractor or supplier in accordance with this Contract; and/or
 - (iii) are not expressly permitted to be chargeable by the Supplier to the Buyer pursuant to this Contract;
- (h) the cost of Goods not used to provide the Services save for a reasonable amount of Goods identified in the BCDR that have been separately allocated for use as spares under this Contract (after allowing for reasonable wastage);
- (i) any costs arising out of or in connection with the preparation for the conduct of an adjudication or proceedings of the tribunal save to the extent that such costs are awarded against the Buyer;
- (j) any increase in the Category B Remedial Work Fee and/or the Category E Remedial Work Fee above the relevant Remedial Work Estimate but such increase shall not be deemed to be a Disallowed Cost where:
 - (i) such increase was caused or contributed to by a Buyer Cause; and
 - (ii) the Supplier notifies the Buyer of such Buyer Cause within at least 2 Working Days of becoming aware (or within 2 Working Days of when it should have become aware) of such Buyer Cause;
- (k) the first £500 of any Category B Remedial Work Fee and Category E Remedial Work Fee as this is deemed to be included within the Fixed Monthly Fee;
- (l) any costs, expenses and/or disbursements arising out of or in connection with the provision of any parent company guarantee and/or collateral warranties required in connection with this Contract; and/or
- (m) fines and/or royalties;

“Disaster” means the occurrence of one or more events which, either separately or cumulatively, mean that the Deliverables, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for seven (7) days or such other period as the Parties may agree;

“Disaster Recovery Plan” means the plan which shall contain the information as per Paragraph 4.2 of Call-Off Schedule 8 (*Business Continuity and Disaster Recovery*);

“Disclosing Party” means the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 16 (*What you must keep confidential*);

“Dispute” means any claim, dispute or difference arises out of or in connection with the Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the Contract, whether the alleged liability shall arise under English law under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;

“Dispute Resolution Procedure” means the dispute resolution procedure set out in Clause 35 (*Resolving disputes*);

“Disruptive Work” means any PPM Tasks, Remedial Work or other performance of the Deliverables that could reasonably be considered necessary to be carried out outside of Working Hours of such Buyer Premises and which the Buyer agrees (acting reasonably) constitutes Disruptive Work;

“Documentation” means the descriptions of the Services and KPIs, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) is required to be supplied by the Supplier to the Buyer under a Contract as:

- (a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables
- (b) is required by the Supplier in order to provide the Deliverables; and/or
- (c) has been or shall be generated for the purpose of providing the Deliverables;

“Due Diligence Information” means any information supplied to the Supplier by or on behalf of the Buyer prior to the Start Date and where such information relates to the anticipated volume of Remedial Work to be undertaken by the Supplier under this Contract;

“Due Diligence Period” means the expiry of 3 months from the Start Date;

“Early Retirement Right” any right to retirement benefit arising on termination for redundancy, whether such benefit is reduced or otherwise and whether such right arises on retirement or otherwise;

“Effective Date” means the date on which the final Party has signed the Order Form;

“EIR” means the Environmental Information Regulations 2004;

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

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Buyer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Subcontractor if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions;
- (f) claims whether in tort, contract or statute or otherwise;
- (g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

“Employer Pension Contribution” means standard employer pension contributions paid in accordance with the relevant pension scheme rules and used in the calculation of the TUPE Risk Premium) less any costs recoverable under Paragraph 5 of Annex D3: LGPS of Part D Pensions of Call-Off Schedule 2 (*Staff Transfer*);

“Employer Pension Contribution Cap” means the 6% maximum rate of Employer Pension Contribution used in the calculation of the TUPE Risk Premium;

“Employment Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC;

“End Date” means the earlier of:

- (a) the Expiry Date (as extended by the Optional Extension Period exercised by the Buyer under Clause 11.2 (*Extending this Contract*)); or
- (b) if a Contract is terminated before the date specified in (a) above, the date of termination of the Contract;

“Environmental Policy” means to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other

substances damaging to health and the environment, including any written environmental policy of the Buyer;

"Equality and Human Rights Commission" means the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;

"Equipment Cost":

- (a) for Category B Remedial Work and Category E Remedial Work (as relevant), the reasonable and proper cost of any equipment and plant used by or on behalf of the Supplier in carrying out Category B Remedial Work and Category E Remedial Work (as relevant);
- (b) for Category C Remedial Work and Category D Remedial Work the forecast and proper cost of any necessary equipment and plant which the Supplier considers are necessary to carry out the Category C Remedial Work and Category D Remedial Work as set out in the Remedial Work Fixed Cost Quotation;

"Excess Amount" any Pension Costs incurred by the Supplier or its Subcontractors in any Pension Period that exceed the Pension Base Cost;

"Exclusive Assets" means the Supplier Assets used exclusively by the Supplier or a Key Subcontractor in the provision of the Deliverables;

"Existing IPR" means any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise);

"Exit Information" has the meaning given to it in Paragraph 2.1 of Call-Off Schedule 10 (*Exit Management*);

"Exit Manager" means the person appointed by each Party to manage their respective obligations under Call-Off Schedule 10 (*Exit Management*);

"Exit Plan" means the plan produced and updated by the Supplier during the Contract Period in accordance with Paragraph 3 of Call-Off Schedule 10 (*Exit Management*);

"Expenses" means:

- (a) for Category B Remedial Work and Category E Remedial Work (as relevant), the reasonable and proper cost of any necessary expenses incurred by or on behalf of the Supplier in carrying out Category B Remedial Work and Category E Remedial Work (as relevant) provided that such expenses are approved by the Buyer (acting reasonably) before they are incurred by or on behalf of the Supplier; and
- (b) for Category C Remedial Work and Category D Remedial Work, the forecast and proper cost of any necessary expenses incurred by or on behalf of the Supplier which the Supplier considers are necessary to carry out the Category C Remedial Work and Category D Remedial Work as set out in the Remedial Work Fixed Cost Quotation;

“Expiry Date” means the date of the end of this Contract, being 31 March 2023 (as extended by the Optional Extension Period exercised by the Buyer under Clause 11.2 (*Extending this Contract*));

“Fair Deal Employees” those:

- (a) Transferring Buyer Employees; and/or
- (b) Transferring Former Supplier Employees; and/or
- (c) employees who are not Transferring Buyer Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Subcontractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.3.4 of Parts A or B or Paragraph 1.2.4 of Part C of Call-Off Schedule 2 (*Staff Transfer*);
- (d) where the Former Supplier becomes the Supplier those employees;
- (e) who at the Commencement Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Buyer;

“Fair Deal Schemes” means the relevant Statutory Scheme or a Broadly Comparable pension scheme;

“Fast-track Variation” any Variation which the Parties agree to expedite in accordance with Paragraph 7 of Joint Schedule 2 (*Variation Control Procedure*);

“Financial Distress Event” the occurrence or one or more of the following events:

- (a) the credit rating of the Supplier, the Guarantor or any applicable Key Sub-Contractor dropping below the applicable Credit Rating Threshold;
- (b) the Supplier, the Guarantor or any applicable Key Sub-Contractor issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;
- (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier, the Guarantor or any applicable Key Sub-Contractor;
- (d) the Supplier, the Guarantor or any applicable Key Sub-Contractor committing a material breach of covenant to its lenders;
- (e) a Key Sub-Contractor (where applicable) notifying the Buyer that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute; or
- (f) any of the following:
 - (i) commencement of any litigation against the Supplier the Supplier, the Guarantor or any applicable Key Sub-Contractor with respect to financial indebtedness or obligations under a contract;

- (ii) non-payment by the Supplier, the Guarantor or any applicable Key Sub-Contractor of any financial indebtedness;
- (iii) any financial indebtedness of the Supplier, the Guarantor or any applicable Key Sub-Contractor becoming due as a result of an event of default; or
- (iv) the cancellation or suspension of any financial indebtedness in respect of the Supplier, the Guarantor or any applicable Key Sub-Contractor,

in each case which the Buyer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Deliverables in accordance with Contract;

“Financial Distress Service Continuity Plan” a plan setting out how the Supplier will ensure the continued performance and delivery of the Deliverables in accordance with the Contract in the event that a Financial Distress Event occurs;

“Fixed Fee TUPE Risk Premium” means the amount payable on an annual basis based on the difference between:

- (a) the costs to employ Transferring Former Supplier Employees or where the Former Supplier becomes the Supplier those Former Supplier employees providing the Services at the Commencement Date and/or Transferring Buyer Employees (as the case may be); and
- (b) the equivalent costs to employ staff used by the Supplier at Further Competition,

in respect of payments due under contracts of employment in respect of the following:

- (i) annual salary;
- (ii) annual national insurance cost;
- (iii) Annual Pension Cost;
- (iv) annual life insurance cost;
- (v) annual sick pay entitlement;
- (vi) maternity/paternity costs; and
- (vii) any other cost arising directly from the contract of employment of the Transferring Former Supplier Employee and or Transferring Buyer Employee,

as set out in Paragraph 1 of Call-Off Schedule 6 (*TUPE Surcharge*);

“Fixed Monthly Fee” means for each Service Period, one twelfth of the fixed fee payable to the Supplier by the Buyer as set out in the Pricing Matrix and such fixed fee shall be deemed to include:

- (a) the Management Fee; and

- (b) all costs and expenses associated with managing and carrying out of the relevant Remedial Work (excluding Category D Remedial Work) below the Inclusive Repair Threshold;

“FM Services” the facilities management services provided by the relevant Buyer Supply Chain Member in respect of the Buyer Estate;

“FOIA” means the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that 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 Event” means any event, occurrence, circumstance, matter or cause affecting the performance by either the Buyer or the Supplier of its obligations arising from:

- (a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Contract;
- (b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
- (c) acts of a Crown Body, local government or regulatory bodies;
- (d) fire, flood or any disaster; or
- (e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
 - (i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain;
 - (ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and
 - (iii) any failure of delay caused by a lack of funds;

“Force Majeure Notice” means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;

“Former Supplier” means a supplier supplying the Deliverables to the Buyer before the Relevant Transfer Date that are the same as or substantially similar to the Deliverables (or any part of the Deliverables) and shall include any Subcontractor of such supplier (or any Subcontractor of any such Subcontractor);

“Framework Contract” means the framework agreement established between CCS and the Supplier in accordance with Regulation 33 for the provision of the Deliverables to Buyers by the Supplier, with reference RM 3830;

“Fund” the relevant pension fund within the LGPS (as may be notified in writing to the Supplier by the Buyer);

“Fund Actuary” means Fund Actuary as defined in Annex D3 to Part D of Call-Off Schedule 2 (*Staff Transfer*);

“Further Competition” means a competition carried out in accordance with the Further Competition Procedure

“Further Competition TUPE Risk Premium” means the amount payable on an annual basis based on the difference between:

- (a) the costs to employ Transferring Former Supplier Employees or where the Former Supplier becomes the Supplier those Former Supplier employees providing the Services at the Commencement Date and/or Transferring Buyer Employees (as the case may be); and
- (b) the equivalent costs to employ staff used by the Supplier at Further Competition,

in respect of payments due under contracts of employment in respect of the following:

- (i) annual salary;
- (ii) annual national insurance cost;
- (iii) Annual Pension Cost;
- (iv) annual life insurance cost;
- (v) annual sick pay entitlement;
- (vi) maternity/paternity costs; and
- (vii) any other cost arising directly from the contract of employment of the Transferring Former Supplier Employee and or Transferring Buyer Employee,

as set out in the Paragraph 4 of Call-Off Schedule 6 (*TUPE Surcharge*);

“GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679)

“General Change in Law” means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;

“Goods” means the Goods specified in the Specification that are to be purchased by the Supplier on behalf of the Buyer under this Contract excluding any Replacement Equipment.

“Good Industry Practice” means the standards, practices, methods and procedures conforming to the Law and the exercise of 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 within the relevant industry or business sector;

“Good Security Practice” shall mean:

- (a) the technical and organisational measures and practices that are required by, or recommended in, nationally or internationally accepted management standards and codes of practice relating to Information Security (such as published by the International Organization for Standardization or the National Institute of Standards and Technology);
- (b) security standards and guidelines relating to Information Security (including generally accepted principles regarding the segregation of the duties of governance, implementation and control) provided to the general public or Information Security practitioners and stakeholders by generally recognised authorities and organisations; and
- (c) the Government’s security policies, frameworks, standards and guidelines relating to Information Security;

“Government” means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

“Government Buying Standards” means product specifications in line with the European Commission’s Green Public Procurement initiative. The current Government Buying Standards are owned by DEFRA;

“Government Data” means:

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

“Guarantee” means a guarantee in the form set out in Joint Schedule 8 (*Guarantee*) in relation to this Contract or any guarantee acceptable to the Buyer that replaces it from time to time;

“Guarantor” means the person (if any) who has entered into a guarantee in the form set out in Joint Schedule 8 (*Guarantee*) in relation to this Contract;

“Halifax Abuse Principle” means the principle explained in the CJEU Case C-255/02 Halifax and others;

“Identified Risk” means the occurrence of one or more of the events listed in Clause 10.1 (*What may happen if there are issues with your provision of the Services*);

“Impact Assessment” an assessment of a Variation Request in accordance with Paragraph 4 of Joint Schedule 2 (*Variation Control Procedure*);

“Impact Assessment Estimate” has the meaning given in Paragraph 3.3 of Joint Schedule 2 (*Variation Control Procedure*);

“Inclusive Repair Threshold” means £500 exclusive of VAT where payable, under which:

- (a) the entirety of the costs of Category A Remedial Work; and
- (b) the first £500 exclusive of VAT where payable for the Category B Remedial Work, Category C Remedial Work and/or Category E Remedial Work,

are deemed to be included in the Fixed Monthly Fee and, subject to paragraph 3 of Call-Off Schedule 5 (*Pricing*) the Supplier is not entitled to recover any costs and/or expenses in relation to Remedial Work which is subject to the Inclusive Repair Threshold;

“Indemnifier” means a Party from whom an indemnity is sought under this Contract;

“Information” has the meaning given under section 84 of the Freedom of Information Act 2000;

“Information Commissioner” means the UK’s independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;

“Information Security” shall mean:

- (a) the protection and preservation of:
 - (i) the confidentiality, integrity and availability of any Buyer Assets, the Buyer’s System (or any part thereof) and the Supplier System (or any part thereof);
 - (ii) related properties of information including, but not limited to, authenticity, accountability, and non-repudiation; and
- (b) compliance with all Law applicable to the processing, transmission, storage and disposal of Buyer Assets;

“Information Security Manager” shall mean the person appointed by the Supplier with the appropriate experience, authority and expertise to ensure that the Supplier complies with this Schedule;

“Information Security Management System (“ISMS”) shall mean the set of policies, processes and systems designed, implemented and maintained by the Supplier to manage Information Security Risk as certified by ISO/IEC 27001;

“Information Security Questionnaire” shall mean the Buyer’s set of questions used to audit and on an ongoing basis assure the Supplier’s compliance with Call-Off Schedule 6 (Security);

“Information Security Risk” shall mean any risk that might adversely affect Information Security including, but not limited to, a Breach of Security;

“Initial Period” means the period up to and including 31 March 2023;

“Insolvency Event” means:

- (a) in respect of a person:
- (b) 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 (English Law) for the benefit of, its creditors; or
- (c) 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
- (d) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working 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
- (e) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (f) 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
- (g) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- (h) being a “small company” within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (i) where the person is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership;
- (j) it applies to court for, or obtains, a moratorium under Part A1 of that Act; or
- (k) it proposes, or takes any step in relation to, a Scheme of Arrangement under Part 26 or Part 26A of the Companies Act 2006, but excluding a scheme of arrangement which is a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction; or
- (l) any event analogous to those listed in limbs (a) to (k) (inclusive) occurs under the law of any other jurisdiction;

“Installation Works” means the decommissioning, removal and disposal of Buyer Equipment, the design, manufacture, ordering, purchase, delivery, installation, testing and commissioning of Replacement Equipment undertaken in accordance with this Contract;

“Intellectual Property Rights” or “IPR” means:

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- (c) all other rights having equivalent or similar effect in any country or jurisdiction;

“IPR Claim” means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Buyer in the fulfilment of its obligations under a Contract;

“IR35” means the off-payroll rules requiring individuals who work through their company pay the same tax and National Insurance contributions as an employee which can be found online at: <https://www.gov.uk/guidance/ir35-find-out-if-it-applies>;

“ISO/IEC 27001, ISO/IEC 27002 and ISO 22301” shall mean

- (a) ISO/IEC 27001;
- (b) ISO/IEC 27002/IEC; and
- (c) ISO 22301,

in each case as most recently published by the International Organization for Standardization or its successor entity (the **“ISO”**) or the relevant successor or replacement information security standard which is formally recommended by the ISO;

“Key Personnel” means those individuals who are identified as being key personnel in the Annex to Call-Off Schedule 7 (*Key Staff*);

“Key Roles” means those key roles identified as such in the Annex to Call-Off Schedule 7 (*Key Staff*);

“Key Staff” means the Key Staff who will fulfil the Key Roles;

“Key Sub-Contract” means each Sub-Contract with a Key Subcontractor;

“Key Subcontractor” means any Subcontractor:

- (a) which is relied upon to deliver any Work Package (if required) within the Deliverables in their entirety;
- (b) which the Buyer considers to be a key subcontractor;
- (c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under the Contract; and

(d) which is referred to in the Annex to Joint Schedule 6 (*Key Subcontractors*);

“Key Subcontractor Financial Distress Event” means a Financial Distress Event which relates to a Key Subcontractor;

“Know-How” means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party’s possession before the applicable Start Date;

“KPI At Risk Amount” means in relation to a KPI in respect of a Service Period, the amount of the Charges for that Service Period which is at risk as calculated in accordance with Paragraph 3.3 of Part A of Call-Off Schedule 14 (*Key Performance Indicators*);

“KPI Category” means each of the categories in the column headed KPI Name in the Performance Criteria tab of the KPI Model;

“KPI Category At Risk Amount” means in relation to a KPI Category in respect of a Service Period, the amount calculated in accordance with Paragraph 3.2 of Part A of Call-Off Schedule 14 (*Key Performance Indicators*);

“KPI Credits” means any KPI credits specified in Call-Off Schedule 14 (*Key Performance Indicators*) as being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more KPIs;

“KPI Failure” means a failure to meet the KPI Performance Measure in respect of a KPI;

“KPI Model” means the model comprised in the Excel worksheet - KPI Model, and attached in the Annex A to Part A of Call-Off Schedule 14 (*Key Performance Indicators*) to be used for calculating any adjustments to the Charges as a result of the operation of the KPI regime in this Schedule;

“KPI Performance Measure” shall be the relevant percentage set out in Call-Off Schedule 14 (*Key Performance Indicators*) for each KPI;

“KPIs” means any key performance indicator applicable to the provision of the Deliverables under the Contract (which, where Call-Off Schedule 14 (*Key Performance Indicators*) is used in this Contract, are referred to in such Schedule);

“Labour Count” means the total number of Transferring Former Supplier Employees and/or Transferring Employer Employees identified in the Suppliers solution;

“Labour Cost” means the necessary labour costs incurred by the Supplier in carrying out a Remedial Work and such costs shall be calculated by multiplying the time spent by such labour, taking into account the express provisions of Call-Off Schedule 5 (*Pricing*), as follows:

- (a) where a rate exists in the Pricing Matrix, be calculated by multiplying the time spent by such labour, taking into account the express provisions of Call-Off Schedule 5 (*Pricing*), with the relevant fixed rate set out in the Pricing Matrix; and

- (b) where there is no rate in the Pricing Matrix, be calculated by multiplying the time spent by such labour, taking into account the express provisions of Call-Off Schedule 5 (*Pricing*), with an agreed fixed rate which shall be agreed between the parties prior to the Supplier carrying out the out the relevant Remedial Work;

“Law” means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;

“LED” means the Law Enforcement Directive (Directive (EU) 2016/680);

“LGPS” the schemes as defined in Annex D3 to Part D of Call-Off Schedule 2 (*Staff Transfer*);

“LGPS Admission Agreement” an admission agreement within the meaning in Schedule 1 of the Local Government Pension Scheme Regulations 2013;

“LGPS Admission Body” an admission body (within the meaning of Part 3 of Schedule 2 of the Local Government Pension Scheme Regulations 2013);

“LGPS Eligible Employees” any Fair Deal Employee who at the relevant time is an eligible employee as defined in the LGPS Admission Agreement or otherwise any Fair Deal Employees who immediately before the Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the LGPS or of a scheme Broadly Comparable to the LGPS;

“LGPS Regulations” the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS;

“LLM Services” the letting and lease management services provided by the relevant Buyer Supply Chain Member in respect of the Buyer Estate;

“Losses” means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (English law) (including negligence), breach of statutory duty, misrepresentation or otherwise and “Loss” shall be interpreted accordingly;

“Management Fee” means:

- (a) the Corporate Management Fixed Fee; and
- (b) the Remedial Work Management Fixed Fee;

“Management Information” means any information reasonably requested by the Buyer and/or the Buyer’s Authorised Representative from the Supplier that demonstrates to the Buyer and/or the Buyer’s Authorised Representative the Supplier’s plans for the future delivery of the Deliverables, PPM Tasks and Remedial

Works and/or that the Supplier is delivering the Deliverables, PPM Tasks and Remedial Works in accordance with the requirements of the Contract;

“Mandatory Wage” means either:

- (a) the statutory minimum hourly rate of pay including the National Living Wage and National Minimum Wage as set by the Crown; or
- (b) the introduce of a requirement by the Buyer that the Supplier pay Supplier Personnel a non-statutory minimum hourly rate of pay (such as the Living Wage or London Living Wage as set by the Living Wage Foundation);

“Milestone” means an event or task described in the Mobilisation Plan;

“Mobilisation Failure” means a failure by the Supplier to provide any of the Mobilisation Deliverable Items by the expiry of the Mobilisation Period;

“Mobilisation Deliverable Item” means an item or feature in the supply of the Deliverables delivered or to be delivered by the Supplier to the reasonable satisfaction of the Buyer at or before the expiry of the Mobilisation Period listed in the Mobilisation Plan and including but not limited to a Remedial Backlog Programme in accordance with Annex F of the Specification;

“Mobilisation Payment” means the fee identified within the ‘Mobilisation’ tab of the Pricing Matrix plus any overheads and profit payable on such fee;

“Mobilisation Period” means the period from the Effective Date until 31 August 2021;

“Mobilisation Plan” means the plan attached at the Annex to Call-Off Schedule 13 (*Mobilisation Plan*) (as may be amended in accordance with this Contract);

“Month” means a calendar month and **“Monthly”** shall be interpreted accordingly;

“Monthly TUPE Risk Premium” is the monthly TUPE risk premium payable for the previous Service Month calculated in accordance with Call-Off Schedule 6 (TUPE Surcharge);

“National Insurance” means the contributions required by the National Insurance Contributions Regulations 2012 (SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

“NCSC” shall mean the National Cyber Security Centre or its successor entity (where applicable);

“Net Book Value” means the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Buyer of the same date as this Contract;

“New Fair Deal” the revised Fair Deal position set out in the HM Treasury guidance: *“Fair Deal for Staff Pensions: Staff Transfer from Central Government”* issued in October 2013 including:

- (a) any amendments to that document immediately prior to the Relevant Transfer Date; and

- (b) any similar pension protection in accordance with the subsequent Annex D1-D3 inclusive of Call-Off Schedule 2 (*Staff Transfer*) as notified to the Supplier by the CCS or Buyer; and

“New IPR” means the:

- (a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of a Contract and updates and amendments of these items including (but not limited to) database schema; and/or
- (b) IPR in or arising as a result of the performance of the Supplier’s obligations under a Contract and all updates and amendments to the same;

but shall not include the Supplier’s Existing IPR;

“NHS Body” has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;

“NHS Pensions” NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS;

“NHS Pension Scheme Arrears” any failure on the part of the Supplier or its Subcontractors (if any) to pay employer’s contributions or deduct and pay across employee’s contributions to the NHSPS or meet any other financial obligations under the NHSPS or any Direction Letter in respect of the NHSPS Eligible Employees;

“NHS Pension Scheme Regulations” as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;

“NHS Premature Retirement Rights” rights to which any Fair Deal Employee (had they remained in the employment of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS) would have been or are entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;

“NHSPS” the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations;

“NHSPS Eligible Employees” each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:

- (a) their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or

- (b) their employment with a Former Supplier who provides access to the NHSPS pursuant to an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal and were permitted to re-join the NHSPS, having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),

and, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services (the same as or similar to the Services).

For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an “open” Direction Letter or other NHSPS “access” facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHSPS) is not an NHSPS Eligible Employee;

“Non-Exclusive Assets” means those Supplier Assets used by the Supplier or a Key Subcontractor in connection with the Deliverables but which are also used by the Supplier or Key Subcontractor for other purposes;

“Notifiable Default” means:

- (a) in the event that the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default);
- (b) the occurrence or likelihood of the occurrence of a failure to meet any KPI Performance Measure;
- (c) the occurrence or likelihood of the occurrence of a Critical Failure Event; or
- (d) the occurrence or likelihood of the occurrence of a Persistent KPI Failure;

“Notified Sum” the amount stated in the Buyer’s Charges Due notice under Paragraph 1.8 of Part B of Call-Off Schedule 5 (*Pricing*) or, in the absence of such notice, the amount stated in the Supplier’s application for payment;

“Open Book Data “ means the complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Contract;

“Operational Variation” without prejudice to the provisions of Call-Off Schedule 3 (*Continuous Improvement*), any change in the Supplier's operational procedures which in all respects, when implemented:

- (a) will not affect the Charges and will not result in any other costs to the Buyer;

- (b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services;
- (c) will not adversely affect the interfaces or interoperability of the Services with any of the Buyer System; and
- (d) will not require a change to this Contract;

“Optional Extension Period” means such period or periods beyond which the Initial Period may be extended up to a maximum of 30 months;

“Order Form” means the order form at Joint Schedule 9 (Order Form);

“Other Pension Cost” means:

- (a) in respect of CSPA Eligible Employees those sums set out at Clauses 7.1.1 (annual administration charges covering core services), 7.1.5 (employer contributions), 7.1.7 (the ASLC) and 7.1.8 (flat charges applicable to the Partnership Pension Account) of the CSPA Admission Agreement;
- (b) in respect of NHSPA Eligible Employees, the standard employer contribution rate applicable to NHS Pensions employers during the Contract Period and payable by the Supplier (but no other costs, contributions, charges or surcharges payable by the Supplier to or in respect of NHS Pensions or in respect of any NHS Premature Retirement Rights, unless otherwise agreed in writing by the Buyer);
- (c) in respect of LGPS Eligible Employees, the standard employer contribution rate applicable to LGPS Eligible Employees during the Contract Period and payable by the Supplier such sums expressed and set out in the rates and adjustments certificate under regulation 62 of the LGPS Regulations (but no other costs, contributions, charges or surcharges payable by the Supplier to or in respect of the LGPS unless otherwise agreed in writing by the Buyer) less any costs recoverable under Paragraph 5 of Annex D3: LGPS of Part D Pensions of Call-Off Schedule 2 (*Staff Transfer*); and
- (d) such other pension contributions, charges or costs incurred by the Supplier which have been expressly agreed by the Buyer in writing to constitute “Other Pension Costs”;

“Out of Hours” means those hours identified as being out of hours in the Specification;

“Parliament” takes its natural meaning as interpreted within by Law;

“Party” means the Buyer or the Supplier. **“Parties”** shall mean both of them where the context permits;

“Payment Index” means UK Consumer Prices Index (excluding owner occupiers’ housing costs (CPIH)), as published by the ONS;

“Payment Mechanism” means the payment mechanism that the Parties shall develop and agree during the Mobilisation Period, so that the agreed payment mechanism:

- (a) reflects the principles set out in Call-Off Schedule 5 (Pricing); and

- (b) includes the Buyer's 'KPIs worked example dated 26 January 2021' that the Buyer provided to the Supplier as part of the procurement process;

"PCI DSS" shall mean the Payment Card Industry Data Security Standard as most recently published by the PCI Security Standards Council, LLC or its successor entity (the **"PCI"**);

"Penetration Test" shall mean a simulated attack on any Authority Assets, the Buyer System (or any part thereof) or the Supplier System (or any part thereof);

"Pension Base Cost" in relation to the LGPS Eligible Employees (if any), who are at the relevant time members of the LGPS, the relevant percent of pensionable pay (as may be notified in writing to the Supplier by the Buyer) for those employees who are members of a Fund (if applicable ("pensionable pay" for these purposes as defined under the LGPS Regulations));

"Pension Benefits" any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme;

"Pension Costs" the costs of complying with the Pension Requirements, but excluding any costs relating to:

- (a) the provision of any bond or indemnity that the Supplier or its Subcontractors are required to provide under the terms of any Admission Agreement; and
- (b) the provision of advice from the actuary to the LGPS arising from the instruction from the Supplier or its Subcontractors in relation to the Pension Requirements;

which will be covered by the Supplier or Subcontractor, as appropriate;

"Pension Requirements" the terms and conditions set out in:

- (a) Paragraph 1 of Annex D3 of Call-Off Schedule 2 (*Supplier to Become an LGPS Admission Body*), and Paragraph 4 of Annex D3 Call-Off Schedule 2 (*Discretionary Benefits*); and
- (b) the LGPS Admission Agreement,

but in each case in respect of LGPS Eligible Employees only;

"Performance Monitoring Reports" shall have the meaning in Part B of Call-Off Schedule 14 (*Key Performance Indicators*);

"Performance Review Meetings" shall have the meaning in Part B of Call-Off Schedule 14 (*Key Performance Indicators*);

"Permitted Event" means any material event which is outside the reasonable control of the Supplier and which a supplier exercising reasonable skill, care and diligence would not have been able to foresee at the time of providing and/or planning to provide the Deliverables, taking into account the nature of the Deliverable and provided always that the Supplier has exercised best endeavours to mitigate the effect of such an event;

"Persistent Buyer Cause" means:

- (a) when a Buyer Cause affects two or more Buyer Premises; or

- (b) when a Buyer Cause has occurred on more than three separate occasions within any 6 month period;

“Persistent KPI Failure” means the Supplier's actual performance against the KPIs falls to or below the standard to which Paragraph 5 of Part A of Call-Off Schedule 14 (*Key Performance Indicators*) refers;

“Personal Data” has the meaning given to it in the GDPR;

“Personal Data Breach” has the meaning given to it in the GDPR;

“Planned Maintenance” means planned maintenance as described in the Specification;

“PPM Deliverable” means for each PPM Task, the Deliverables that the Supplier is required to provide to the Buyer, including but not limited to all documents, certificates, reports and other information that the Supplier is required to Upload to demonstrate to the Supplier (acting reasonably) that:

- (a) the PPM Task has achieved PPM Task Completion;
- (b) the Buyer's Premises comply with all Laws and guidance; and
- (c) it has complied with its obligations under this Contract;

“PPM Plan” means the PPM plan set out in the Specification (as may be updated in accordance with this Contract);

“PPM Task” means a task set out in the PPM Plan;

“PPM Task Completion” means in relation to each PPM Task, where the Supplier has:

- (a) carried out all the work which the Specification, PPM Plan and/or any other part of this Contract states is to be carried out and/or completed by the Supplier by the relevant date set out in the PPM Plan;
- (b) Uploaded all relevant documents associated with a PPM Task;
- (c) complied with all of the requirements of this Contract to the extent they relate to such PPM Task; and
- (d) Submitted a Routine Variation (where relevant),

provided that the Supplier shall not be entitled to achieve PPM Task Completion where the PPM Task is carried out by or on behalf of the Supplier more than 10 Working Days earlier than the relevant date set out in the PPM Plan;

“PPM Task Fixed Price” means in relation to a PPM Task the relevant Unit Rate set out in the Pricing Matrix and such rate shall be deemed to include all costs, expenses, disbursements and otherwise incurred in relation to complying with its obligations under this Contract for the planning, delivery and management or otherwise of the PPM Tasks and the provision of the PPM Deliverables to achieve PPM Task Completion for a PPM Task;

“Prescribed Person” means a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in ‘Whistleblowing: list of prescribed people and bodies’, 24 November 2016, available online at: <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>;

“Pricing Matrix” means the pricing matrix attached at Part C of Call-Off Schedule 5 (*Pricing*) including without limitation the price list setting out the Unit Rates as adjusted from time to time in accordance with this Contract;

“Processor” has the same meaning as in the GDPR and “Processing” and “Processed” shall be interpreted accordingly;

“Programme Information” means:

- (a) any required Remedial Work (including their categorisation) arising from PPM Tasks, and/or Remedial Work requested by the Buyer, and such Remedial Work is to be carried out by the Supplier;
- (b) the costs for carrying out each item of Remedial Work identified on the Remedial Work Programme;
- (c) the dates when, in order to achieve Completion of Remedial Work in accordance with the programme, the Supplier will need:
 - (i) planned starting date and completion date and any other key dates;
 - (ii) access to a part of the Site, taking into account the Site Operational Hours and whether any work is Disruptive Work;
 - (iii) other things to be provided by the Buyer or the Buyer’s Authorised Representative; and
 - (iv) information from the Buyer or the Buyer’s Authorised Representative;
- (d) for each item, of work or task, the Supplier shall state how it plans to do the work, identifying the principal equipment and other resources which it plans to use; and
- (e) any approved Remedial Work Proposal in accordance with Annex F of the Specification;

“Progress Meeting” means a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;

“Progress Meeting Frequency” means monthly or such other period as the Parties may agree;

“Project Services” the services in relation to projects in respect of the Buyer Estate provided by the relevant Buyer Supply Chain Member;

“Protective Measures” means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner

after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

“Rating Agency” means Dun & Bradstreet or such other credit rating agency generally recognised in the United Kingdom business sector as publishing ratings of the ability of a debtor to pay interest and the likelihood of debt default;

“Ratchet” shall have the meaning in Part A of Call-Off Schedule 14 (*Key Performance Indicators*);

“Receiving Party” the Party which receives a proposed Variation;

“Recipient Party” means the Party which receives or obtains directly or indirectly Confidential Information;

“Rectification Plan” means the Supplier’s plan (or revised plan) to rectify it’s breach using the template in Joint Schedule 10 (*Rectification Plan Template*) which shall include:

- (a) full details of the Default that has occurred, including a root cause analysis;
- (b) the actual or anticipated effect of the Default; and
- (c) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable);

“Rectification Plan Failure” means

- (a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Buyer within the timescales specified in Clause 10.8 and Clause 10.9 (*Submission of the draft Rectification Plan*) and Clause 10.10, Clause 10.11 and Clause 10.12 (*Agreement of the Rectification Plan*);
- (b) the Buyer, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 10.10 (*Agreement of the Rectification Plan*);
- (c) the Supplier failing to rectify a material Default within the later of:
 - (i) thirty (30) Working Days of a notification made pursuant to Clause 10.5; and
 - (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default;
- (d) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of 6 months for the same (or substantially the same) root cause as that of the original Notifiable Default;

“Rectification Plan Process” means the process set out in Clause 10.8 and Clause 10.9 (*Submission of the draft Rectification Plan*);

“Redundancy” has the meaning given by section 139 of the Employment Rights Act 1996;

“Redundancy Payment” means any and all of the following payments which may be made by the Supplier (or, if relevant, the notified Sub-Contractor) to any Affected Employee:

- (a) statutory redundancy payments made in accordance with section 162 of the Employment Rights Act 1996;
- (b) contractual redundancy payments (which for this purpose shall mean redundancy payments made in accordance with the terms and conditions of employment to which the relevant Affected Employee was entitled at the Reference Date and for the avoidance of doubt, in each employee's case, shall not include any ex gratia payment, payment for accrued holiday or any other payment made as compensation for the termination of employment);
- (c) where it is not reasonably practicable to require the Affected Employee to work their notice period, in respect of each Affected Employee, either:
 - (i) payment of damages for breach of the applicable statutory notice entitlement or, if higher, the notice entitlement under the terms and conditions of employment to which the relevant employee was entitled at the Reference Date; (and such payment for avoidance of doubt, shall be limited to the actual losses incurred or which would be incurred by the relevant employee if these are ascertainable by the time the payment is made, but otherwise may be calculated on the basis of the losses the relevant employee would incur in respect of the entirety of the unserved period of notice and assuming no mitigation of losses); or
 - (ii) payment in lieu of any such notice entitlement, made pursuant to such terms and conditions of employment, but for the avoidance of doubt, shall not include any payment of salary or wages or of any benefit in respect of any period of continuing employment (whether during a notice period or otherwise);
- (d) any payment made in satisfaction of any Early Retirement Right to which the relevant employee was entitled under his or her terms and conditions of employment on the Reference Date;

“Redundancy Surcharge” means a surcharge on the Charges equal amount to each relevant Redundancy Payment;

“Reference Date” means either:

- (a) the date of commencement of employment, if the Affected Employee became employed by the Supplier (or, if relevant, notified Sub-contractor) after the Relevant Transfer Date; or
- (b) the Relevant Transfer Date,

save that where the Supplier (or, if relevant, notified Sub-contractor) and Former Supplier are the same entity such that the Employment Regulations do not apply to transfer staff, the relevant date shall be either the Contract Date or, if the Affected

Employee became employed by the Supplier (or, if relevant, notified Sub-contractor) after such date, the date of commencement of employment;

“Registers” means the register and configuration database referred to in Paragraph 1.2 of Call-Off Schedule 10 (*Exit Management*);

“Regulations” means the Public Contracts Regulations 2015 as amended from time to time;

“Related Supplier” means any person who provides Deliverables to the Buyer which are related to the Deliverables from time to time;

“Relevant Requirements” means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

“Relevant Transfer” means a transfer of employment to which the Employment Regulations applies, and for the purposes of Call-Off Schedule 6 (*TUPE Surcharge*) Paragraphs 3 and 4 only shall include the situation where the Former Supplier becomes the Supplier on the Start Date;

“Relevant Transfer Date” means in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place, and for the purposes of Part D: Pensions of Call-Off Schedule 2 (*Staff Transfer*), shall include the Start Date, where appropriate;

“Remedial Backlog Programme” means the programme for completion of the Outstanding Remedial Work provided to the Supplier as part of Mobilisation (as updated in accordance with this Contract);

“Remedial Work Programme” means the programme set out in the Specification (as updated in accordance with this Contract);

“Remedial Work” means any works required in relation to a PPM Task to ensure statutory compliance and/or proper functioning of the relevant Asset and including the following categories of Remedial Work;

- (a) Category A Remedial Work;
- (b) Category B Remedial Work;
- (c) Category C Remedial Work;
- (d) Category D Remedial Work; and
- (e) Category E Remedial Work;

“Remedial Work Completion” means Completion of Remedial Work;

“Remedial Work Completion Period” means the relevant Remedial Work completion period set out in Table 2 of Annex F of the Specification;

“Remedial Work Estimate” means for any Category B Remedial Work and/or Category E Remedial Work, the Supplier shall provide the Buyer with an estimate detailing the anticipated cost of such Category B Remedial Work and/or Category E Remedial Work to be calculated by assessing the anticipated Allowable Cost;

“Remedial Work Fee” means the following fees payable to the Supplier by the Buyer in relation to the provision of the relevant Remedial Work and as calculated in accordance with Call-Off Schedule 5 (*Pricing*):

- (a) Category B Remedial Work Fee;
- (b) Category C Remedial Work Fee;
- (c) Category D Remedial Work Fee; and
- (d) Category E Remedial Work Fee;

“Remedial Work Fixed Cost” means where the Buyer approves a Remedial Work Fixed Cost Quotation, the fixed cost for the relevant Remedial Work set out in such quotation;

“Remedial Work Fixed Cost Quotation”, means for any Category C Remedial Work and/or Category D Remedial Work, the Supplier shall provide the Buyer with a quotation detailing the cost of such Category C Remedial Work and/or Category D Remedial Work and such quotation shall be calculated by assessing the relevant:

- (a) Consumable Cost;
- (b) Equipment Cost;
- (c) Labour Cost; and
- (d) Subcontractor Labour Cost,

required by the Supplier to carry out and compete the Category C Remedial Work and/or Category D Remedial Work in a proportionate and reasonable manner and in accordance with the terms of this Contract;

“Remedial Work Management Fixed Fee” means the relevant fixed fee payable to the Supplier by the Buyer in relation to the Buyer’s obligations to manage and plan the delivery of the Remedial Work as set out in the Pricing Matrix and such fee shall be deemed to include all the Supplier’s costs, expenses, disbursements or otherwise incurred in relation to complying with such obligations under this Contract save for:

- (a) the Corporate Management Fixed Fee;
- (b) the Variable Fee; and
- (c) other costs which the Contract expressly allows for,

provided that:

- (d) there shall be no double counting between the Remedial Work Management Fixed Fee and any costs, expenses, disbursements or otherwise included as part of the Corporate Management Fixed Fee; and/or
- (e) the Buyer shall not be entitled to include any such costs, expenses, disbursements or otherwise as part of any Remedial Work Fee;

“Remedial Work Programme”, means the programme of Remedial Work held on the Buyer’s CAFM System and such programme shall be updated by the Supplier in

accordance with the relevant Submission Date to include the Programme Information and any other information required by the Contract;

“Replacement Supplier” means any third party provider of Replacement Services appointed by or at the direction of the Buyer from time to time, or where the Buyer is providing Replacement Services for its own account, the Buyer;

“Replacement Equipment” means plant, spare parts, equipment, replacement parts, materials and other items (whether or not reused or reconditioned) supplied by the Supplier in order to deliver construction works, maintenance, repair or replacement Services;

“Replacement Deliverables” means any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any of the Deliverables following the Expiry Date, whether those goods are provided by the Buyer internally and/or by any third party;

“Replacement Goods” means any goods which are substantially similar to any of the Goods and which the Buyer receives in substitution for any of the Goods following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;

“Replacement Subcontractor” means a Subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Subcontractor of any such Subcontractor);

“Replacement Services” means any services which are substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;

“Replacement Supplier” means any third party provider of Replacement Deliverables appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Deliverables for its own account, shall also include the Buyer;

“Report” means any document, certificate, report or management information that the Supplier is required to provide to the Buyer, the Buyer’s Authorised Representative and/or the Supply Chain Integrator (as the case may be) including, without limitation, any:

- (a) Transparency Report; and
- (b) Performance Monitoring Report,

and each document, certificate, report or management information shall:

- (c) be in the format specified in this Contract;
- (d) include all information specified in this Contract or as may be requested by the Buyer (acting reasonably);
- (e) be complete and accurate;
- (f) be Uploaded; and

(g) comply with all other requirements of the Contract;

“Request For Information” means a request for information or an apparent request relating to a Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;

“Required Insurances” means the insurances required by Joint Schedule 3 (*Insurance Requirements*);

“Reserved Matters” includes:

- (a) decisions relating to changes in the National Threat Level;
- (b) matters which relate to, or may cause, a conflict of interest between the Supplier and the Supply Chain Integrator; and
- (c) any other matters as may be specified in writing as Reserved Matters from time to time by the Buyer,

and references to a **Reserved Matter** shall be construed accordingly;

“Retirement Benefits Scheme” a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004.

“Review Report” has the meaning given to it in Paragraph 6.2 of Call-Off Schedule 6 (*TUPE Surcharge*);

“Risk Profile” shall mean a description of any set of risk. The set of risks can contain those that relate to a whole organisation, part of an organisation or as otherwise applicable.

“Routine” means the Remedial Work identified as such in Appendix 1 of Annex F of the Specification;

“Routine Variation” means any update to the PPM Plan, the Remedial Work Plan, the Remedial Backlog Programme, the Risk Management Report, Management Information, the Buyer Asset Register and/or any other plan, report or information notified to the Supplier by the Buyer or the Buyer’s Authorised Representative or by the Buyer or the Buyer’s Authorised Representative to the Supplier;

“Schedules” means the Joint Schedules and Call-Off Schedules (and their Annexes) attached to this Contract;

“Security Policy” means the Buyer's security policy set out at Call-Off Schedule 9 (Security Policy) in force as at the Start Date, as updated from time to time and notified to the Supplier;

“Security Services” the security services provided by the relevant Buyer Supply Chain Member in respect of the Buyer Estate;

“Security Test” shall include, but not be limited to, Penetration Test, Vulnerability Scan, Availability Test and any other security related test and audit;

“Serious Fraud Office” means the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;

“Service Change Redundancy Surcharge” means in relation to a redundancy as described in Paragraph 3.1 of Call-Off Schedule 23 (*Redundancy Surcharge*), a surcharge on the Charges equal in amount to the Redundancy Payment;

“Service Month” means each Monthly period (or part of a Month at the start and end of the Contract Period where applicable) during the Contract Period when the Supplier provides Deliverables;

“Service Period” means a Service Month;

“Services” means the services made available by the Supplier as specified in the Specification;

“Service Transfer” means any transfer of the Deliverables (or any part of the Deliverables), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;

“Service Transfer Date” means the date of a Service Transfer;

“Sites” means any premises (including the Buyer Premises, the Supplier’s premises or third party premises) from, to or at which:

- (a) the Deliverables are (or are to be) provided; or
- (b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables;

“Special Terms” means the Clauses which form the front end of this Contract;

“Specific Change in Law” means a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Start Date;

“Specification” means the specification attached to this Contract at Call-Off Schedule 22 (*Specification*);

“Staffing Information” means in relation to all persons identified on the Supplier’s Provisional Supplier Personnel List or Supplier’s Final Supplier Personnel List, as the case may be, such information as the Buyer may reasonably request (subject to all applicable provisions of the Data Protection Laws), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement, gender and place of work;
- (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;

- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

“Standards” means any:

- (a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;
- (b) standards detailed in the Specification;
- (c) standards agreed between the Parties from time to time;
- (d) relevant Government codes of practice and guidance applicable from time to time;

“Start Date” means 1 September 2021 or such later date as the Buyer (in its absolute discretion) may decide;

“Statutory Schemes” means the CSPA, NHSPS or LGPS.

“Storage Media” means the part of any device that is capable of storing and retrieving data;

“Sub-Contract” means any contract or agreement (or proposed contract or agreement), other than this Contract, pursuant to which a third party:

- (a) provides the Deliverables (or any part of them);
- (b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or
- (c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);

“Subcontractor” means any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;

“Subcontractor Labour Cost” means the necessary labour costs incurred by the Supplier’s subcontractor in carrying out Remedial Work and such costs shall be calculated by multiplying the time spent by such labour, taking into account the express provisions of Call-Off Schedule 5 (Pricing), as follows:

- (a) where a rate exists in the Pricing Matrix, be calculated by multiplying the time spent by such labour, taking into account the express provisions of Call-Off Schedule 5 (Pricing), with the relevant fixed rate set out in the Pricing Matrix; and
- (b) where there is no rate in the Pricing Matrix, be calculated by multiplying the time spent by such labour, taking into account the express provisions of Call-Off Schedule 5 (Pricing), with an agreed fixed rate which shall be agreed between the parties prior to the relevant subcontractor carrying out the relevant Remedial Work;

“Submission Date” means the relevant date set out in Table 1 of this Annex F of the Specification and/or those timescales set out in paragraph 3.8 of Annex F of the Specification;

“Submit” and **“Submitted”** means successfully to submit any report or document containing Management Information to the Buyer, the Buyer’s Authorised Representative and/or the Supply Chain Integrator (as the case may be):

- (a) in a format to be agreed during the Mobilisation Period and in any event in a format that shall enable the Buyer, the Buyer’s Authorised Representative and the Supply Chain Integrator to access, use, read, write, amend, search, file, save and/or carry out any other reasonable function with such information, Report or other document; and
- (b) Monthly or such other period to be agreed between the Parties during the Mobilisation Period, provided that if within two (2) Working Days of receipt of written notice from the Buyer, the Buyer’s Authorised Representative and/or the Supply Chain Integrator (as the case may be) that the Supplier has not submitted successfully or at all any such report or document, the Supplier submits a report or document or a revised report or document (as the case may be) which addresses the issues set out such notice, the Buyer shall be deemed to have Submitted the report or document by the applicable timescale, provided further that the Parties agree that the Buyer is not required to issue such notice and if the Buyer chooses not to issue such notice, this shall not affect the Buyer’s rights under this Contract;

“Sub-processor” means any third Party appointed to process Personal Data on behalf of the Supplier related to a Contract;

“Supplier Assets” means all assets and rights used by the Supplier to provide the Deliverables in accordance with the Contract but excluding the Buyer Assets;

“Supplier Authorised Representative” means the representative appointed by the Supplier from time to time in relation to this Contract as notified to the Buyer;

“Supplier's Confidential Information” means:

- (a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier;
- (b) 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 which comes (or has come) to the Supplier’s attention or into the Supplier’s possession in connection with a Contract; and
- (c) Information derived from any of the above,

as further set out in Joint Schedule 4 (*Commercially Sensitive Information*);

“Supplier Equipment” means the Supplier’s hardware, computer and telecoms devices, equipment, plant, materials and such other items used by the Supplier (but not hired, leased or loaned from the Buyer) in the performance of its obligations under this Contract but excluding Replacement Equipment;

“Supplier Non-Performance” means where the Supplier has failed to:

- (a) Achieve a Milestone by its Milestone Date;
- (b) provide the Goods and/or Services in accordance with the KPIs; and/or
- (c) comply with an obligation under this Contract;

“Supplier Profit” means in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total costs (in nominal cash flow terms) in respect of this Contract for the relevant period;

“Supplier Profit Margin” means in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;

“Supplier Staff” means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier’s obligations under this Contract;

“Supplier Variation Manager” the person appointed to that position by the Supplier from time to time and notified in writing to the Buyer or, if no person is notified, the Supplier Representative;

“Supplier’s Final Supplier Personnel List” means a list provided by the Supplier of all Supplier Personnel whose will transfer under the Employment Regulations on the Service Transfer Date;

“Supplier’s Provisional Supplier Personnel List” means a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

“Supplier System” means the information and communications technology system used by the Supplier in implementing and performing the Services including the

Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System);

“Supplier Personnel” means all employees of the Supplier (and any subcontractor) who are wholly or mainly engaged in or assigned to the provision of the Deliverables or any relevant part of the Deliverables;

“Supplier Termination Event” means:

- (a) the Supplier:
 - (i) commits a material Default which is irremediable; or
 - (ii) commits a material Default which is capable of remedy, but which has not been remedied by the Supplier within 30 days of being notified in writing to do so by the Buyer;
- (b) a Conflict of Interest arises in connection with the delivery of the Deliverables to which no mitigation acceptable to the Buyer can be promptly identified;
- (c) where a right of termination is expressly reserved in this Contract;
- (d) the Supplier is in material Default in respect of any data handling and/or security requirements set out in Clause 15 (*Data protection and information*);
- (e) (subject always to the Corporate Insolvency and Governance Act 2020) an Insolvency Event occurring in respect of the Supplier and/or the Guarantor;
- (f) a change of Control of the Supplier and/or the Guarantor unless:
 - (i) the Buyer has given its prior written consent (not to be unreasonably withheld or conditioned) to the particular change of Control, which subsequently takes place as proposed; or
 - (ii) the Buyer has not served its notice of objection within 6 months of the later of the date on which the change of Control took place or the date on which the Buyer was given notice of the change of Control;
- (g) a material failure by the Supplier to comply with legal obligations in the fields of environmental, social or labour law;
- (h) the departure from the Supplier of any of its senior officers or Key Personnel where the Buyer has reasonable grounds to believe that such departure will impact or could potentially impact the delivery of the Deliverables unless the Buyer has not served its notice of objection within 6 months of the date on which the Buyer was informed by the Supplier of such departure;
- (i) the Supplier assigns, transfers or otherwise disposes of its rights, obligations and/or liabilities or seeks to assign, transfer or otherwise dispose of its rights, obligations and/or liabilities under the whole or any part of this Contract to a third party in breach of the terms of this;
- (j) the Supplier is in Default under Clause 28 (*Preventing fraud, bribery and corruption*);

- (k) the Supplier or any Subcontractor or Affiliate through its act or omission brings the Buyer into disrepute and/or diminishes the trust the public places in the Buyer;
- (l) the Guarantee and/or Performance Bond is withdrawn and/or ceases to be enforceable for any reason (without the Guarantee and/or Performance Bond being replaced with a comparable bond and/or guarantee to the satisfaction of the Buyer with the Guarantor or with another guarantor which is acceptable to the Buyer);
- (m) there is a breach or anticipatory breach of the Guarantee by the Guarantor;
- (n) an occurrence of any of the circumstances in regulations 73(1) (a) to (c) of the Regulations;
- (o) this Contract has been substantially modified in breach of regulation 72(9) of the Regulations;
- (p) the Buyer discovers that the Supplier was in one of the situations in regulations 57(1) to (3) of the Regulations at the time this Contract was awarded;
- (q) the Court of Justice of the European Union uses Article 258 of the Treaty on the Functioning of the European Union ("TFEU") to declare that this Contract should not have been awarded to the Supplier because of a serious breach of the TFEU or the Regulations;
- (r) a Critical Failure Event occurs or is likely to occur;
- (s) a Persistent KPI Failure occurs;
- (t) the Framework Contract is terminated for any reason;
- (u) a Rectification Plan Failure;
- (v) the Supplier fails to comply with Clause 32.2 (*Tax and financial matters*) or fails to provide details of steps being taken and mitigating factors pursuant to Clause 32.2 (*Tax and financial matters*) which in the reasonable opinion of the Buyer are acceptable; or
- (w) the Supplier fails to obtain and/or maintain a Cyber Essentials Certificate during the Contract Period in accordance with Paragraph 4 of Call-Off Schedule 9 (*Security*);

"Supply Chain Integrator" the third party that the Buyer has appointed to provide the Supply Chain Integrator Services, in its capacity as integrator under such contract and including any replacement third party and/or the Buyer;

"Supply Chain Integrator Services" the management and coordination services provided by the Supply Chain Integrator in respect of the Buyer Supply Chain Members;

"Supporting Documentation" sufficient information in writing to enable the Buyer reasonably to assess whether the Charges, and other sums due from the Buyer detailed in the information are properly payable.

“Termination Assistance” means the activities to be performed by the Supplier pursuant to the Exit Plan, and other assistance required by the Buyer pursuant to the Termination Assistance Notice;

“Termination Assistance Notice” has the meaning given to it in Paragraph 4.1 of Call-Off Schedule 10 (*Exit Management*);

“Termination Assistance Period” means the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 4.2 Call-Off Schedule 10 (*Exit Management*);

“Termination Notice” means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate a Contract on a specified date and setting out the grounds for termination;

“Third Country” means either any country other than the UK, a European Union Member State or a member of the European Economic Area, or in the event of Brexit, any country other than the UK, at the time of transfer of Personal Data;

“Third Party IPR” means Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;

“Tigerscheme” shall mean a scheme for authorised penetration tests which scheme is managed by USW Commercial Services Ltd;

“Transferable Assets” means exclusive Assets which are capable of legal transfer to the Buyer;

“Transferable Contracts” means Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Buyer or any Replacement Supplier to provide the Deliverables or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;

“Transferring Assets” has the meaning given to it in Paragraph 5.2 of Call-Off Schedule 10 (*Exit Management*);

“Transferring Buyer Employees” means those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to the Relevant Transfer Date;

“Transferring Contracts” has the meaning given to it in Paragraph 7.2 of Call-Off Schedule 10 (*Exit Management*);

“Transferring Former Supplier Employees” means in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to the Relevant Transfer Date;

“Transferring Supplier Employees” means those employees of the Supplier and/or the Supplier's Subcontractors to whom the Employment Regulations will apply on the Service Transfer Date;

“Transparency Information” means the Transparency Reports and the content of a Contract, including any changes to this Contract agreed from time to time, except for – (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and (ii) Commercially Sensitive Information;

“Transparency Reports” means the information relating to the Deliverables and performance of the Contracts which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Call-Off Schedule 1 (*Transparency Reports*);

“TUPE Count” means the Staffing Information which includes the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List;

“TUPE Risk Premium” means either the:

- (a) Direct Award TUPE Risk Premium;
- (b) Further Competition TUPE Risk Premium; or
- (c) Fixed Fee TUPE Risk Premium,

as the context requires;

“TUPE Risk Premium Adjustment” means an adjustment to the Further Competition TUPE Risk Premium;

“TUPE Risk Premium Average” means the average calculated by dividing the Further Competition TUPE Risk Premium by the lower of either:

- (a) Labour Count; or
- (b) the TUPE Count;

“Unit Rate” means is the rate for relevant a Deliverable set out in the Pricing Matrix (as adjusted from time to time in accordance with Call-Off Schedule 5 (*Pricing*)).

“Upload” and **“Uploaded”** means successfully to upload any Routine Variation and/or Report to the Buyer CAFM System (or such other system as may be set out in this Contract):

- (a) in a format specified in this Contract and in any event in a format that shall enable the Buyer, the Buyer's Authorised Representative and the Supply Chain Integrator to access, use, read, write, amend, search, file, save and/or carry out any other reasonable function with such Report and/or Routine Variation; and/or
- (b) by the applicable timescale set out in this Contract, provided that if within two (2) Working Days of receipt of written notice from the Buyer that the Supplier has not Uploaded successfully or at all a Report and/or Routine Variation, the Supplier Uploads a Report and/or Routine Variation and/or a revised Routine Variation and/or revised Report (as the case may be) which addresses the issues set out such notice, the Buyer shall be deemed to have Uploaded the Routine Variation and/or Report by the applicable timescale, provided further that the Parties agree that the Buyer is not required to issue such notice and if

the Buyer chooses not to issue such notice, this shall not affect the Buyer's rights under this Contract;

"Urgent" means the Remedial Work identified as such in Appendix 1 of Annex F of the Specification;

"Variable Fee" means for each Service Period, the relevant:

- (a) PPM Task Fixed Price;
- (b) Remedial Work Fee; and
- (c) Monthly TUPE Risk Premium;

"Variation" means the following:

- (a) an Operational Variation;
- (b) a Fast-track Variation; and/or
- (c) any other variation to this Contract instructed pursuant to paragraphs 3 to 10 (as the case may be) of the Variation Control Procedure,

but 'Variation' excludes a Routine Variation, unless the Parties agree or it is determined otherwise;

"Variation Authorisation Note" a form setting out an agreed Variation which shall be substantially in the form of Annex 2 of Joint Schedule 2 (*Variation Control Procedure*); and

"Variation Communication" any Variation Request, Impact Assessment, Variation Authorisation Note or other communication sent or required to be sent pursuant to this Schedule.

"Variation Control Procedure" means the procedure set out in Clause 25 (*Changing this Contract*) and Joint Schedule 2 (*Variation Control Procedure*);

"Variation Request" a written request for a Variation substantially in the form of Annex 1 of Joint Schedule 2 (*Variation Control Procedure*);

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

"Vulnerability Scan" shall mean an ongoing activity to identify any potential vulnerability in any Buyer Assets, the Buyer's System (or any part thereof) or the Supplier System (or any part thereof);

"Work Order" means a written instruction by the Buyer to carry out Remedial Works issued by the Buyer or the Buyer's Authorised Representative pursuant to the Specification;

"Worker" means any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) (<https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees>) applies in respect of the Deliverables;

“Working Day” means any day other than a Saturday or Sunday or public holiday in England and Wales;

“Working Hours” means standard hours of business of the Buyer at each Buyer Premises as set out in the Specification and **“Operational Working Hours”** shall be construed accordingly; and

“Work Package” means a group of Services as defined in the Specification.

Joint Schedule 2

Variation Control Procedure and Routine Variations

1 General principles of Variation Control Procedure

- 1.1 This Schedule sets out the procedure for dealing with Variations and Routine Variation and such procedure is without prejudice to Clause 1.10 and Clause 1.11 (*How the Contract works*).
- 1.2 Operational Variations shall be processed in accordance with Paragraph 8. If either Party disputes whether a change falls within the definition of an Operational Variation, then it must be processed as a Variation.
- 1.3 Routine Variations shall be processed in accordance with Paragraph 11. If either Party disputes whether a change falls within the definition of a Routine Variation, then it must be processed as a Routine Variation, unless otherwise determined by the Dispute Resolution Procedure.
- 1.4 The Parties shall deal with Variations as follows:
 - 1.4.1 either Party may request a Variation which they shall initiate by issuing a Variation Request in accordance with Paragraph 3;
 - 1.4.2 unless this Contract otherwise requires, the Supplier shall assess and document the potential impact of a proposed Variation in accordance with Paragraph 4 before the Variation can be either approved or implemented;
 - 1.4.3 the Buyer shall have the right to request amendments to a Variation Request, approve it or reject it in the manner set out in Paragraph 5;
 - 1.4.4 the Supplier shall have the right to reject a Variation Request solely in the manner set out in Paragraph 6;
 - 1.4.5 save as otherwise provided in this Contract, no proposed Variation shall be implemented by the Supplier until a Variation Authorisation Note has been signed and issued by the Buyer in accordance with Paragraph 5.2;
 - 1.4.6 if a proposed Variation is a Fast-track Variation, it shall be processed in accordance with Paragraph 7; and
 - 1.4.7 if a proposed Variation is a Buyer Premises Variation, it shall be processed in accordance with Paragraph 10.
- 1.5 Until a Variation Authorisation Note has been signed and issued by the Buyer in accordance with Paragraph 5.2, then:
 - 1.5.1 unless Buyer expressly agrees (or requires) otherwise in writing, the Supplier shall continue to provide the Deliverables in accordance with the existing terms of this Contract as if the proposed Variation did not apply; and
 - 1.5.2 any discussions, negotiations or other communications which may take place between the Buyer and the Supplier in connection with any proposed

Variation, including the submission of any Variation Communications, shall be without prejudice to each Party's other rights under this Contract.

1.6 The Supplier shall:

- 1.6.1 within ten (10) Working Days of the Buyer's signature and issue of a Variation Authorisation Note, deliver to the Buyer a copy of this Contract updated to reflect all Variations agreed in the relevant Variation Authorisation Note and annotated with a reference to the Variation Authorisation Note pursuant to which the relevant Variations were agreed; and
- 1.6.2 thereafter provide to the Buyer such further copies of the updated Contract as the Buyer may from time to time request.

2 Costs

- 2.1 The costs of preparing each Variation Request shall be borne by the Party making the Variation Request.
- 2.2 The costs incurred by the Supplier in undertaking an Impact Assessment shall:
 - 2.2.1 where the Variation Request has been made by the Supplier, be borne by the Supplier; and
 - 2.2.2 where the Variation Request has been made by the Buyer, the Supplier will provide an estimate of the costs of preparing the Impact Assessment in accordance with Paragraph 3.3 and will only be obliged to prepare such Impact Assessment upon approval of the Impact Assessment Estimate pursuant to Paragraph 3.4, provided that:
 - (i) the Supplier shall use reasonable endeavours to use resource already deployed in the provision of the Deliverables except where to do so would prevent the Supplier from delivering the Deliverables; and
 - (ii) the Buyer shall not be required to pay any such costs to the extent that such costs exceed those in the accepted Impact Assessment Estimate.
- 2.3 The cost of any Variation shall be calculated and charged in accordance with Call-Off Schedule 5 (*Pricing*). The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Variation requires additional resources and, in any event, any change to the Charges resulting from a Variation (whether the change will cause an increase or a decrease in the Charges) shall be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Deliverables as amended by the Variation.
- 2.4 Both Parties' reasonable costs incurred in respect of any use of this Variation Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.

3 Variation Request

- 3.1 Either Party may issue a Variation Request to the other Party at any time during the Contract Period. A Variation Request shall be substantially in the form of Annex 1 and state whether the Party issuing the Variation Request considers the proposed Variation to be a Fast-track Variation or a Buyer Premises Variation.
- 3.2 If the Supplier issues the Variation Request, then it shall also provide an Impact Assessment to the Buyer as soon as is reasonably practicable but in any event within ten (10) Working Days of the date of issuing the Variation Request.
- 3.3 If the Buyer issues the Variation Request, then the Supplier shall provide as soon as reasonably practical and in any event within ten (10) Working Days of the date of receiving the Variation Request an estimate ("Impact Assessment Estimate") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Buyer within ten (10) working days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Buyer.
- 3.4 If the Buyer accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Buyer as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Variation Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Buyer and provided that sufficient information is received by the Buyer to fully understand:
- 3.4.1 the nature of the request for clarification; and
 - 3.4.2 the reasonable justification for the request,
- and the time period to complete the Impact Assessment shall be extended by the time taken by the Buyer to provide that clarification. The Buyer shall respond to the request for clarification as soon as is reasonably practicable.

4 Impact Assessment

- 4.1 Each Impact Assessment shall be completed in good faith and shall include:
- 4.1.1 details of the proposed Variation including the reason for the Variation;
 - 4.1.2 details of the impact of the proposed Variation on the provision of the Deliverables, including without limitation, any impact on the Buyer CAFM System and the Supplier's ability to meet its other obligations under this Contract;
 - 4.1.3 any variation to the terms of this Contract that will be required as a result of that impact, including changes to:
 - (i) the Deliverables;
 - (ii) the Mobilisation Plan;
 - (iii) the PPM Plan, the Remedial Work Programme and any other timetable previously agreed by the Parties;

- (iv) the Buyer Asset Register;
 - (v) the Pricing Matrix;
 - (vi) the Exit Plan; and/or
 - (vii) other services provided by the Buyer Supply Chain Members to the Buyer, including any changes required by the proposed Variation to the Buyer CAFM System;
- 4.1.4 details of the cost of implementing the proposed Variation;
- 4.1.5 details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the:
 - (i) Charges;
 - (ii) Fixed Monthly Fee, such amendments to be determined by reference to the Pricing Matrix; and/or
 - (iii) Unit Rates;
- 4.1.6 details of any alteration in the resources and/or expenditure required by either Party;
- 4.1.7 details of any alteration to the working practices of either Party;
- 4.1.8 such other information as the Buyer may reasonably request in (or in response to) the Variation Request; and
- 4.1.9 where the proposed Variation relates to the omission of part or parts of the Deliverables during the Optional Extension Period, the relevant Charges set out in Call-Off Schedule 5 (Pricing) and the Pricing Matrix shall be used as the basis for reducing the Charges and the Supplier shall not be entitled to its loss of profit in relation to the Deliverables that the Supplier is no longer required to provide.
- 4.2 If the Variation involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 16.1 (*What you must keep confidential*).
- 4.3 Subject to the provisions of Paragraph 4.5, the Buyer shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 5 within fifteen (15) Working Days of receiving the Impact Assessment.
- 4.4 If the Buyer is the Receiving Party and the Buyer reasonably considers that it requires further information regarding the proposed Variation so that it may properly evaluate the Variation Request and the Impact Assessment, then within five (5) Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re- issue the relevant Impact Assessment to the Buyer within ten (10) Working Days of receiving such notification. At the Buyer's discretion, the Parties may repeat the process described in this Paragraph 4.4 until the Buyer is satisfied that it has sufficient information to properly evaluate the Variation Request and Impact Assessment.

4.5 The calculation of costs for the purposes of Paragraphs 4.1.4 and 4.1.5 shall:

4.5.1 be calculated as follows:

- (i) where the additional or substituted work is of a similar character to and is executed under similar conditions as the work set out in the Specification, in accordance with Call-Off Schedule 5 (*Pricing*) where the Pricing Matrix and Unit Rates are applicable;
- (ii) where the additional or substituted work is of similar character to work set out in the Specification but is not executed under similar conditions, the Unit Rates for the work set out in the Pricing Matrix are the basis for determining the valuation and the valuation includes a fair allowance for such difference in conditions; and
- (iii) where additional or substantial work is not of similar character to work set out in the Specification the work is valued at fair rates and prices;

4.5.2 include estimated volumes of each type of resource to be employed;

4.5.3 include full disclosure of any assumptions underlying such Impact Assessment;

4.5.4 include evidence of the cost of any assets required for the Variation; and

4.5.5 include details of any new Sub-contracts necessary to accomplish the Variation.

5 Buyer's Right of Approval

5.1 Within fifteen (15) Working Days of receiving the Impact Assessment from the Supplier or within ten (10) Working Days of receiving the further information that it may request pursuant to Paragraph 4.4, the Buyer shall evaluate the Variation Request and the Impact Assessment and shall do one of the following:

5.1.1 approve the proposed Variation, in which case the Parties shall follow the procedure set out in Paragraph 5.2;

5.1.2 in its absolute discretion reject the Variation, in which case it shall notify the Supplier of the rejection. The Buyer shall not reject any Variation to the extent that the Variation is necessary for the Supplier or the Services to comply with any Changes in Law. If the Buyer does reject a Variation, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or

5.1.3 in the event that it reasonably believes that a Variation Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within five (5) Working Days of such request. Subject to Paragraph 4.4, on receiving the modified Variation Request and/or Impact Assessment, the Buyer shall approve or reject the proposed Variation within ten (10) Working Days.

- 5.2 If the Buyer approves the proposed Variation pursuant to Paragraph 5.1 and it has not been rejected by the Supplier in accordance with Paragraph 6, then it shall inform the Supplier and the Supplier shall prepare two copies of a Variation Authorisation Note which it shall sign and deliver to the Buyer for its signature. Following receipt by the Buyer of the Variation Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Buyer's signature the Variation Authorisation Note shall constitute (or, where the Buyer has agreed to or required the implementation of a Variation prior to signature of a Variation Authorisation Note, shall constitute confirmation of) a binding variation to this Contract.
- 5.3 If the Buyer does not sign the Variation Authorisation Note within ten (10) Working Days, then the Supplier shall have the right to notify the Buyer and if the Buyer does not sign the Variation Authorisation Note within five (5) Working Days of such notification, then the Supplier may refer the matter to the Dispute Resolution Procedure.
- 5.4 If a dispute arises regarding any Variation, including, without limitation, any dispute as to the price of a Variation, or as to whether any service or item required by the Buyer or requested by Supplier constitutes a Variation, Supplier will nevertheless promptly proceed with performance as directed by the Buyer in writing, without delay or interruption. Neither the Buyer's request, Supplier's performance, nor the acceptance of any disputed services by the Buyer will constitute or be deemed to be a waiver on the part of the Buyer or Supplier of its rights to seek a determination of the appropriate compensation for a Variation, or classification of a service as a Variation.

6 Supplier's Right of Approval

- 6.1 Following an Impact Assessment, if:
- 6.1.1 the Supplier reasonably believes that any proposed Variation which is requested by the Buyer would:
- (i) materially and adversely affect the risks to the health and safety of any person; and/or
 - (ii) require the Deliverables to be performed in a way that infringes any Law; and/or
 - (iii) the Supplier demonstrates to the Buyer's reasonable satisfaction that the proposed Variation is technically impossible to implement,
- then the Supplier shall be entitled to reject the proposed Variation and shall notify the Buyer of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 3.3.

7 Fast-track Variations

- 7.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.
- 7.2 If both Parties agree that the proposed Variation is not significant then the Parties shall confirm to each other in writing that they shall use the process set out in Paragraphs 3, 4, 5 and 6 but with reduced timescales, such that any period of fifteen (15) Working Days is reduced to five (5) Working Days, any period of ten (10) Working Days is

reduced to two (2) Working Days and any period of five (5) Working Days is reduced to one (1) Working Day.

- 7.3 The Parties may agree in writing that the Fast-track Variation procedure shall be used in relation to a particular Variation.

8 Operational Variation Procedure

- 8.1 Without prejudice to Call-Off Schedule 3 (*Continuous Improvement*), any Operational Variations identified by the Supplier to improve operational efficiency of the provision of the Deliverables may be implemented by the Supplier without following the Variation Control Procedure for proposed Variations provided they do not:

- 8.1.1 have an impact on the business of the Buyer;
- 8.1.2 require a change to this Contract;
- 8.1.3 have a direct impact on provision of the Deliverables; or
- 8.1.4 involve the Buyer in paying any additional Charges or other costs.

- 8.2 The Supplier shall maintain records of all Operational Variations identified and implemented in relation to this Contract and shall provide copies of such records upon request by the Buyer.

- 8.3 The Buyer may request an Operational Variation by submitting a written request for Operational Variation (“**RFOV**”) to the Supplier Representative.

- 8.4 The RFOV shall include the following details:

- 8.4.1 the proposed Operational Variation; and
- 8.4.2 the time-scale for completion of the Operational Variation.

- 8.5 The Supplier shall inform the Buyer of any impact on the Deliverables that may arise from the proposed Operational Variation.

- 8.6 The Supplier shall complete the Operational Variation by the timescale specified for completion of the Operational Variation in the RFOV, and shall promptly notify the Buyer when the Operational Variation is completed.

9 Communications

- 9.1 For any Variation Communication to be valid under this Schedule, it must be sent to the Buyer Variation Manager or the Supplier Variation Manager, as applicable. The provisions of Clause 26 (*How to communicate about this Contract*) shall apply to a Variation Communication as if it were a notice.

10 Variations to Buyer Premises

- 10.1 The Buyer shall be entitled to issue a Variation Request to vary the Buyer Premises by written notice to the Supplier at any time.

- 10.2 If a Variation Request relates to a variation of the Buyer Premises then, subject to Paragraphs 11.3 and 11.4 (as applicable), the Parties shall use the process set out in Paragraphs 3, 4, 5 and 6 but with reduced timescales, such that any period of fifteen

(15) Working Days is reduced to five (5) Working Days, any period of ten (10) Working Days is reduced to two (2) Working Days and any period of five (5) Working Days is reduced to one (1) Working Day.

- 10.3 Where a Variation Request relates to the addition or omission of a Buyer Premises, the relevant Charges shall be set out in Call-Off Schedule 5 (*Pricing*) and the Pricing Matrix shall be used as the basis for calculating the Charges for the provision of the Deliverables at the new Buyer's Premises and the following provisions shall apply:

10.3.1 where the additional or substituted work is of a similar character to and is executed under similar conditions as the work set out in the Specification, in accordance with Call-Off Schedule 5 (*Pricing*) where the Pricing Matrix and Unit Rates are applicable;

10.3.2 where the additional or substituted work is of similar character to work set out in the Specification but is not executed under similar conditions, the Unit Rates for the work set out in the Pricing Matrix are the basis for determining the valuation and the valuation includes a fair allowance for such difference in conditions; and

10.3.3 where additional or substantial work is not of similar character to work set out in the Specification the work is valued at fair rates and prices.

- 10.4 Where a part of the Buyer's Premises is removed during the Term, the Supplier shall cease to provide the Services or the Deliverables at the relevant Buyer's Premises from the date specified in the Buyer's notice and the relevant Charges set out in Call-Off Schedule 5 (*Pricing*) and the Pricing Matrix shall be used as the basis for reducing the Charges and the Supplier shall not be entitled to its loss of profit in relation to the Deliverables that the Supplier is no longer required to provide.

11 Routine Variations

- 11.1 All Routine Variations shall be managed by the Buyer's Authorised Representative on behalf of the Buyer.

- 11.2 Without prejudice to Clause 23, the Supplier shall ensure that all Routine Variations are provided to the Buyer's Authorised Representative and/or Uploaded (where applicable) in accordance with the relevant express provisions of this Contract.

- 11.3 Save where:

11.3.1 expressly provided for in Call-Off Schedule 5 (*Pricing*);

11.3.2 a Routine Variation arises directly from a Variation Request to vary the Buyer Premises pursuant to paragraph 10 of this Schedule; and/or

11.3.3 the Parties agree or it is determined that that a Routine Variation should be deemed to be a Variation,

no Routine Variation shall adjust any part of the Charges unless approved in writing by or on behalf of the Buyer.

- 11.4 The Buyer may undertake checks and verification audits of any Routine Variation and the Supplier at no cost to the Buyer shall provide all information, documents or records as may reasonably be requested by the Buyer to support any such activity.

- 11.5 If, following a check or verification audit undertaken pursuant to Paragraph 11.4 of this Schedule, the Buyer (acting reasonably) determines that a Routine Variation is inaccurate, the relevant Routine Variation shall be corrected accordingly at no cost to the Buyer and the Buyer shall be entitled to rely on any rights it may have under the Contract in relation the corrected Routine Variation.

Annex 1: Variation Request Form

CR NO.:	TITLE	TYPE OF VARIATION:		
CONTRACT:			REQUIRED BY DATE:	
ACTION:	NAME:			DATE:
	RAISED BY:			
	AREA(S) IMPACTED (OPTIONAL FIELD):			
	ASSIGNED FOR IMPACT ASSESSMENT BY:			
	ASSIGNED FOR IMPACT ASSESSMENT TO:			
	SUPPLIER REFERENCE NO.:			
	FULL DESCRIPTION OF REQUESTED VARIATION (INCLUDING PROPOSED VARIATIONS TO THE WORDING OF THE CONTRACT):			
	DETAILS OF ANY PROPOSED CHANGES TO THE BUYER PREMISES:			
	DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:			
	REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED VARIATION:			
	SIGNATURE OF REQUESTING VARIATION OWNER:			
	DATE OF REQUEST:			

Annex 2: Variation Authorisation Note

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF VARIATION:	REQUIRED BY DATE:
[KEY MILESTONE DATE: [if any]]		
DETAILED DESCRIPTION OF VARIATION FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED VARIATIONS TO THE CONTRACT:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE VARIATION (IF ANY):		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS):		
SIGNED ON BEHALF OF THE BUYER		
Signature: _____	Signature: _____	
Name: _____	Name: _____	
Position: _____	Position: _____	
Date: _____	Date: _____	

Joint Schedule 3

Insurance Requirements

1 Obligation to Maintain Insurances

- 1.1 The Supplier shall take out and maintain, or procure the taking out and maintenance of the insurances as set out in the Annex to this Schedule ("**Additional Insurances**") and any other insurances as may be required by applicable Law (together the "**Insurances**"). The Supplier shall ensure that each of the Insurances is effective no later than the Effective Date.
- 1.2 The Insurances shall be:
- 1.2.1 maintained in accordance with Good Industry Practice;
 - 1.2.2 (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time;
 - 1.2.3 taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
 - 1.2.4 maintained for at least six (6) years after the End Date.
- 1.3 The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Supplier is legally liable.

2 General Obligations

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:
- 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to Deliverables as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
 - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
 - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3 Failure to Insure

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

- 3.2 Where the Supplier has failed to purchase or maintain any of the Insurances in full force and effect, the Buyer may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

4 Evidence of Policies

- 4.1 The Supplier shall upon the Start Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Buyer, that the Insurances are in force and effect and meet in full the requirements of this Schedule.

5 Aggregate Limit of Indemnity

- 5.1 The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained at all times for the minimum limit of indemnity specified in this Contract and if any claims are made which do not relate to this Contract then the Supplier shall notify the Buyer and provide details of its proposed solution for maintaining the minimum limit of indemnity.

6 Cancellation

- 6.1 The Supplier shall notify the Buyer in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Buyer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

7 Insurance Claims

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or each Contract for which it may be entitled to claim under any of the Insurances. In the event that the Buyer receives a claim relating to or arising out of a Contract or the Deliverables, the Supplier shall co-operate with the Buyer and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.2 Except where the Buyer is the claimant party, the Supplier shall give the Buyer notice within twenty (20) Working Days after any insurance claim in excess of 10% of the sum required to be insured pursuant to Paragraph 5.1 relating to or arising out of the provision of the Deliverables or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Buyer) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.

- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Buyer any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

Annex 1: Required Insurances

1 Obligation to Maintain Insurances

- 1.1 Without prejudice to its obligations to the Buyer under this Contract, including its indemnity and liability obligations, the Supplier shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time. Such terms and conditions shall not include any term or condition to the effect that the Supplier must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989.
- 1.3 The Insurances shall be taken out and maintained with insurers who are:
- 1.3.1 reputable
 - 1.3.2 to whom no other party has reasonable objection
 - 1.3.3 lawfully carrying on such insurance business in the United Kingdom
 - 1.3.4 of good financial standing;
 - 1.3.5 appropriately regulated;
 - 1.3.6 regulated by the applicable regulatory body and is in good standing with that regulator; and
 - 1.3.7 except in the case of any Insurances provided by an Affiliate of the Supplier, of good repute in the international insurance market.
- 1.4 The Supplier shall immediately inform the Buyer if any of the Insurances cease to be available at rates and on terms that the Supplier considers to be commercially reasonable. Any increased or additional premium required by insurers by reason of the Supplier’s own claims record or other acts, omissions, matters or things particular to the Supplier is deemed to be within commercially reasonable rates.
- 1.5 Nothing in this Schedule relieves the Supplier from any of its obligations and liabilities under this Contract.

2 General Obligations

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:

- 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
- 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
- 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3 Failure to Insure

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Buyer may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the Buyer shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

4 Evidence of Insurances

The Supplier shall upon the Effective Date and within 15 Working Days after the renewal or replacement of each of the Insurances, provide evidence, in a form satisfactory to the Buyer, that the Insurances are in force and effect and meet in full the requirements of this Schedule. Receipt of such evidence by the Buyer shall not in itself constitute acceptance by the Buyer or relieve the Supplier of any of its liabilities and obligations under this Contract.

5 Cancellation

- 5.1 Subject to Paragraph 5.2, the Supplier shall notify the Buyer in writing at least 5 Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 5.2 Without prejudice to the Supplier's obligations under Paragraph 3, Paragraph 5.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

6 Insurance Claims, Premiums and Deductibles

- 6.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Contract for which it may be entitled to claim under any of the Insurances. In the event that the Buyer receives a claim relating to or arising out of the Services and/or this Contract, the Supplier shall co-operate with the Buyer and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.

- 6.2 The Supplier shall maintain a register of all claims under the Insurances in connection with this Contract and shall allow the Buyer to review such register at any time.
- 6.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 6.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Buyer any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.
- 6.5 The Supplier shall not without the prior written approval of the Buyer settle or compromise with the insurers any claim which the Supplier may have against the insurers and which relates to a claim by the Buyer against the Supplier, nor by any act or omission lose or prejudice the Supplier's right to make or proceed with such a claim against the insurers.

7 Insurance Claim Notification

- 7.1 Except where the Authority is the claimant party, the Supplier shall give the Buyer notice within 20 Working Days after any insurance claim in excess of £100,000 relating to or arising out of the provision of the Services or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Buyer) full details of the incident giving rise to the claim.

Annex 1: Required Insurances

Part A: United Kingdom Compulsory Insurances

The Supplier shall meet its insurance obligations under applicable Law in full.

Annex 1: Required Insurances

Part B: Additional Insurances

Third Party Public and Products Liability Insurance

1 Insured

The Supplier

2 Interest

2.1 To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

2.1.1 death or bodily injury to or sickness, illness or disease contracted by any person; and

2.1.2 loss of or damage to physical property, Plant, materials and Equipment

happening during the period of insurance (as specified in Paragraph 5) and arising out of or in connection with the provision of the Services and in connection with this Contract.

3 Limit of indemnity

Not less than £25,000,000 in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period.

4 Territorial limits

United Kingdom

5 Period of insurance

From the date of this Contract for the Contract Period and renewable on an annual basis unless agreed otherwise by the Buyer in writing.

6 Cover features and extensions

Indemnity to principals clause.

7 Principal exclusions

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.

7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

8 Maximum deductible threshold

Not to exceed £10,000 for each and every third party property damage claim (personal injury claims to be paid in full).

Professional Indemnity Insurance

1 Insured

The Supplier

2 Interest

To indemnify the Insured in respect of a failure of the Supplier to exercise the reasonable skill and care of an appropriately qualified professional of the relevant discipline and arising out of or in connection with the provision of the Services and in connection with this Contract.

3 Limit of indemnity

Not less than five million pounds (£5,000,000), in respect of any one claim and in the aggregate subject to one annual reinstatement or ten million pounds (£10,000,000) in respect of any one claim and without reinstatement.

4 Territorial limits

United Kingdom

5 Period of insurance

From the Effective Date until 12 years after the end of the Contract Period, but subject to availability in the market at commercially reasonable rates and terms.

6 Principal exclusions

- 6.1 War and related perils.
- 6.2 Nuclear and radioactive risks.
- 6.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.
- 6.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

- 6.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 6.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 6.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 6.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

7 Maximum deductible threshold

Not to exceed £500,000 for each and every claim.

Employer Liability Insurance

1 Insured

The Supplier

2 Interest

To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of death or bodily injury to or sickness, illness or disease contracted by any employees of the Supplier arising out of and in the course of their employment in connection with this Contract happening during the period of insurance (as specified in Paragraph 5).

3 Limit of indemnity

Not less than £15,000,000 in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period.

4 Territorial limits

United Kingdom

5 Period of insurance

From the date of this Contract for the Contract Period and renewable on an annual basis unless agreed otherwise by the Buyer in writing.

6 Principal exclusions

- 6.1 War and related perils.
- 6.2 Nuclear and radioactive risks.
- 6.3 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- 6.4 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

- 6.5 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 6.6 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 6.7 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

Contractors All Risks Insurance

1 Insured

The Supplier

2 Interest

To indemnify the Insured in respect of All risks of physical loss or damage to Permanent or Temporary Works (including Transit), Temporary Buildings, Constructional Plant and Equipment, Hired in Property and Employees Tools Limit of indemnity

3 Limit of indemnity

Not less than £20,000,000 in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period.

4 Territorial limits

United Kingdom

5 Period of insurance

From the date of this Contract for the Contract Period and renewable on an annual basis unless agreed otherwise by the Buyer in writing.

6 Maximum deductible threshold

Not to exceed £15,000 for each and every damage claim

Joint Schedule 4

Commercially Sensitive Information

1 Introduction

- 1.1 In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
- 1.2 Where possible, the Parties have sought to identify when any relevant Confidential Information will cease to fall into the category of Information to which this Schedule applies in the table below and in the Buyer Contract Details (which shall be deemed incorporated into the table below).
- 1.3 Without prejudice to the Buyer's obligation to disclose Information in accordance with FOIA or Clause 16 (*What you must keep confidential*), the Buyer will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

No.	Date	Item(s)	Duration of Confidentiality
1	29 June 2021	Supplier's pricing information, including unit rates, overhead and margin amounts	For the duration of the contract period plus one year
2	29 June 2021	Supplier's organisational structure	For the duration of the contract period plus one year
3	29 June 2021	Supplier's identified efficiencies within <i>Table 4, Pricing Variables in A5A DWP LS2 Pricing Matrix</i>	For the duration of the contract period plus one year

Joint Schedule 5

Corporate Social Responsibility

1 Introduction

- 1.1 In September 2017, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government. (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/646497/2017-09-13_Official_Sensitive_Supplier_Code_of_Conduct_September_2017.pdf)
- 1.2 The Buyer expects its suppliers and subcontractors to meet the standards set out in that Code. In addition, the Buyer expects its suppliers and subcontractors to comply with the standards set out in this Schedule.
- 1.3 The Supplier acknowledges that the Buyer may have additional requirements in relation to corporate social responsibility. The Buyer expects that the Supplier and its Subcontractors will comply with such corporate social responsibility requirements as the Buyer may notify to the Supplier from time to time.

2 Equality and Accessibility

- 2.1 In addition to legal obligations, the Supplier shall support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under this Contract in a way that seeks to:
 - 2.1.1 eliminate discrimination, harassment or victimisation of any kind; and
 - 2.1.2 advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

3 Modern Slavery, Child Labour & Inhumane Treatment

“**Modern Slavery Helpline**” means the mechanism for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.

- 3.1 In addition to the obligations set out in Clause 29 (*Equality, diversity, human rights and modern slavery*) the Supplier:
 - 3.1.1 shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;
 - 3.1.2 shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identity papers with the Employer and shall be free to leave their employer after reasonable notice;
 - 3.1.3 warrants and represents that it has not been convicted of any slavery or human trafficking offenses anywhere around the world.
 - 3.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any

allegation of slavery or human trafficking offenses anywhere around the world.

- 3.1.5 shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offenses anywhere around the world.
- 3.1.6 shall have and maintain throughout the term of this Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act and include in its contracts with its subcontractors anti-slavery and human trafficking provisions;
- 3.1.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under this Contract;
- 3.1.8 shall prepare and deliver to the Buyer, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with Paragraph 3;
- 3.1.9 shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
- 3.1.10 shall not use or allow child or slave labour to be used by its Subcontractors;
- 3.1.11 shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to the Buyer and Modern Slavery Helpline.

4 Income Security

4.1 The Supplier shall:

- 4.1.1 ensure that that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the United Kingdom (as relevant);
- 4.1.2 ensure that all Supplier Staff are provided with written and understandable Information about their employment conditions in respect to wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid;
- 4.1.3 not make deductions from wages:
 - (i) as a disciplinary measure
 - (ii) except where permitted by law; or
 - (iii) without expressed permission of the worker concerned;
 - (iv) record all disciplinary measures taken against Supplier Staff; and

- 4.1.4 ensure that Supplier Staff are engaged under a recognised employment relationship established through national law and practice.

5 Working Hours

5.1 The Supplier shall:

- 5.1.1 ensure that the working hours of Supplier Staff comply with national laws, and any collective agreements;
- 5.1.2 that the working hours of Supplier Staff, excluding overtime, shall be defined by contract, and shall not exceed 48 hours per week unless the individual has agreed in writing;
- 5.1.3 ensure that use of overtime is used responsibly, taking into account:
 - (i) the extent;
 - (ii) frequency; and
 - (iii) hours worked;by individuals and by the Supplier Staff as a whole;

5.2 The total hours worked in any seven day period shall not exceed 60 hours, except where covered by Paragraph 5.3 below.

5.3 Working hours may exceed 60 hours in any seven day period only in exceptional circumstances where all of the following are met:

- 5.3.1 this is allowed by the law of the United Kingdom (as relevant);
- 5.3.2 this is allowed by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce;
- 5.3.3 appropriate safeguards are taken to protect the workers' health and safety; and
- 5.3.4 the employer can demonstrate that exceptional circumstances apply such as unexpected production peaks, accidents or emergencies.

5.4 All Supplier Staff shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.

6 Sustainability

6.1 The supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

Joint Schedule 6

Key Subcontractors

1 Key Subcontractors

- 1.1 The Supplier is entitled to sub-contract its obligations under this Contract to Key Subcontractors.
- 1.2 Where during the Contract Period the Supplier wishes to enter into a new Key Sub contract or replace a Key Subcontractor, it must obtain the prior written consent of the Buyer and the Supplier shall, at the time of requesting such consent, provide the Buyer with the information detailed in Paragraph 1.3. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. The Buyer may reasonably withhold their consent to the appointment of a Key Subcontractor if it considers that:
 - 1.2.1 the appointment of a proposed Key Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
 - 1.2.2 the proposed Key Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other Buyers; and/or
 - 1.2.3 the proposed Key Subcontractor employs unfit persons.
- 1.3 The Supplier shall provide the Buyer with the following information in respect of the proposed Key Subcontractor:
 - 1.3.1 the proposed Key Subcontractor's name, registered office and company registration number;
 - 1.3.2 the scope/description of any Deliverables to be provided by the proposed Key Subcontractor;
 - 1.3.3 where the proposed Key Subcontractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Buyer that the proposed Key Sub Contract has been agreed on "arm's length" terms;
 - 1.3.4 for the Buyer, the Key Sub Contract price expressed as a percentage of the total projected Charges over the Contract Period; and
 - 1.3.5 (where applicable) Credit Rating Threshold (as defined in Joint Schedule 7 (*Financial Distress*)) of the Key Subcontractor.
- 1.4 If requested by the Buyer, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Paragraph 1.3, the Supplier shall also provide:
 - 1.4.1 a copy of the proposed Key Sub Contract; and
 - 1.4.2 any further information reasonably requested by the Buyer.
- 1.5 The Supplier shall ensure that each new or replacement Key Sub Contract shall include:
 - 1.5.1 provisions which will enable the Supplier to discharge its obligations under the Contract;

- 1.5.2 a provision which will enable the Supplier to comply with its obligations in relation to any Optional Extension Period at no additional cost to the Buyer and/or the Supplier;
- 1.5.3 a provision which will enable the Supplier and the Key Subcontractor to comply with its obligations following the exercise by the Buyer of the Buyer to exercise its rights under Clause 10.11.3(ii);
- 1.5.4 a right under CRTPA and/or any collateral warranty for the Buyer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Buyer;
- 1.5.5 a provision enabling the Buyer to enforce step in rights under any collateral warranty as if it were the Supplier;
- 1.5.6 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub Contract to the Buyer;
- 1.5.7 obligations no less onerous on the Key Subcontractor than those imposed on the Supplier in respect of:
- (i) the data protection requirements set out in Clause 15 (*Data protection and information*);
 - (ii) the FOIA and other access request requirements set out in Clause 17 (*When you can share information*);
 - (iii) the obligation not to embarrass the Buyer or otherwise bring the Buyer into disrepute;
 - (iv) the keeping of records in respect of the goods and/or services being provided under the Key Sub Contract, including the maintenance of Open Book Data; and
 - (v) the conduct of audits set out in Clause 6 (*Record keeping and reporting*);
- 1.5.8 provisions enabling the Supplier to terminate the Key Sub Contract on notice on terms no more onerous on the Supplier than those imposed on the Buyer under Clauses 11.3 and 11.4 (*When the Buyer can end this Contract*) and 11.5 (*What happens if the Contract ends*) of this Contract; and
- 1.5.9 a provision restricting the ability of the Key Subcontractor to sub contract all or any part of the provision of the Deliverables provided to the Supplier under the Key Sub Contract without first seeking the written consent of the Buyer.

Annex

Service / Product	Subcontractor	Company Registration Number	Registered Office
Access	PTSG Building Access Specialists Limited	08950738	13-14 Flemming Court, Castleford, West Yorkshire, Castleford, WF10 5HW
Catering	Catercall Ltd	04804076	Unit 1 Facet House , Facet Road, Kings Norton, Birmingham, West Midlands, B38 9PT
Chillers	Connaught Security Ltd	07298725	Lancaster House, 70-76 Blackburn Street, M26 2JW
Generator	Power Technique Limited	02643516	Unit 4 Concorde Close, Segensworth North, Fareham, England, PO15 5RT
Lift service & support	TBA		
Lightning Protection	PTSG Electrical Services Limited	02811979	13 Flemming Court, Whistler Drive, Castleford, West Yorkshire, WF10 5HW
Statutory Inspections	BES (British Engineering Services Limited)	09299724	5 New York Street, Manchester, M1 4JB
TM44 Surveys	ACI Reports Ltd	06956376	Suite 9 Allied Business Centre, Potter Place, Skelmersdale, WN8 9PW
Water at Quarry House	WCS Environmental Limited	02184649	17 Wheatstone Court, Waterwells Business Park, Glos, GL2 2AQ
HV	SPEC (Specialist Power Engineering Contracts Ltd)	04051023	Unit 5 Eagle Point, Wakefield 41 Ind Est, Wakefield, WF2 0XW

Joint Schedule 7

Financial Distress

1 Introduction

- 1.1 The Parties shall comply with the provisions of this Schedule in relation to the assessment of the financial standing of the Supplier and the consequences of a change to that financial standing.
- 1.2 The terms of this Schedule shall survive termination or expiry of this Contract.

2 Credit Rating and Duty To Notify

- 2.1 The Supplier warrants and represents to the Buyer that as at the Start Date the long term credit ratings issued for the Supplier and Guarantor by the Rating Agency.
- 2.2 The Supplier shall promptly (and in any event within five (5) Working Days) notify the Buyer in writing if there is any downgrade in the credit rating issued by any Rating Agency for either the Supplier or and Guarantor.
- 2.3 If there is any downgrade credit rating issued by any Rating Agency for either the Supplier or the Guarantor, the Supplier shall ensure that the Supplier's auditors or Guarantor's auditors (as the case may be) thereafter provide the Buyer within 10 Working Days of the end of each Contract Year and within 10 Working Days of written request by the Buyer (such requests not to exceed 4 in any Contract Year) with written calculations of the quick ratio for the Supplier or the Guarantor as the case may be as at the end of each Contract Year or such other date as may be requested by the Buyer. For these purposes the "quick ratio" on any date means:

$$\frac{A + B + C}{D}$$

where:

- A is the value at the relevant date of all cash in hand and at the bank of the Supplier or the Guarantor (as the case may be);
- B is the value of all marketable securities held by the Supplier or the Guarantor (as the case may be) determined using closing prices on the Working Day preceding the relevant date;
- C is the value at the relevant date of all account receivables of the Supplier and Guarantor (as the case may be); and
- D is the value at the relevant date of the current liabilities of the Supplier or the Guarantor (as the case may be).
- 2.4 The Supplier shall:
- 2.4.1 regularly monitor the credit ratings of the Supplier, Guarantor and each applicable Key Subcontractor with the Rating Agency; and
- 2.4.2 promptly notify (or shall procure that its auditors promptly notify) the Buyer in writing following the occurrence of a Financial Distress Event or Key

Subcontractor Financial Distress Event (where applicable) or any fact, circumstance or matter which could cause a Financial Distress Event or a Key Subcontractor Financial Distress Event (and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event, the Key Subcontractor Financial Distress Event (where applicable) or the fact, circumstance or matter which could cause a Financial Distress Event or a Key Subcontractor Financial Distress Event (where applicable).

- 2.5 For the purposes of determining whether a Financial Distress Event has occurred, the credit rating of the Supplier, the Guarantor or relevant Key Subcontractor (as the case may be) shall be deemed to have dropped below the applicable Credit Rating Threshold if the Rating Agency has rated the Supplier, the Guarantor or relevant Key Subcontractor (as the case may be) at or below the applicable Credit Rating Threshold.

3 Consequences of a Financial Distress Event

- 3.1 In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if the Buyer becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Buyer shall have the rights and remedies as set out in Paragraphs 3.3 to 3.6.

- 3.2 In the event that a Financial Distress Event arises due to a Key Subcontractor notifying the Buyer that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute then, the Buyer shall not exercise any of its rights or remedies under Paragraph 3.3 without first giving the Supplier ten (10) Working Days to:

3.2.1 rectify such late or non-payment; or

3.2.2 demonstrate to the Buyer's reasonable satisfaction that there is a valid reason for late or non-payment.

- 3.3 The Supplier shall (and shall procure that the Guarantor and/or any relevant Key Subcontractor shall):

3.3.1 at the request of the Buyer meet the Buyer as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event) to review the effect of the Financial Distress Event on the continued performance and delivery of the Deliverables in accordance with this Contract; and

3.3.2 where the Buyer reasonably believes (taking into account the discussions and any representations made under Paragraph 3.3.1) that the Financial Distress Event could impact on the continued performance and delivery of the Deliverables in accordance with this Contract:

(i) submit to the Buyer for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event); and

(ii) provide such financial information relating to the Supplier or the Guarantor as the Buyer may reasonably require.

- 3.4 If the Buyer does not (acting reasonably) approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Buyer within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is Approved by the Buyer or referred to the Dispute Resolution Procedure.
- 3.5 If the Buyer considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.
- 3.6 Following Approval of the Financial Distress Service Continuity Plan by the Buyer, the Supplier shall:
- 3.6.1 on a regular basis (which shall not be less than Monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Deliverables in accordance with this Contract;
 - 3.6.2 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 3.6.1, submit an updated Financial Distress Service Continuity Plan to the Buyer for its Approval, and the provisions of Paragraphs 3.5 and 3.6 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and
 - 3.6.3 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 3.7 Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Buyer and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 3.6.

4 Termination Rights

- 4.1 The Buyer shall be entitled to terminate this Contract for material Default if:
- 4.1.1 the Supplier fails to notify the Buyer of a Financial Distress Event in accordance with Paragraph 2.4;
 - 4.1.2 the Buyer and the Supplier fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 3.3 to 3.5; and/or
 - 4.1.3 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 3.6.3.

5 Primacy of Credit Ratings

- 5.1 Without prejudice to the Supplier's obligations and the Buyer's rights and remedies under Paragraph 3, if, following the occurrence of a Financial Distress Event, the Rating Agency reviews and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:
- 5.1.1 the Supplier shall be relieved automatically of its obligations under Paragraphs 3.3 to 3.6; and
- 5.1.2 the Buyer shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 3.3.2(ii).

Annex 1: Credit Ratings & Credit Rating Thresholds

Part 1: Current Rating

Entity	Credit rating (long term)
Supplier	37
Guarantor	92

Part 2: Lot Specific Credit Rating Threshold

Lot 1B

Entity	Credit Rating Threshold
Supplier	37
Guarantor	55

Joint Schedule 8

Guarantee

CROWN COMMERCIAL SERVICE

AND

SUPPLIER

FACILITIES MANAGEMENT MARKETPLACE CONTRACT

REF: RM3830

JOINT SCHEDULE 8 (OPTIONAL)

GUARANTEE

1 **DEFINITIONS**

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (*Definitions*):

"Call-Off Guarantee" a deed of guarantee in favour of a Buyer in the form set out in the Annex to this Schedule; and

"Call-Off Guarantor" the person acceptable to a Buyer to give a Call-Off Guarantee;

2 **CALL-OFF GUARANTEE**

- 2.1 Where a Buyer has notified the Supplier that the award of the Call-Off Contract by the Buyer shall be conditional upon receipt of a valid Call-Off Guarantee, then, on or prior to the execution of the Call-Off Contract, as a condition for the award of that Call-Off Contract, the Supplier shall deliver to the Buyer:

2.1.1 an executed Call-Off Guarantee from a Call-Off Guarantor; and

2.1.2 a certified copy extract of the board minutes and/or resolution of the Call-Off Guarantor approving the execution of the Call-Off Guarantee.

- 2.2 Where a Buyer has procured a Call-Off Guarantee from the Supplier under Paragraph 2 above, the Buyer may terminate the Call-Off Contract for Material Default where:

2.2.1 the Call-Off Guarantor withdraws the Call-Off Guarantee for any reason whatsoever;

2.2.2 the Call-Off Guarantor is in breach or anticipatory breach of the Call-Off Guarantee;

2.2.3 an Insolvency Event occurs in respect of the Call-Off Guarantor;

2.2.4 the Call-Off Guarantee becomes invalid or unenforceable for any reason whatsoever; or

2.2.5 the Supplier fails to provide the documentation required by Paragraph 2.1 by the date so specified by the Buyer;

2.2.6 and in each case the Call-Off Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Buyer.

ANNEX 1

DRAFT GUARANTEE

[Guidance Note: this is a draft form of guarantee which can be used to procure either a Framework Guarantee or a Call-Off Guarantee, and so it will need to be amended to reflect the Beneficiary's requirements.]

MITIE GROUP PLC

- AND -

THE SECRETARY OF STATE FOR WORK AND PENSIONS

DEED OF GUARANTEE

DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the day of 20[]

PROVIDED BY:

MITIE GROUP PLC a company incorporated in Scotland with number SC019230 whose registered office is at 35 Duchess Road, Rutherglen, Glasgow, G73 1AU ("**Guarantor**")

WHEREAS:

- (A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.
- (B) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees for the benefit of the Beneficiary as follows:

1 Definitions and Interpretation

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.2 the words and phrases below shall have the following meanings:

[Guidance Note: Insert and/or settle Definitions, including from the following list, as appropriate to either Framework Guarantee or Call-Off Guarantee]

["CCS"	has the meaning given to it in the Framework Contract;]
--------	---

["Beneficiary(s)"]	means [CCS and all Buyers under all Call-Off Contracts] [insert name of the Buyer with whom the Supplier enters into a Call-Off Contract] and "Beneficiaries" shall be construed accordingly;]
--------------------	--

["Call-Off Contract"]	has the meaning given to it in the Framework Contract;]
-----------------------	---

["Framework Contract"]	means the Framework Contract for the Goods and/or Services dated on or about the date hereof made between CCS and the Supplier;]
------------------------	--

["Goods" has the meaning given to it in the Framework Contract;]

["Guaranteed Agreement(s)" means [the Framework Contract and all Call-Off Contracts] [the Call-Off Contract] made between the Beneficiary and the Supplier [from time to time] [on insert date];]

"Guaranteed Obligations" means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement;

["Services" has the meaning given to it in the Framework Contract;]

- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent, present or future.

2 Guarantee and Indemnity

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations which are or become due from the Supplier to the Beneficiary.
- 2.2 The Guarantor undertakes to pay within a reasonable period and in any event no later than 90 days of a written demand by the Beneficiary, to the Beneficiary all monies and liabilities which are due and payable by the Supplier to the Beneficiary under the Guaranteed Agreement or in respect of the Guaranteed Obligations.

If at any time the Supplier shall fail to perform any of the Guaranteed Obligations which have become due under the terms of a Guaranteed Agreement, the Guarantor undertakes to the Beneficiary that, within a reasonable period and in any event no later than 90 days of time from the first written demand by the Beneficiary it shall, at the cost and expense of the Guarantor:

- 2.2.1 at the request of the Beneficiary fully, punctually and specifically perform such Guaranteed Obligations; and
- 2.2.2 as a separate and independent obligation, be liable to the Beneficiary for the losses, damages, reasonable costs and properly incurred expenses (including VAT thereon, and including, without limitation, all reasonable legal costs) of whatever nature which may result or which such Beneficiary suffers, incurs or sustains arising directly out of a failure by the Supplier to perform the Guaranteed Obligations which have become due and performable save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities (either in terms of extent or duration of those obligations or liabilities) on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement. The Guarantor's liability shall be no greater than the Supplier's liability (either in terms of extent or duration) would have been under the Guaranteed Agreement.
- 2.3 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes 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 Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3 Not used

4 Demands and Notices

- 4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

[Address of the Guarantor in England and Wales]

For the Attention of [insert details]

or such other address in England and Wales as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address for the receipt of such demands or notices. Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

- 4.1.1 if delivered by hand, at the time of delivery; or
- 4.1.2 if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or
- 4.2 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter.
- 4.3 Any notice purported to be served on either party under this Deed of Guarantee shall only be valid when received in writing by that party

5 Beneficiary's Protections

- 5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor).
- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
 - 5.2.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
 - 5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
 - 5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever (save for reason of illegality), the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
 - 5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not

prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.

- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non-performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.
- 5.8 The Guarantor shall afford any auditor of the Beneficiary appointed under the Guaranteed Agreement access to such records and accounts at the Guarantor's premises and/or provide such records and accounts or copies of the same, as may be required and agreed with any of the Beneficiary's auditors from time to time, in order that the Auditor may identify or investigate any circumstances which may impact upon the financial stability of the Guarantor.

6 Guarantor Intent

- 6.1 Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

7 Rights of Subrogation

- 7.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

- 7.1.1 of subrogation and indemnity;
- 7.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
- 7.1.3 to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on written demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier in respect of the Guarantor's obligations under this Deed of Guarantee and agrees not to do so until Beneficiary receives all moneys payable hereunder. Any security taken by the Guarantor from the Supplier in breach of this Clause shall be held by the Guarantor on trust for the Beneficiary until all the monetary obligations of the Supplier under the Guaranteed Agreement have been discharged in full.

8 Deferral of Rights

- 8.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:

- 8.1.1 in competition with the Beneficiary:
 - 8.1.1.1 exercise any rights it may have to be indemnified by the Supplier;
 - 8.1.1.2 claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement;
 - 8.1.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement; or
 - 8.1.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or
- 8.1.2 claim any set off or counterclaim against the Supplier;

- 8.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

9 Representations and Warranties

9.1 The Guarantor hereby represents and warrants to the Beneficiary that:

- 9.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- 9.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
- 9.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause Error! Reference source not found.) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
 - 9.1.3.1 the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
 - 9.1.3.2 any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
 - 9.1.3.1 the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
- 9.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 9.1.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

10 Payments and Set-off

- 10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary 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.
- 10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

10.3 Not used.

11 Guarantor's Acknowledgement

11.1 The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

12 Assignment

12.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.

12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

13 Severance

13.1 If any provision of this Deed of Guarantee 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 hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

14 Third Party Rights

14.1 Other than the Beneficiary, a person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

15 Survival

15.1 This Deed of Guarantee shall survive termination or expiry of the Guaranteed Agreement.

16 Governing Law

16.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.

16.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.

16.3 Not used.

16.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a **DEED** by

MITIE GROUP PLC acting by [Insert/print names]

Director

Director/Secretary

Joint Schedule 9

Order Form

Contract Number: ecm 9137

From the ("**Buyer**"): **THE SECRETARY OF STATE FOR WORK AND PENSIONS**, acting as part of the Crown.

Address: Caxton House Tothill Street, London, SW1H 9NA

To the ("**Supplier**")

Name: **MITIE FM LIMITED**

Registered Address: Level 12, The Shard, 32 London Bridge Street, London, England, SE1 9SG

Registered Number: 03253304

DUNS Number: 52-568-2399

Following the completion and execution of this Order Form by both Parties, the contract annexed to this Order Form between the Buyer and Supplier in relation to the provision of the management and maintenance services in relation to life systems across the Buyer's estate (the "**Contract**") shall become effective.

APPLICABLE FRAMEWORK CONTRACT:

This Order Form is issued in accordance with and subject to the provisions of the Framework Contract with the reference number RM 3830 and dated 10 July 2018 for the provision of facilities management services.

This Order Form is in relation to the following Lot 1b (ISO 9001, ISO 14001).

ORDER FORM INCORPORATED TERMS:

The Contract, its terms and all documents referred to in the Contract, including without limitation the documents referred to in clause 1.4 of the Contract are incorporated into this Order Form.

In the case of any conflict between any of the documents forming part of this Order Form, the order of precedence shall be as stated in clause 1.4 of the Contract.

The provisions incorporated into the Contract are the entire agreement between the Parties. The Contract and its terms replace all previous statements and agreements whether written or oral. No other provisions apply.

No change, alteration or modification to the Contract or this Order Form shall be effective unless the same shall be in writing and signed by both Parties.

COUNTERPARTS

The Order Form may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

Transmission of an executed counterpart of this Order Form (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Order Form. If either method of delivery is adopted, without prejudice to the validity of the Order Form thus made, each Party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

SIGNED by the duly appointed representatives of the Parties:

For and on behalf of **THE SECRETARY OF STATE FOR WORK AND PENSIONS**, acting as part of the Crown

Signature:

Name:

Position:

For and on behalf of **MITIE FM LIMITED**

Signature:

Name:

Position:

Joint Schedule 10

Rectification Plan¹

Request for [Draft/Revised] Rectification Plan			
Details of the Notifiable Default:	[Guidance: Explain the Notifiable Default, with clear schedule and clause references as appropriate.]		
Deadline for receiving the [Draft/Revised] Rectification Plan:	[DATE, (within 5 / 10 (as relevant and in accordance with Clause 10.8 (<i>Submission of the draft Rectification Plan</i>) and Clause 10.11 (<i>Agreement of the Rectification Plan</i>)) Working Days from request)]		
Signed by Buyer:		Date:	
Supplier [Draft/Revised] Rectification Plan			
Cause of the Notifiable Default	[This needs to include a root cause analysis.]		
Anticipated impact assessment:			
Actual effect of Notifiable Default:	[]		
Steps to be taken to rectification:	Steps	Timescale	
	1.	[date]	
	2.	[date]	
	3.	[date]	
	4.	[date]	
	[...]	[date]	
Timescale for complete Rectification of Notifiable Default	[X] Working Days		
Steps taken to prevent recurrence of Notifiable Default	Steps	Timescale	
	1.	[date]	
	2.	[date]	
	3.	[date]	
	4.	[date]	
	[...]	[date]	
Signed by the Supplier:		Date:	
Review of Rectification Plan Buyer			
Outcome of review	[Plan Accepted]		

¹ DWP to confirm if any additional items need to be included here.

	[Plan Rejected][Revised Plan Requested]		
Reasons for Rejection (if applicable)	Buyer must state why the plan is being rejected in accordance with Clause 10.10 (<i>Agreement of the Rectification Plan</i>)		
Signed by the Buyer		Date:	

Attachments: [attach additional documents, if relevant]

Call-Off Schedule 1

Transparency Reports

- 1.1 The Supplier recognises that the Buyer is subject to PPN 01/17 (Updates to transparency principles v1.1 (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>)). The Supplier shall comply with the provisions of this Schedule in order to assist the Buyer with its compliance with its obligations under that PPN.
- 1.2 Within three (3) Months of the Start Date the Supplier shall submit to the Buyer for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in the Annex of this Schedule.
- 1.3 If the Buyer rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Buyer. If the Parties fail to agree on a draft Transparency Report the Buyer shall determine what should be included. Any other disagreement in connection with Transparency Reports shall be treated as a Dispute.
- 1.4 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Buyer at the frequency referred to in the Annex of this Schedule.

Annex: List of Transparency Reports

Title	Content	Format	Frequency
Performance	KPI Performance Data	To be agreed during Mobilisation with the Buyer	Monthly
Contract Charges	Monthly Invoice Amounts	To be agreed during Mobilisation with the Buyer	Monthly

Call-Off Schedule 2

Staff Transfer²

1 Interpretation

- 1.1 Where a provision in this Schedule imposes any obligation on the Supplier including (without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Subcontractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Buyer, Former Supplier, Replacement Supplier or Replacement Subcontractor, as the case may be and where the Subcontractor fails to satisfy any claims under such indemnities the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

2 Application of this Schedule

- 2.1 The Parts of this Schedule which shall apply to the Contract are specified in the Buyer Contract Details.

² To be updated to reflect the correct relevant Parts. The relevant definitions will also need to be updated.

Part A: Staff Transfer at Start Date – Outsourcing from the Buyer (Optional)

1 Relevant Transfers

- 1.1 The Buyer and the Supplier agree that:
- 1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Buyer Employees; and
 - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Buyer and the Transferring Buyer Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Subcontractor and each such Transferring Buyer Employee.
- 1.2 The Buyer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions.

2 Buyer Indemnities

- 2.1 Subject to Paragraph 2.2, the Buyer shall indemnify the Supplier and any Subcontractor against any Employee Liabilities arising from or as a result of any act or omission by the indemnifying party in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee occurring before the Relevant Transfer Date.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date.
- 2.3 Subject to Paragraphs 2.4 and 2.5, if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then -
- 2.3.1 the Supplier will, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing;
 - 2.3.2 the Buyer may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;
 - 2.3.3 if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
 - 2.3.4 if after the period referred to in Paragraph 2.3.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may

within 5 Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 2.3.1 to 2.3.4 the Buyer will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in this Paragraph 2.3.

2.4 The indemnity in Paragraph 2.3 shall not apply to any claim:

2.4.1 for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or any Subcontractor; or

2.4.2 any claim that the termination of employment was unfair because the Supplier and/or any Subcontractor neglected to follow a fair dismissal procedure.

2.5 The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date.

2.6 If the Supplier and/or any Subcontractor at any point accept the employment of any person as is described in Paragraph 2.3, such person shall be treated as having transferred to the Supplier and/or any Subcontractor and the Supplier shall comply with such obligations as may be imposed upon it under applicable Law.

3 Supplier Indemnities and Obligations

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Buyer against any Employee Liabilities arising from or as a result of any act or omission by the Supplier or any Subcontractor in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee whether occurring before, on or after the Relevant Transfer Date.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations.

3.3 The Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees, from (and including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and any other sums due under Part D: Pensions.

4 Information

The Supplier shall promptly provide to the Buyer in writing such information as is necessary to enable the Buyer to carry out its duties under regulation 13 of the

Employment Regulations. The Buyer shall promptly provide to the Supplier in writing such information as is necessary to enable the Supplier and any Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5 Principles of Good Employment Practice

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Buyer Employee as set down in (i) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007; (ii) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; (iii) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or (iv) the New Fair Deal.
- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Control Procedure.

6 Pensions

- 6.1 The Supplier shall comply with:
 - 6.1.1 all statutory pension obligations in respect of all Transferring Buyer Employees; and
 - 6.1.2 the provisions in Part D: Pensions.

Part B: Staff Transfer at Start Date – Transfer from Former Supplier on
Reprocurement (Optional)

1 Relevant Transfers

- 1.1 The Buyer and the Supplier agree that:
- 1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
 - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disappplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Subcontractor and each such Transferring Former Supplier Employee.
- 1.2 The Buyer shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions.

2 Former Supplier Indemnities

- 2.1 Subject to Paragraph 2.2, the Buyer shall procure that each Former Supplier shall indemnify the Supplier and any Subcontractor against any Employee Liabilities arising from or as a result of any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date.
- 2.3 Subject to Paragraphs 2.4 and 2.5, if any employee of a Former Supplier who is not identified as a Transferring Former Supplier Employee and claims, and/or it is determined, in relation to such person that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Subcontractor pursuant to the Employment Regulations then:
- 2.3.1 the Supplier will within 5 Working Days of becoming aware of that fact notify the Buyer and the relevant Former Supplier in writing;
 - 2.3.2 the Former Supplier may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;
 - 2.3.3 if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;

- 2.3.4 If after the period referred to in Paragraph 2.3.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 2.3.1 to 2.3.4 the Buyer shall procure that the Former Supplier will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Former Supplier's employees referred to in Paragraph 2.3.

- 2.4 The indemnity in Paragraph 2.3 shall not apply to any claim:

2.4.1 for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Supplier and/or any Subcontractor; or

2.4.2 that the termination of employment was unfair because the Supplier and/or Subcontractor neglected to follow a fair dismissal procedure.

- 2.5 The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date.

- 2.6 If the Supplier and/or any Subcontractor at any point accept the employment of any person as is described in Paragraph 2.3, such person shall be treated as having transferred to the Supplier and/or any Subcontractor and the Supplier shall comply with such obligations as may be imposed upon it under applicable Law.

3 Supplier Indemnities and Obligations

- 3.1 Subject to Paragraph 3.1, the Supplier shall indemnify the Buyer, and the Former Supplier against any Employee Liabilities arising from or as a result of any act or omission by the Supplier or any Subcontractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date.

- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

- 3.3 The Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due under Part D: Pensions.

4 Information

The Supplier shall promptly provide to the Buyer and/or at the Buyer's direction, the Former Supplier, in writing such information as is necessary to enable the Buyer and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Former Supplier shall promptly provide to the Supplier in writing such information as is necessary to enable the Supplier and any Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5 Principles of Good Employment Practice

- 5.1 The Supplier shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Former Supplier Employee as set down in (i) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007; (ii) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; (iii) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or (iv) the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Control Procedure.

6 Procurement Obligations

Notwithstanding any other provisions of this Part B, where in this Part B the Buyer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Buyer's contract with the Former Supplier contains a contractual right in that regard which the Buyer may enforce, or otherwise so that it requires only that the Buyer's must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

7 Pensions

- 7.1 The Supplier shall comply with:
 - 7.1.1 all statutory pension obligations in respect of all Transferring Former Supplier Employees; and
 - 7.1.2 the provisions in Part D: Pensions.

Part C: No Staff Transfer on Start Date (Optional)

1 Procedure in the Event of Transfer

- 1.1 The Buyer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Buyer and/or any Former Supplier.
- 1.2 Subject to Paragraphs 1.3, 1.4 and 1.5, if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then:
- 1.2.1 the Supplier will, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing;
 - 1.2.2 the Buyer may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;
 - 1.2.3 if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
 - 1.2.4 if after the period referred to in Paragraph 1.2.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 1.2.1 to 1.2.4:

- (i) the Buyer will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in Paragraph 1.2; and
 - (ii) the Buyer will procure that the Former Supplier indemnifies the Supplier and/or any Subcontractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2.
- 1.3 The indemnities in Paragraph 1.2 shall not apply to any claim:
- 1.3.1 for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or Subcontractor; or
 - 1.3.2 any claim that the termination of employment was unfair because the Supplier and/or any Subcontractor neglected to follow a fair dismissal procedure

- 1.4 The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date.
- 1.5 If the Supplier and/or the Subcontractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Subcontractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) indemnify the Buyer and any Former Supplier against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Subcontractor.

2 Procurement Obligations

Where in this Part C the Buyer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Buyer's contract with the Former Supplier contains a contractual right in that regard which the Buyer may enforce, or otherwise so that it requires only that the Buyer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

Part D: Pensions

1 Participation

- 1.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPA, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.
- 1.2 The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 1.3 The Supplier undertakes:
 - 1.3.1 to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
 - 1.3.2 subject to Paragraph 5 of Annex D3 LGPS of this Part D and Call-Off Schedule 6 (*TUPE Surcharge*), to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.

2 Provision of Information

- 2.1 The Supplier undertakes to the Buyer:
 - 2.1.1 to provide all information which the Buyer may reasonably request concerning matters referred to in this Part D as expeditiously as possible; and
 - 2.1.2 not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Buyer (such consent not to be unreasonably withheld or delayed).

3 Indemnities

- 3.1 The Supplier undertakes to the Buyer to indemnify and keep indemnified CCS, NHS Pensions the Buyer and/or any Replacement Supplier and/or any Replacement Subcontractor on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards all and any Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which arise from any breach by the Supplier of this Part D, and/or the CSPA Admission Agreement and/or the Direction Letter and/or the LGPS Admission Agreement or relates to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Fair Deal Schemes.
- 3.2 The Supplier hereby indemnifies the CCS, NHS Pensions, the Buyer and/or any Replacement Supplier and/or Replacement Subcontractor from and against all Losses suffered or incurred by it or them which arise from claims by Fair Deal Employees of

the Supplier and/or of any Subcontractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:

- 3.2.1 relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; or
 - 3.2.2 arise out of the failure of the Supplier and/or any relevant Subcontractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract.
- 3.3 The indemnities in this Part D and its Annexes:
- 3.3.1 shall survive termination of this Contract; and
 - 3.3.2 shall not be affected by the caps on liability contained in Clause 12 (*How much each Party can be held responsible for*).

4 Disputes

- 4.1 The Dispute Resolution Procedure will not apply to this Part D and any dispute between the CCS and/or the Buyer and/or the Supplier or between their respective actuaries or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the CCS and/or the Buyer and/or the Supplier be referred to an independent Actuary:
- 4.1.1 who will act as an expert and not as an arbitrator;
 - 4.1.2 whose decision will be final and binding on the CCS and/or the Buyer and/or the Supplier; and
 - 4.1.3 whose expenses shall be borne equally by the CCS and/or the Buyer and/or the Supplier unless the independent Actuary shall otherwise direct.

5 Third Party Rights

- 5.1 The Parties agree Clause 20 (*Other people's rights in this Contract*) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her or it by the Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.
- 5.2 Further, the Supplier must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Subcontractor in his or her or its own right under section 1(1) of the CRTPA.

6 Breach

- 6.1 The Supplier agrees to notify the Buyer should it breach any obligations it has under this Part D and agrees that the Buyer shall be entitled to terminate its Contract for material Default in the event that the Supplier:

- 6.1.1 commits an irremediable breach of any provision or obligation it has under this Part D; or
- 6.1.2 commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Buyer giving particulars of the breach and requiring the Supplier to remedy it.

7 Transfer to Another Employer/ Sub- Contractors

- 7.1 Save on expiry or termination of this Contract, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the Employment Regulations) the Supplier shall and shall procure that any relevant Subcontractor shall:
 - 7.1.1 consult with and inform those Fair Deal Employees of the pension provisions relating to that transfer; and
 - 7.1.2 procure that the employer to which the Fair Deal Employees are transferred (the “**New Employer**”) complies with the provisions of this Part D and its Annexes provided that references to the “Supplier” will become references to the New Employer, references to “Relevant Transfer Date” will become references to the date of the transfer to the New Employer and references to “Fair Deal Employees” will become references to the Fair Deal Employees so transferred to the New Employer.

8 Pension Issues on Expiry or Termination

The provisions of Part E: Staff Transfer on Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Contract.

9 Broadly Comparable Pension Schemes

- 9.1 If either:
 - 9.1.1 the terms of any of Paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and or 4 of Annex D3: LGPS apply; and/or
 - 9.1.2 the Buyer agrees, having considered the exceptional cases provided for in New Fair Deal, (such agreement not to be unreasonably withheld) that the Supplier (and/or its Subcontractors, if any) need not continue to provide the Fair Deal Employees, who continue to qualify for Fair Deal Protection, with access to the appropriate Statutory Scheme;
 - 9.1.3 the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the Relevant Transfer Date or if later cessation of participation in the Statutory Scheme until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.
- 9.2 Where the Supplier has set up a Broadly Comparable pension scheme or schemes pursuant to the provisions of Paragraph 9.1, the Supplier shall (and shall procure that any of its Subcontractors shall):

- 9.2.1 supply to the Buyer details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability covering all relevant Fair Deal Employees, as soon as it is able to do so and in any event no later than 28 days before the Relevant Transfer Date;
- 9.2.2 fully fund any such Broadly Comparable pension scheme in accordance with the funding requirements set by that Broadly Comparable pension scheme's Actuary or by the Government Actuary's Department for the period ending on the Service Transfer Date;
- 9.2.3 instruct any such Broadly Comparable pension scheme's Actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the Replacement Supplier and/or CCS and/or NHS Pension and/or CSPA and/or the relevant Administering Authority and/or the Buyer may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
- 9.2.4 provide a replacement Broadly Comparable pension scheme with immediate effect for those Fair Deal Employees who are still employed by the Supplier and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Subcontractor's Broadly Comparable pension scheme is terminated;
- 9.2.5 allow and make all necessary arrangements to effect, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the relevant Statutory Scheme and as is relevant on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the appropriate Statutory Scheme to fund day for day service ("**Shortfall**"), the Supplier or the Subcontractor (as agreed between them) must pay the Statutory Scheme, as required, provided that in the absence of any agreement between the Supplier and any Subcontractor, the Shortfall shall be paid by the Supplier; and
- 9.2.6 indemnify CCS and/or the Buyer and/or NHS Pension and/or CSPA and/or the relevant Administering Authority and/or on demand for any failure to pay the Shortfall as required under Paragraph 9.2.5 above.

Annex D1: CSPA

1 Future Service Benefits

- 1.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the CSPA that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the CSPA for service from (and including) the Relevant Transfer Date.
- 1.2 The Supplier undertakes that should it cease to participate in the CSPA for whatever reason at a time when it has CSPA Eligible Employees, that it will, at no extra cost to the Buyer, provide to any Fair Deal Employee who immediately prior to such cessation of participation remained a CSPA Eligible Employee with access to a pension scheme which is Broadly Comparable to the CSPA on the date the CSPA Eligible Employees ceased to participate in the CSPA.

Annex D2: NHSPS

1 Membership of the NHSPS

- 1.1 In accordance with New Fair Deal, the Supplier and/or any of its Subcontractors to which the employment of any NHSPS Eligible Employee compulsorily transfers as a result of the award of this Contract, if not an NHS Body or other employer which participates automatically in the NHSPS, must by or as soon as reasonably practicable after the Relevant Transfer Date, each secure a Direction Letter to enable the NHSPS Eligible Employees to retain either continuous active membership of or eligibility for, the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Contract, and have a right to membership or eligibility of that scheme under the terms of the Direction Letter.
- 1.2 The Supplier must supply to the Buyer by or as soon as reasonably practicable after the Relevant Transfer Date a complete copy of each Direction Letter.
- 1.3 The Supplier must ensure (and procure that each of its Sub-Contracts (if any) ensures) that all of its NHSPS Eligible Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter.
- 1.4 The Supplier will (and will procure that its Subcontractors (if any) will) comply with the terms of the Direction Letter, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health in respect of the NHSPS Eligible Employees for so long as it remains bound by the terms of any such Direction Letter.
- 1.5 Where any employee omitted from the Direction Letter supplied in accordance with Paragraph 1 of this Annex are subsequently found to be an NHSPS Eligible Employee, the Supplier will (and will procure that its Subcontractors (if any) will) treat that person as if they had been an NHSPS Eligible Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
- 1.6 The Supplier will (and will procure that its Subcontractors (if any) will) as soon as reasonably practicable and at its (or its Subcontractor's) cost, obtain any guarantee, bond or indemnity that may from time to time be required by the Secretary of State for Health.

2 Future Service Benefits in the NHSPS

The Supplier will procure that with effect from the Relevant Transfer Date the NHSPS Eligible Employees shall be either eligible for or remain in continuous active membership of (as the case may be) the NHSPS for employment from (and including) the Relevant Transfer Date.

3 NHS Premature Retirement Rights

From the Relevant Transfer Date until the Service Transfer Date, the Supplier must provide (and/or must ensure that its Subcontractors (if any) provide) NHS Premature Retirement Rights in respect of the NHSPS Eligible Employees that are identical to the benefits they would have received had they remained employees of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS.

4 Breach and Cancellation of any Direction Letter(s) and Right of Set-Off

- 4.1 The Supplier agrees that the Buyer is entitled to make arrangements with NHS Pensions for the Buyer to be notified if the Supplier (or its Subcontractor) breaches the terms of its Direction Letter. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Buyer in the event that it (or its Subcontractor) breaches the terms of its Direction Letter.
- 4.2 If the Buyer is entitled to terminate the Contract or the Supplier (or its Subcontractor, if relevant) ceases to participate in the NHSPS for whatever other reason, the Buyer may in its sole discretion, and instead of exercising its right to terminate this Contract where relevant, permit the Supplier (or any such Subcontractor, as appropriate) to offer Broadly Comparable Pension Benefits, on such terms as decided by the Buyer. The provisions of Paragraph 9 (*Bulk Transfer Obligations in relation to any Broadly Comparable pension scheme*) of Part D: Pensions shall apply in relation to any Broadly Comparable pension scheme established by the Supplier or its Subcontractors.
- 4.3 In addition to the Buyer's right to terminate the Contract, if the Buyer is notified by NHS Pensions of any NHS Pension Scheme Arrears, the Buyer will be entitled to deduct all or part of those arrears from any amount due to be paid under this Contract or otherwise.

5 Compensation

- 5.1 If the Supplier (or its Subcontractor, if relevant) is unable to provide the NHSPS Eligible Employees with either:

5.1.1 membership of the NHSPS (having used its best endeavours to secure a Direction Letter); or

5.1.2 access to a Broadly Comparable pension scheme,

the Buyer may in its sole discretion permit the Supplier (or any of its Subcontractors) to compensate the NHSPS Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier (or Subcontractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Eligible Employees. The Supplier must meet (or must procure that the relevant Subcontractor meets) the costs of the Buyer determining whether the level of compensation offered is reasonable in the circumstances.

- 5.2 This flexibility for the Buyer to allow compensation in place of Pension Benefits is in addition to and not instead of the Buyer's right to terminate the Contract.

6 Supplier Indemnities

- 6.1 The Supplier must indemnify and keep indemnified the CCS, the Buyer and any Replacement Supplier against all Losses arising out of any claim by any NHSPS Eligible Employee that the provision of (or failure to provide) Pension Benefits and NHS Premature Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.
- 6.2 The Supplier must indemnify and keep indemnified the Buyer, NHS Pensions and any Replacement Supplier against all Losses arising out of the Supplier (or its Subcontractor) allowing anyone who is not an NHSPS Eligible Employee to join or claim membership of the NHSPS at any time during the Contract Period.

7 Subcontractors

- 7.1 If the Supplier enters into a Sub-Contract for the delivery of all or part or any component of the Services which will involve the transfer of employment of any NHSPS Eligible Employee it will impose obligations on its Subcontractor in identical terms as those imposed on the Supplier in relation to Pension Benefits and NHS Premature Retirement Rights by this Annex, including requiring that:
- 7.1.1 if the Supplier has secured a Direction Letter, the Subcontractor also secures a Direction Letter in respect of the NHSPS Eligible Employees for their future service with the Subcontractor as a condition of being awarded the Sub-Contract and the Supplier shall be responsible for ensuring that the Buyer receives a complete copy of each such Subcontractor direction letter as soon as reasonably practicable; or
- 7.1.2 if, in accordance with Paragraph 3 of this Annex, the Supplier has offered the NHSPS Eligible Employees access to a pension scheme under which the benefits are Broadly Comparable to those provided under the NHSPS, the Subcontractor either secures a Direction Letter in respect of the NHSPS Eligible Employees or (with the prior consent of the Buyer) provides NHSPS Eligible Employees with access to a scheme with Pension Benefits which are Broadly Comparable to those provided under the NHSPS whereupon the provisions of Paragraph 9 below (*Bulk Transfer Obligations in relation to any Broadly Comparable Scheme*) shall apply.
- 7.2 The Supplier shall procure that each Subcontractor provides indemnities to the Buyer, NHS Pensions and/or any Replacement Supplier and/or Replacement Subcontractor that are identical to the indemnities set out in Paragraph 6 of this Annex B. Where a Subcontractor fails to satisfy any claim made under such one or more indemnities, the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

Annex D3: LGPS

1 Supplier to become an LGPS Admission Body

- 1.1 Where the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date, the Supplier shall become an LGPS Admission Body and shall on or before the Relevant Transfer Date enter into a LGPS Admission Agreement with the Administering Authority which will have effect from and including the Relevant Transfer Date.
- 1.2 The LGPS Admission Agreement must ensure that all LGPS Eligible Employees covered by that Agreement who were active LGPS members immediately before the Relevant Transfer Date are admitted to the LGPS with effect on and from the Relevant Transfer Date. Any LGPS Eligible Employees who were eligible to join the LGPS but were not active LGPS members immediately before the Relevant Transfer Date must retain the ability to join the LGPS after the Relevant Transfer Date if they wish to do so.
- 1.3 The Supplier shall provide any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.
- 1.4 The Supplier shall not automatically enroll or re-enroll for the purposes of the Pensions Act 2008 any LGPS Eligible Employees in any pension scheme other than the LGPS.

2 Right of Set-Off

The Buyer shall have a right to set off against any payments due to the Supplier under the Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Supplier (or from any relevant Subcontractor) under an LGPS Admission Agreement and shall pay such amount to the relevant Fund.

3 Supplier Ceases to be an LGPS Admission Body

If the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date and the Supplier either cannot or does not participate in the LGPS, the Supplier shall offer such LGPS Eligible Employee membership of a pension scheme Broadly Comparable to the LGPS.

4 Discretionary Benefits

Where the Supplier is an LGPS Admission Body, the Supplier shall award benefits to the LGPS Eligible Employees under the LGPS in circumstances where the LGPS Eligible Employees would have received such benefits had they still been employed by their previous employer. Where such benefits are of a discretionary nature, they shall be awarded on the basis of the previous employer's written policy in relation to such benefits at the time of the Relevant Transfer Date.

5 Funding

- 5.1 The Buyer hereby undertakes that it shall procure that the funding of the accrued rights of LGPS Eligible Employees in the LGPS in respect of pensionable service up to the first Relevant Transfer Date under the Contract shall be calculated on the basis that the LGPS had assets equal to its liabilities, as at that Relevant Transfer Date, based on the LGPS' ongoing actuarial valuation basis.

- 5.2 Subject to Paragraph 5.3 of this Annex D3, any Excess Amount shall be the sole responsibility of the Buyer and shall be dealt with as set out in Paragraphs 5.4 to 5.7 of this Annex D3.
- 5.3 Nothing in Paragraph 5.2 of this Annex D3 shall require the Buyer to be responsible for any Excess Amount to the extent that such Excess Amount has arisen as a result of:
- 5.3.1 a decision or exercise of discretion by the Supplier or any Subcontractor which:
- (i) increases the pensionable pay of LGPS Eligible Employees above the greater of:
 - (A) the increases assumed in the relevant actuarial valuations of the LGPS; and
 - (B) the increases the Supplier and/or any Subcontractor are contractually bound to provide on the Relevant Transfer Date;
 - (ii) otherwise increases the benefits payable to a LGPS Eligible Employee and in particular:
 - (A) the immediate payment of benefits with:
 - 1) the Supplier's or Subcontractors' consent under Regulation 30 of the LGPS Regulations, including waiving any reduction of benefits under Regulation 30(8) of the LGPS Regulations or otherwise; or
 - 2) the Supplier or Subcontractors waiving any reduction of benefits on compassionate grounds under Schedule 2 of The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014); and/or
 - (B) an award to additional pension under Regulation 31 of the LGPS Regulations;
- 5.3.2 the early retirement of LGPS Eligible Employees due to dismissal or termination of employment under Regulation 30(7) of the LGPS Regulations;
- 5.3.3 the early retirement of LGPS Eligible Employees under the provisions of regulations 35 to 39 of the LGPS Regulations;
- 5.3.4 any contribution required by the Administering Authority towards the cost of the administration of the Fund relating to the Supplier that are not met through the Supplier's or Subcontractors' payments under the applicable rates and adjustment certificate under regulation 62 of the LGPS Regulations, including without limitation an amount specified in a notice given by the Administering Authority under Regulation 70 of the LGPS Regulations and the costs of any reports and advice requested by the Supplier from an actuary appointed by the Administering Authority; and/or

- 5.3.5 any interest payable under the LGPS Regulations or LGPS Administration Agreement.
- 5.4 Within 20 Working Days of the end of each Contract Year the Supplier shall notify the Buyer in writing of any Excess Amount in the immediately preceding Contract Year together with a reasonable summary of how the Supplier has arrived at its calculation of such amount.
- 5.5 On receipt of the Supplier's calculation in accordance with Paragraph 5.4 above the Buyer shall either:
 - 5.5.1 notify the Supplier in writing of acceptance of the Excess Amount;
 - 5.5.2 request further information/evidence; and/or
 - 5.5.3 request a meeting to discuss/clarify the evidence provided.
- 5.6 Where the pension adjustment notified Paragraph 5.4 above is agreed following the receipt of further information/evidence or following a meeting, the Buyer shall notify the Supplier in writing. In the event that the Supplier and the Buyer are unable to agree the pension adjustment, they shall follow the Dispute Resolution Procedure.
- 5.7 Any Excess Amount agreed by the Buyer shall be paid within timescales as agreed between Buyer and Supplier. In respect of any Excess Amount the amount to be paid by the Buyer shall be an amount equal to the Excess Amount (less an amount equal to any corporation tax relief which has been claimed in respect of the Excess Amount by the Supplier or its Subcontractors).
- 5.8 EXIT COSTS AT CALL-OFF STAGE - Any decision regarding Suppliers exposure to LGPS costs arising at the end of the Contract will be notified at Call Off.

Part E: Staff Transfer on Exit (Mandatory)

1 Pre-Service Transfer Obligations

1.1 The Supplier agrees that within 20 Working Days of the earliest of:

- 1.1.1 receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;
- 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of the relevant Contract;
- 1.1.3 the date which is 12 Months before the end of the Term; and
- 1.1.4 receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any 6 Month period),

It shall provide in a suitably anonymised format so as to comply with the Data Protection Laws, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Buyer.

1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Subcontractor (i) the Supplier's Final Supplier Personnel List, which shall identify the basis upon which they are Transferring Supplier Employees and (ii) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

1.3 The Buyer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Subcontractor.

1.4 The Supplier warrants, for the benefit of The Buyer, any Replacement Supplier, and any Replacement Subcontractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

1.5 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees that it shall not assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall, unless otherwise instructed by the Buyer (acting reasonably):

- 1.5.1 not replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- 1.5.2 not make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions, retirement and death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Supplier Personnel (including any payments connected with the termination of employment);

- 1.5.3 not increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4 not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- 1.5.5 not increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services);
- 1.5.6 not terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process;
- 1.5.7 not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor;
- 1.5.8 give the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor reasonable access to Supplier Personnel and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Buyer, Replacement Supplier and/or Replacement Subcontractor in respect of persons expected to be Transferring Supplier Employees;
- 1.5.9 co-operate with the Buyer and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
- 1.5.10 promptly notify the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Subcontractor of any notice to terminate employment given by the Supplier or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect;
- 1.5.11 not for a period of 12 Months from the Service Transfer Date re-employ or re-engage or entice any employees, suppliers or Subcontractors whose employment or engagement is transferred to the Buyer and/or the Replacement Supplier (unless otherwise instructed by the Buyer(acting reasonably));
- 1.5.12 not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;
- 1.5.13 fully fund any Broadly Comparable pension schemes set up by the Supplier;
- 1.5.14 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Fair Deal Employees);

- 1.5.15 promptly provide to the Buyer such documents and information mentioned in Paragraph 2.1.1 of Part D: Pensions which the Buyer may reasonably request in advance of the expiry or termination of this Contract; and
 - 1.5.16 fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract.
- 1.6 On or around each anniversary of the Effective Date and up to four times during the last 12 Months of the Term, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within 20 Working Days of receipt of a written request the Supplier shall provide such information as the Buyer may reasonably require which shall include:
- 1.6.1 the numbers of employees engaged in providing the Services;
 - 1.6.2 the percentage of time spent by each employee engaged in providing the Services;
 - 1.6.3 the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part D: Pensions); and
 - 1.6.4 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier shall provide all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Subcontractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Subcontractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
- 1.7.1 the most recent month's copy pay slip data;
 - 1.7.2 details of cumulative pay for tax and pension purposes;
 - 1.7.3 details of cumulative tax paid;
 - 1.7.4 tax code;
 - 1.7.5 details of any voluntary deductions from pay; and
 - 1.7.6 bank/building society account details for payroll purposes.

2 Employment Regulations Exit Provisions

- 2.1 A change in the identity of the supplier of the Services (or part of the Services), howsoever arising, may constitute a Relevant Transfer to which the Employment

Regulations will apply. The Buyer and the Supplier agree that where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Subcontractor (as the case may be) and each such Transferring Supplier Employee.

- 2.2 The Supplier shall comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Fair Deal Schemes (as defined in Part D: Pensions).
- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor against any Employee Liabilities arising from or as a result of any act or omission of the Supplier or any Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.
- 2.4 The indemnity in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Subcontractor whether occurring or having its origin before, on or after the Service Transfer Date.
- 2.5 Subject to Paragraphs 2.6 and 2.7, if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Subcontractor pursuant to the Employment Regulations then.
 - 2.5.1 the Replacement Supplier and/or Replacement Subcontractor will, within 5 Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing;
 - 2.5.2 the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Replacement Supplier and/or Replacement Subcontractor;
 - 2.5.3 if such offer of employment is accepted, the Replacement Supplier and/or Replacement Subcontractor shall immediately release the person from its employment;
 - 2.5.4 if after the period referred to in Paragraph 2.5.2 no such offer has been made, or such offer has been made but not accepted, the Replacement Supplier and/or Replacement Subcontractor may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Replacement Supplier's and/or Replacement Subcontractor's compliance with Paragraphs 2.5.1 to 2.5.4 the Supplier will indemnify the Replacement Supplier and/or Replacement Subcontractor against all Employee Liabilities arising out

of the termination of the employment of any of the Supplier's employees referred to in Paragraph 2.5.

2.6 The indemnity in Paragraph 2.5 shall not apply to:

2.6.1 any claim for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief, or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Replacement Supplier and/or Replacement Subcontractor, or

2.6.2 any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Subcontractor neglected to follow a fair dismissal procedure.

2.7 The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date.

2.8 If at any point the Replacement Supplier and/or Replacement Sub-contract accepts the employment of any such person as is described in Paragraph 2.5, such person shall be treated as a Transferring Supplier Employee and Paragraph 2.5 shall cease to apply to such person.

2.9 The Supplier shall promptly provide the Buyer and any Replacement Supplier and/or Replacement Subcontractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Replacement Supplier and/or Replacement Subcontractor, shall promptly provide to the Supplier and each Subcontractor in writing such information as is necessary to enable the Supplier and each Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

2.10 Subject to Paragraph 2.9, the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Subcontractor and its Subcontractors against any Employee Liabilities arising from or as a result of any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.

2.11 The indemnity in Paragraph 2.10 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Subcontractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Subcontractor (as applicable) to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Supplier's Final Supplier Personnel List in accordance with Paragraph 2.5 (and subject to the limitations set out in Paragraphs 2.6 and 2.7 above).

Call-Off Schedule 3

Continuous Improvement

1 General

1.1 Not used.

2 Continuous Improvement

2.1 The Supplier shall, throughout the Contract Period, identify and notify the Buyer of new or potential improvements to the provision of the Deliverables with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables and their supply to the Buyer.

2.2 The Supplier shall adopt a policy of continuous improvement in relation to the Deliverables pursuant to which it will regularly review with the Buyer the Deliverables and the manner in which it is providing the Deliverables with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables. The Supplier and the Buyer will provide to each other any information which may be relevant to assisting in fulfilling these objectives.

2.3 Without limiting Paragraph 2.1, the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Deliverables and/or reducing the Charges (without adversely affecting the performance of this Contract) during that Contract Year ("**Continuous Improvement Plan**") for the Buyer's Approval. The Continuous Improvement Plan shall include, as a minimum, proposals in respect of the following:

2.3.1 identifying the emergence of relevant new and evolving technologies;

2.3.2 changes in business processes of the Supplier or the Buyer and ways of working that would provide cost savings and/or enhanced benefits to the Buyer (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);

2.3.3 new or potential improvements to the provision of the Deliverables including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and Buyer support services in relation to the Deliverables; and

2.3.4 measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains pertaining to the Deliverables, and identifying opportunities to assist the Buyer in meeting their sustainability objectives.

2.4 The initial Continuous Improvement Plan for the first (1st) Contract Year shall be submitted by the Supplier to the Buyer for Approval within one hundred (100) Working Days or six (6) Months following the Start Date, whichever is earlier.

2.5 The Buyer shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. If it is rejected then the Supplier shall, within ten (10) Working Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required. If this revised Continuous Improvement Plan is also rejected the Supplier shall provide a second revised Continuous Improvement Plan for approval.

Should this second revised Continuous Improvement Plan not be approved the Parties may refer this to the Dispute Resolution Process.

- 2.6 Where a Continuous Improvement Plan is Approved, it shall constitute the Continuous Improvement Plan for the purposes of this Contract.
- 2.7 The Supplier shall provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested.
- 2.8 If the Buyer wishes to incorporate any improvement into this Contract, it shall request a Variation in accordance with paragraph 8 of the Variation Control Procedure and the Supplier shall implement such Variation at no additional cost to the Buyer.
- 2.9 Once the first Continuous Improvement Plan has been Approved in accordance with Paragraph 2.5:
 - 2.9.1 the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
 - 2.9.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Supplier's progress against the Continuous Improvement Plan.
- 2.10 The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1st) Contract Year) in accordance with the procedure and timescales set out in Paragraph 2.3.
- 2.11 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.
- 2.12 Should the Supplier's costs in providing the Deliverables to the Buyer be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Buyer by way of a consequential and immediate reduction in the Charges for the Deliverables.
- 2.13 At any time during the Contract Period of the Contract, the Supplier may make a proposal for gainshare. If the Buyer deems gainshare to be applicable then the Supplier shall update the Continuous Improvement Plan so as to include details of the way in which the proposal shall be implemented in accordance with an agreed gainshare ratio.

Call-Off Schedule 4

Not used

Call-Off Schedule 4A

Not used

Call-Off Schedule 5

Pricing

Part A: Charges

1 General

- 1.1 The Charges in each month shall be calculated in accordance with this Call-Off Schedule 5 (*Pricing*).
- 1.2 For all Charges, the Supplier shall ensure that:
 - 1.2.1 all costs are evidenced by the Supporting Documentation; and
 - 1.2.2 the Supplier shall:
 - (i) not be paid any Charges attributable to Disallowed Costs and/or any Permitted Event; and
 - (ii) only be entitled to be paid Charges that have been properly and reasonably incurred, taking into account the Supplier's obligation to deliver the Services in a proportionate and reasonable manner and in accordance with the terms of this Agreement.
- 1.3 The Charges shall not be subject to increase by way of indexation save that once any Optional Extension Period has commenced in accordance with this Contract any amounts or sums which are expressed in the Pricing Matrix to be "subject to Indexation" shall be adjusted in accordance with the provisions of Paragraph 1.4.
- 1.4 Where indexation applies during the Optional Extension Period, the relevant adjustment shall be:
 - 1.4.1 applied on the commencement of the Optional Extension Period (the "**Adjustment Date**"); and
 - 1.4.2 determined by multiplying the relevant amount or sum by the percentage increase or changes in the Payment Index published since the previous Adjustment Date.
- 1.5 If the Payment Index has not been published for the relevant month as required for this calculation then the last published value of the index available at the Adjustment Date shall be used.
- 1.6 Where the Payment Index is no longer published, the Buyer and the Supplier shall agree a fair and reasonable replacement that will have substantially the same effect.
- 1.7 For a Service Period, the Supplier shall only be entitled to charge:
 - 1.7.1 one twelfth of the Fixed Monthly Fee; and
 - 1.7.2 for the relevant Variable Fee:
 - (i) the relevant PPM Task Fixed Price for any PPM Task which has achieved PPM Task Completion in that Service Month;

- (ii) the relevant Remedial Work Fee for any Remedial Work which has achieved Completion of Remedial Work in that Service Month; and
 - (iii) the Monthly TUPE Risk Premium;
 - 1.7.3 the Mobilisation Payment in the Service Period in which the Mobilisation Payment Date occurs (or such later Service Period as the Parties may agree); and
 - 1.7.4 any other express costs and/or expenses provided for in this Contract,
- less any relevant sums due to the Buyer under this Contract including, without limitation, Deductions.
- 1.8 The Supplier shall keep records of:
- 1.8.1 time segments in 1 hour increments. For example, if an engineer has taken 40 minutes to undertake a Remedial Work (where applicable) the timesheet will record 1 hour;
 - 1.8.2 all Remedial Work (where applicable) carried out by the Supplier Personnel in the form of timesheets and taking into account the time segments referred to in paragraph 1.8.1;
 - 1.8.3 all:
 - (i) expenses;
 - (ii) consumables and materials,
 reasonably and necessarily incurred by or on behalf of the Supplier in providing the Services; and
- the Supplier shall submit the relevant records with each monthly application for payment ("**AFP**"). If the Buyer requires and requests any additional information in support of the AFP the Supplier shall make the records available to the Buyer within 2 Working Days of the Buyer's request.
- 1.9 All Remedial Work shall be authorised in accordance with this Call-Off Schedule 5 (*Pricing*). The Buyer may at its discretion require Remedial Works to be:
- 1.9.1 managed and executed by the Supplier;
 - 1.9.2 managed by a third party nominated by the Buyer and executed by the Supplier; or
 - 1.9.3 managed by the Supplier and executed by any third party nominated by the Buyer.
- 1.10 The Supplier shall be entitled to a fair and reasonable increase in any Category C Remedial Work Fee and/or Category D Remedial Work Fee above the relevant Remedial Work Fixed Cost Quotation where:
- 1.10.1 such increase was caused or contributed to by a Buyer Cause; and

- 1.10.2 the Supplier notifies the Buyer of the Buyer Cause within at least 2 Working Days of becoming aware (or within 2 Working Days of when it should have become aware) of such Buyer Cause.

2 Applications for payment for Remedial Work

- 2.1 The Supplier shall only be entitled to submit any AFP in relation to any Remedial Work as follows:

2.1.1 for Category A Remedial Work this shall be deemed to be included within the Fixed Monthly Fee and no other sums shall be deemed to be due in relation to the Category A Remedial Work unless expressly provided for in this Contract:

2.1.2 for Category B Remedial Work, Category C Remedial Work and/or Category D Remedial Work:

- (i) where the Remedial Work Proposal has been approved by the Buyer in accordance with Annex F of the Specification;
- (ii) the relevant Remedial Work has achieved Remedial Work Completion; and
- (iii) the Supplier shall not be entitled to recover from the Buyer the first £500 (exclusive of VAT) for such Remedial Work as this sum is deemed to be included within the Fixed Monthly Fee; and

2.1.3 for Category E Remedial Work:

- (i) where there Remedial Work Proposal (where applicable) has been approved by the Buyer in accordance with Annex F of the Specification;
- (ii) the Category E Remedial Work has achieved Remedial Work Completion; and
- (iii) the Supplier shall not be entitled to recover from the Buyer the first £500 (exclusive of VAT) for such Remedial Work as this sum is deemed to be included within the Fixed Monthly Fee.

3 Category A Remedial Work Fee

- 3.1 The Category A Remedial Work Fee and the Inclusive Repair Threshold exclude any work arising out of the following to the extent that such work does not arise or is contributed to by any act, omission or default of the Supplier and/or any person for whom the Supplier is responsible (including without limitation any Key Subcontractor and/or Supplier Staff):

3.1.1 misuse of an Asset and/or abuse of an Asset where this can be proven by the Supplier;

3.1.2 vandalism;

- 3.1.3 damage or failure if due to continued use by the Buyer or building user after fault has been diagnosed and the Supplier has advised the Buyer not to use the Asset;
 - 3.1.4 the building user not following the Buyer or manufacturer's operating procedural standards;
 - 3.1.5 other unapproved suppliers repairing Assets;
 - 3.1.6 water or cleaning fluid damage due to incorrect cleaning procedures by building users;
 - 3.1.7 damage or failure due to electrical supplies being interrupted or altered by others;
 - 3.1.8 access denied to the Supplier where access had been agreed and prearranged;
 - 3.1.9 where the Buyer requests a Variation in accordance with the provisions of Joint Schedule 2 (*Variation Control Procedure*);
 - 3.1.10 fire, leaks, act of god, storm damage, floods or similar force majeure; unless caused by an act or failure of the Supplier;
 - 3.1.11 that part of the cost of the Remedial Work for an event which exceeds the Inclusive Repair Threshold; and
 - 3.1.12 operator error by a building user, where this can be proven by the Supplier.
- 3.2 A schedule of works arising from events listed in Paragraph 3.1 above shall be provided to the Buyer on a monthly basis and payment will be made through the defined approval process as agreed between the Buyer and the Supplier.

4 Charges from the Start Date

- 4.1 From the Start Date, the Charges payable in a Service Period shall be the relevant:

- 4.1.1 Fixed Monthly Fee;
- 4.1.2 Variable Fee; and
- 4.1.3 Mobilisation Payment,

less any sums due to the Buyer under this Contract including, without limitation, Deductions.

5 Changes to the Pricing Matrix and any fee set out in the Pricing Matrix

- 5.1 Subject to any express contractual right to increase the Fixed Monthly Fee, the Unit Rates and any relevant agreed Variations, the Fixed Monthly Fee and the Unit Rates shall not increase during the Contract Period.
- 5.2 Any Variations to the Pricing Matrix shall be developed and agreed by the Parties in accordance with Joint Schedule 2 (*Variation Control Procedure*) and on the basis that the Variation shall put the Supplier in no better nor worse position that which applied as at the Effective Date.

6 Changes to Minimum/Living Wage

- 6.1 Notwithstanding Clauses 25.5-25.7 (*Change in Law*), where the Supplier can provide evidence in the form of an Impact Assessment that a percentage increase to the Mandatory Wage in a given period has exceeded any percentage increase for the same period in the Payment Index, the Supplier may request an increase in the Charges by using the Variation Control Procedure.
- 6.2 Suppliers must include in their Impact Assessment evidence of the:
- 6.2.1 Supplier Personnel affected by the Mandatory Wage Increase and the Services that they provide;
 - 6.2.2 affected Supplier Personnel's current hourly rate of pay; and
 - 6.2.3 the number of hours worked by each of the affected Supplier Personnel.
- 6.3 The Buyer is not required to accept the Variation request under this Paragraph 6 and must not accept any variation request that:
- 6.3.1 exceeds the difference between the Mandatory Wage rate (as adjusted to take into account the Payment Index) and the current Mandatory Wage rate increase for each member of the Supplier Personnel affected by the Mandatory Wage increase;
 - 6.3.2 seeks to increase the Charges which go beyond the Services affected by the Mandatory Wage increase; and
 - 6.3.3 increases the Charges in respect of those Supplier Personnel on an hourly rate already in excess of the Mandatory Wage (whether or not to maintain differentials between the affected Supplier Personnel and higher paid Supplier Personnel).

7 Extension Period

- 7.1 In the event that the Buyer exercises its right under Clause 11 (*Ending or extending this Contract*) to extend the Contract for the Optional Extension Period, the pricing methods and payment provisions set out in the Call-Off Schedule 5 (*Pricing*) shall continue to apply for the duration of the Optional Extension Period.

Part B: Invoicing and Payment Terms

1 Application for Payment and Invoicing Process

- 1.1 This Paragraph 1 of Part B applies to all applications for payment other than an application for payment pursuant to the Final Reconciliation Report.
- 1.2 An application for payment in relation to the Charges can be submitted by the Supplier after the end of the previous month and no later than 6 Working Days after the end of each month and the application date set out in Paragraph 1.6.10 and/or Paragraph 1.7 (as the case may be) shall be the “**Application Date**”.
- 1.3 Notwithstanding any other provision of this Call-Off Schedule 5 (*Pricing*):
- 1.3.1 the **Due Date for Payment** for the purposes of the Housing Grants, Construction and Regeneration Act 2009 (the “**Construction Act**”) shall be the Application Date;
- 1.3.2 not later than five (5) calendar days after the Due Date for Payment, the Buyer and/or the Supply Chain Integrator shall issue a certificate to the Supplier setting out the sum which the Buyer considers is due to the Supplier in respect of the relevant AFP as at the Due Date for Payment (the “**notified sum**”);
- 1.3.3 the **Final Date for Payment** for the Construction Act shall be thirty (30) calendar days after the Due Date for Payment; and
- 1.3.4 if the Buyer wishes to pay less than the notified sum, it shall no later than one Working Day before the Final Date for Payment, issue a pay less notice specifying:
- (i) the sum that the Buyer considers to be due and intends to pay under the invoice; and
- (ii) the basis on which that sum is calculated,
- (a “**Pay Less Notice**”).
- 1.4 Applications shall be in the format to be agreed with the Buyer during Mobilisation and be supported with all necessary and required information.
- 1.5 The Supplier shall ensure that all applications for payment are accompanied by:
- 1.5.1 a statement by the Supplier of the amount considered to be due and the basis upon which it is calculated including:
- (i) a description of the Deliverables provided in the relevant month;
- (ii) the dates on which such Services were performed;
- (iii) in relation to PPM Tasks and Remedial Works carried out in the relevant month, evidence that:
- (A) PPM Task Completion has been completed in relation to each PPM Task; and

- (B) Completion of Remedial Works has been achieved in relation to the relevant Remedial Works;
 - (iv) the Supplier's calculation of the Charges relating to the Deliverables calculated in accordance with Part A of this Call-Off Schedule 5 (*Pricing*);
 - 1.5.2 details of any VAT or other sales tax payable in respect of the Charges;
 - 1.5.3 reference to any Reports required by the Buyer in respect of the Deliverables to which the Charges detailed on the application for payment relate (or in the case of reports issued by the Supplier for approval by the Buyer, then to any such reports as are validated by the Buyer in respect of the Deliverables);
- 1.6 Subject to the time periods set out in Paragraph 1.3 of this Part B of Call-Off Schedule 5 (*Pricing*), on receipt of and no later than the following Working Day after receipt of the Supplier's application for payment, the Supply Chain Integrator, the Supplier and the Buyer shall commence the following process to agree the monthly application for payment, Working Day 0 being the day immediately following receipt of the Supplier's AFP by the Buyer and the Supply Chain Integrator:
 - 1.6.1 **Working Day 0** - Supplier submits the AFP onto the Buyer CAFM System. NB: Working Day 0 is usually the Working Day directly following the receipt of the AFP. The AFP relates to the Services undertaken during the previous month.
 - 1.6.2 **Working Day 1** – the Supply Chain Integrator undertakes initial review of the AFP.
 - 1.6.3 **Working Day 2 (AM)** – Supply Chain Integrator and the Supplier hold a conference call to discuss queries, clarifications and any requests for additional supporting documentation required to verify the AFP.
 - 1.6.4 **Working Day 2 (PM)/Working Day 3** – Supplier provides all information, responds to queries and/or clarifications to enable the Supply Chain Integrator to complete the validation of the AFP.
 - 1.6.5 **Working Day 3 (COB)** – the Supply Chain Integrator issues AFP with notes to date, identifying in-flight validations to the Buyer in advance of the Working Day 4.
 - 1.6.6 **Working Day 4 (AM)** – the Supply Chain Integrator continues with the evaluation of the AFP.
 - 1.6.7 **Working Day 4 (PM)** – the Supply Chain Integrator and the Buyer (representatives from finance, commercial and the estates teams) hold a conference call to review the validation of the AFP the Supply Chain Integrator has undertaken. The Buyer advises the Supply Chain Integrator of any further queries, clarifications and validation requirements.
 - 1.6.8 **Working Day 5 (Noon)** – the Supply Chain Integrator issues a Charges Due Notice (“CDN”) including all backing information (AFP, validation checklist, remedial / reactive work order listing) to the Buyer to sign-off by the relevant Buyer representative.

- 1.6.9 **Working Day 5 (COB)** – the Buyer returns the approved CDN to the Supply Chain Integrator to issue to the Supplier and the costs loaded on to onto the Buyer CAFM System.
- 1.6.10 **Working Day 6 (AM)** – the Supplier receives an invite to upload their invoice onto the Buyer CAFM System after which it is transferred for payment in accordance with Paragraph 1.12 below and this date shall be deemed to be the Application Date.
- 1.7 On completion of the process outlined above the Buyer shall issue a notice to the Supplier stating the amount that it considers to be due and the basis on which it has calculated the Charges Due Notice. Notwithstanding the remainder of this Part B, if the Buyer and/or the Supply Chain Integrator fail to comply with their respective obligations set out in Paragraph 1.6, the Supplier shall be entitled to upload its invoice in accordance with Paragraph 1.6.10 and/or where it is unable to upload the invoice in accordance with Paragraph 1.6.10 the supplier shall be entitled to submit a written invoice in to the Buyer's Authorised Representative provided that such invoice complies with this Part B.
- 1.8 The Notified Sum for any Service Period:
- 1.8.1 shall be the amount stated in the Buyer's Charges Due Notice; or
- 1.8.2 where the Buyer has not issued a Charges Due Notice pursuant to Paragraph 1.6.9, shall be the amount stated in the Supplier's application under Paragraph 1.6.1.
- 1.9 No sooner than 15 Working Days after the Application Date, the Supplier may submit an invoice for the Notified Sum.
- 1.10 The Supplier shall ensure that all invoices are accompanied by:
- 1.10.1 a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries; and
- 1.10.2 the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
- 1.11 Any invoice shall be cross referenced to the application to which the it relates and shall be submitted to:
- The Finance Controller, DWP Estates, Department for Work and Pensions,
Commercial Directorate – the address shall be provided during Mobilisation
- with a copy to such other person and at such place as the Buyer may notify to the Supplier from time to time.
- 1.12 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Buyer in writing. Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice. Subject to the relevant provisions of this Call-Off Schedule 5 (*Pricing*), the Buyer shall make payment to the Supplier as soon as practical and on or before the Final Date for Payment.

- 1.13 The Buyer shall regard an invoice as valid only if it complies with the provisions of this Call-Off Schedule 5 (*Pricing*). Where any invoice does not conform to the Buyer's requirements set out in this Call-Off Schedule 5 (*Pricing*), the Buyer shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.
- 1.14 The Supplier undertakes to provide to the Buyer any other documentation reasonably required by the Buyer from time to time to substantiate any invoice.

2 FINAL RECONCILIATION REPORT

- 2.1 Within 6 months of the end of the Contract Period, the Supplier shall submit to the Buyer its Final Reconciliation Report in accordance with Paragraph 2.2 of this Part B.
- 2.2 The Final Reconciliation Report shall set out any outstanding amounts that the Supplier considers to be due to it or to the Buyer (as the case may be) and the basis upon which it is calculated (the "**Supplier Final Account Balance**"), which shall include evidence of:
- 2.2.1 the aggregate Charges charged by the Supplier in providing the Deliverables under this Agreement; and
- 2.2.2 total payments made by the Buyer in respect of the Services.
- 2.3 Within 3 months of receipt by the Buyer of the Final Reconciliation Report, or where no Final Reconciliation Report is received from the Supplier at any time after the Final Reconciliation Report should have been received, the Buyer shall submit to the Supplier its assessment of the amount that it considers to be due to the Supplier or to the Buyer (as the case may be) and the basis upon which it is calculated (the "**Buyer Final Account Balance**").
- 2.4 Subject to Paragraph 2.7, the amount due to the Supplier or the Buyer (as the case may be) shall be the amount stated in the Buyer Final Account Balance.
- 2.5 In the absence of submission by the Buyer of a Buyer Final Account Balance by the time required by Paragraph 2.3, and subject to Paragraph 2.7, the amount due to the Supplier or the Buyer in respect of the Final Reconciliation Report shall be the Supplier Final Account Balance.
- 2.6 The due date for payment of the Buyer Final Account Balance or the Supplier Final Account Balance (as the case may be) is 3 months after receipt of the Final Reconciliation Report. The final date for payment of such sum is the date which is 3 months after the date on which an invoice for the Buyer Final Account Balance or the Supplier Final Account Balance (as the case may be) was submitted.
- 2.7 If the Buyer or the Supplier (as the case may be) intends to pay less than the Buyer Final Account Balance or the Supplier Final Account Balance (as the case may be), it may issue a notice no later than five days before the due date for payment for such Buyer Final Account Balance or the Supplier Final Account Balance (as the case may be) stating the amount which it considers to be due on the date of such notice and the basis upon which it is calculated.
- 2.8 No sooner than 6 Working Days after the due date, the Supplier (or the Buyer as the case may be) may submit an invoice for the Buyer Final Account Balance or the Supplier Final Account Balance (as the case may be).

- 2.9 Subject to the relevant provisions of this Schedule, the Buyer or the Supplier (as the case may be) shall make payment of the Buyer Final Account Balance or the Supplier Final Account Balance (as the case may be) to the Supplier or to the Buyer (as the case may be) 30 days after the due date for payment.
- 2.10 Either Party may refer a dispute as to the amount due to the Supplier or the Buyer (as the case may be) under this Paragraph 2 to the Dispute Resolution Procedure.

Part C: Pricing Matrix

See separate document titled, "A5A DWP LS2 Pricing Matrix v1.2 [Mitie FM Limited]"

Call-Off Schedule 6

TUPE Surcharge

1 Option 1 – Not used

2 Option 2 – Not used

3 Option 3 – Further Competition - Fixed Fee TUPE Risk Premium

- 3.1 The Fixed Fee TUPE Risk Premium shall be priced for at Further Competition as set out in Part C - Call-Off Schedule 5 (*Pricing*) and no further adjustments shall be permitted except as set out in Paragraph 4 of this Call-Off Schedule 6 (*TUPE Surcharge*).

4 Employer Pensions Contribution Cap & Other Pension Cost

- 4.1 The following shall apply to paragraph 3 above:

- 4.1.1 Where any Annual Pension Cost would have included Employer Pension Contribution in excess of the 6% Employer Pension Contribution Cap or Other Pension Costs, the Supplier may request a pension adjustment to cover the additional cost. Such request for a pension adjustment to be must be submitted to the Buyer, no later than 20 Working Days after the end of the relevant Contract Year.
- 4.1.2 If the Supplier requests a pension adjustment in accordance with the provisions of Paragraph 4.1.1 above to the TUPE Risk Premium they must provide sufficient evidence to the Buyer to justify the pension adjustment.
- 4.1.3 On receipt of the Supplier's calculation of the pension adjustment the Buyer shall either:
- (i) Notify the Supplier in writing of acceptance of the pension adjustment;
 - (ii) Request further information/evidence; and/or
 - (iii) Request a meeting to discuss/clarify the evidence provided.
- 4.1.4 Where the pension adjustment in Paragraph 4.1.1 is agreed following the receipt of further information/evidence or following a meeting, the Buyer shall notify the Supplier in writing.
- 4.1.5 In the event that the Supplier and the Buyer are unable to agree the pension adjustment, they shall follow the Dispute Resolution Procedure.
- 4.1.6 If Paragraph 4.1.4 above applies, the excess amount calculated for the pension adjustment is not included in any calculation of the TUPE Risk Premium Average.
- 4.1.7 Any pension adjustment agreed by the Buyer over the Employer Pension Contribution Cap or in respect of Other Pension Cost shall be paid within timescales as agreed between Buyer and Supplier.

5 Cost of Change

5.1 Option 1 – Not used.

5.2 Option 2 – Not used.

5.3 Option 3 – Further Competition Fixed Fee TUPE Risk Premium

5.3.1 There shall be no post award adjustment to Cost of Change.

Call-Off Schedule 7

Key Staff

- 1.1 The Supplier shall ensure that the Key Staff fulfil the Key Roles at all times during the Contract Period.
- 1.2 The Buyer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Staff.
- 1.3 The Supplier shall not and shall procure that any Subcontractor shall not remove or replace any Key Staff unless:
 - 1.3.1 requested to do so by the Buyer or the Buyer Approves such removal or replacement (not to be unreasonably withheld or delayed);
 - 1.3.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or
 - 1.3.3 the person's employment or contractual arrangement with the Supplier or Subcontractor is terminated for material breach of contract by the employee.
- 1.4 The Supplier shall:
 - 1.4.1 notify the Buyer promptly of the absence of any Key Staff (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - 1.4.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - 1.4.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Staff and, except in the cases of death, unexpected ill health or a material breach of the Key Staff's employment contract, this will mean at least three (3) Months' notice;
 - 1.4.4 ensure that all arrangements for planned changes in Key Staff provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Deliverables; and
 - 1.4.5 ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Staff whom he or she has replaced.
- 1.5 The Buyer may require the Supplier to remove or procure that any Subcontractor shall remove any Key Staff that the Buyer considers in any respect unsatisfactory. The Buyer shall not be liable for the cost of replacing any Key Staff.

Annex: Key Roles and Key Personnel

Name³	Role	Organisation	Contact Details
Redacted	Redacted	Redacted	Redacted
Redacted	Redacted	Redacted	Redacted
Redacted	Redacted	Redacted	Redacted
Redacted	Redacted	Redacted	Redacted
Redacted	Redacted	Redacted	Redacted
Redacted	Redacted	Redacted	Redacted
Redacted	Redacted	Redacted	Redacted
Redacted	Redacted	Redacted	Redacted

³ The Supplier shall notify the Buyer in writing of any proposed Key Personnel for a Key Role for the Buyer's approval (not to be unreasonably withheld or delayed). The Supplier shall provide such other information reasonably requested by the Buyer. Following the approval of any proposed Key Personnel, the parties shall update this Call-Off Schedule 7 (*Key Staff*).

Call-Off Schedule 8

Business Continuity and Disaster Recovery

1 BCDR Plan

- 1.1 Not used.
- 1.2 At least ninety (90) Working Days prior to the Start Date the Supplier shall prepare and deliver to the Buyer for the Buyer's written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:
 - 1.2.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Deliverables; and
 - 1.2.2 the recovery of the Deliverables in the event of a Disaster ("**BCDR Plan**").
- 1.3 The BCDR Plan shall be divided into three sections:
 - 1.3.1 Section 1 which shall set out general principles applicable to the BCDR Plan;
 - 1.3.2 Section 2 which shall relate to business continuity (the "**Business Continuity Plan**"); and
 - 1.3.3 Section 3 which shall relate to disaster recovery (the "**Disaster Recovery Plan**").
- 1.4 Following receipt of the draft BCDR Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

2 Section 1 of the BCDR Plan - General Principles

- 2.1 Section 1 of the BCDR Plan shall:
 - 2.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
 - 2.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Deliverables and any goods and/or services provided to the Buyer by a Related Supplier;
 - 2.1.3 contain an obligation upon the Supplier to liaise with the Buyer and any Related Suppliers with respect to business continuity and disaster recovery;
 - 2.1.4 detail how the BCDR Plan interoperates with any overarching disaster recovery or business continuity plan of the Buyer and any of its other Related Supplier in each case as notified to the Supplier by the Buyer from time to time;

- 2.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multiple channels;
- 2.1.6 contain a risk analysis, including:
 - (i) failure or disruption scenarios and assessments of likely frequency of occurrence;
 - (ii) identification of any single points of failure within the provision of Deliverables and processes for managing those risks;
 - (iii) identification of risks arising from the interaction of the provision of Deliverables with the goods and/or services provided by a Related Supplier; and
 - (iv) a business impact analysis of different anticipated failures or disruptions;
- 2.1.7 provide for documentation of processes, including business processes, and procedures;
- 2.1.8 set out key contact details for the Supplier (and any Subcontractors) and for the Buyer;
- 2.1.9 identify the procedures for reverting to “normal service”;
- 2.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;
- 2.1.11 identify the responsibilities (if any) that the Buyer has agreed it will assume in the event of the invocation of the BCDR Plan; and
- 2.1.12 provide for the provision of technical assistance to key contacts at the Buyer as required by the Buyer to inform decisions in support of the Buyer’s business continuity plans.
- 2.2 The BCDR Plan shall be designed so as to ensure that:
 - 2.2.1 the Deliverables are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
 - 2.2.2 the adverse impact of any Disaster is minimised as far as reasonably possible;
 - 2.2.3 it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and
 - 2.2.4 it details a process for the management of disaster recovery testing.
- 2.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Deliverables and the business operations supported by the provision of Deliverables.

- 2.4 The Supplier shall not be entitled to any relief from its obligations under the KPIs or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

3 Section 2 of the BCDR Plan - Business Continuity

- 3.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of Deliverables remain supported and to ensure continuity of the business operations supported by the Services including:
- 3.1.1 the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Deliverables; and
 - 3.1.2 the steps to be taken by the Supplier upon resumption of the provision of Deliverables in order to address the effect of the failure or disruption.
- 3.2 The Business Continuity Plan shall:
- 3.2.1 address the various possible levels of failures of or disruptions to the provision of Deliverables;
 - 3.2.2 set out the goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Deliverables;
 - 3.2.3 specify any applicable KPIs with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the KPIs in respect of the provision of other Deliverables during any period of invocation of the Business Continuity Plan; and
 - 3.2.4 set out the circumstances in which the Business Continuity Plan is invoked.

4 Section 3 of the BCDR Plan - Disaster Recovery

- 4.1 The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Buyer supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 4.2 The Supplier's BCDR Plan shall include an approach to business continuity and disaster recovery that addresses the following:
- 4.2.1 loss of access to the Buyer Premises;
 - 4.2.2 loss of utilities to the Buyer Premises;
 - 4.2.3 loss of the Supplier's helpdesk or Buyer CAFM system;
 - 4.2.4 loss of a Subcontractor;
 - 4.2.5 emergency notification and escalation process;
 - 4.2.6 contact lists;

- 4.2.7 staff training and awareness;
- 4.2.8 BCDR Plan testing;
- 4.2.9 post implementation review process;
- 4.2.10 any applicable KPI with respect to the provision of the disaster recovery services and details of any agreed relaxation to the KPIs in respect of the provision of other Deliverables during any period of invocation of the Disaster Recovery Plan;
- 4.2.11 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 4.2.12 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- 4.2.13 testing and management arrangements.

5 Review and Amendment of the BCDR Plan

- 5.1 The Supplier shall review the BCDR Plan:
 - 5.1.1 on a regular basis and as a minimum once every six (6) Months;
 - 5.1.2 within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 7; and
 - 5.1.3 where the Buyer requests in writing any additional reviews (over and above those provided for in Paragraphs 6.1.1 and 6.1.2 of this Schedule) whereupon the Supplier shall conduct such reviews in accordance with the Buyer's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Buyer for the Buyer's approval. The costs of both Parties of any such additional reviews shall be met by the Buyer except that the Supplier shall not be entitled to charge the Buyer for any costs that it may incur above any estimate without the Buyer's prior written approval.
- 5.2 Each review of the BCDR Plan pursuant to Paragraph 6.1 shall assess its suitability having regard to any change to the Deliverables or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan, and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within such period as the Buyer shall reasonably require.
- 5.3 The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Buyer a report (a "**Review Report**") setting out the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.
- 5.4 Following receipt of the Review Report and the Supplier's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Supplier's Proposals.

If the Parties are unable to agree Review Report and the Supplier's Proposals within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

- 5.5 The Supplier shall as soon as is reasonably practicable after receiving the approval of the Supplier's Proposals effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Deliverables.

6 Testing of the BCDR Plan

- 6.1 The Supplier shall test the BCDR Plan:
- 6.1.1 regularly and in any event not less than once in every Contract Year;
 - 6.1.2 in the event of any major reconfiguration of the Deliverables
 - 6.1.3 at any time where the Buyer considers it necessary (acting in its sole discretion).
- 6.2 If the Buyer requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Buyer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Buyer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 6.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of the Buyer and shall liaise with the Buyer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Buyer.
- 6.4 The Supplier shall ensure that any use by it or any Subcontractor of "live" data in such testing is first approved with the Buyer. Copies of live test data used in any such testing shall be (if so required by the Buyer) destroyed or returned to the Buyer on completion of the test.
- 6.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Buyer a report setting out:
- 6.5.1 the outcome of the test;
 - 6.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - 6.5.3 the Supplier's proposals for remedying any such failures.
- 6.6 Following each test, the Supplier shall take all measures requested by the Buyer to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at its own cost, by the date reasonably required by the Buyer.

7 Invocation of the BCDR Plan

- 7.1 In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Buyer promptly of such invocation). In all other instances the Supplier shall invoke or test the BCDR Plan only with the prior consent of the Buyer.

8 Force Majeure

- 8.1 The Supplier will not be entitled to rely on the Force Majeure provisions, if the Supplier would not have been impacted by the Force Majeure event had it complied with the Business Continuity Schedule.

Call-Off Schedule 9

Security

1 Definitions

- 1.1 Reference to any notice to be provided by the Supplier to the Buyer shall be construed as a notice to be provided by the Supplier to the Buyer's Authorised Representative.

2 Principles of Security

- 2.1 The Supplier shall at all times comply with this Schedule and provide a level of security which is in accordance with the Security Policies and Standards, Good Security Practice and Law.

3 ISO/IEC 27001 Compliance and Audit

- 3.1 The Supplier shall, and shall procure that any Key Sub-Contractor (as applicable) shall, comply with ISO/IEC 27001 in relation to the Services during the Contract Period.
- 3.2 The Supplier shall appoint an Information Security Manager and shall notify the Buyer of the identity of the Information Security Manager on the Effective Date and, where applicable, within 5 Working Days following any change in the identity of the Information Security Manager.
- 3.3 The Supplier shall ensure that it operates and maintains the Information Security Management System during the Contract Period and that the Information Security Management System meets the Security Policies and Standards, Good Security Practice and Law and includes:
- 3.3.1 a scope statement (which covers all of the Services provided under this Contract);
 - 3.3.2 a risk assessment (which shall include any risks specific to the Services);
 - 3.3.3 a statement of applicability;
 - 3.3.4 a risk treatment plan; and
 - 3.3.5 an incident management plan

in each case as specified by ISO/IEC 27001.

The Supplier shall provide the Information Security Management System to the Buyer upon request within 10 Working Days from such request.

- 3.4 The Supplier shall carry out regular Security Tests in compliance with ISO/IEC 27001 and shall within 10 Working Days after completion of the relevant audit provide any associated security audit reports to the Buyer.
- 3.5 Notwithstanding the provisions of Paragraph 3.1 to Paragraph 3.4, the Buyer may, in its absolute discretion, notify the Supplier that it is not in compliance with this Schedule and provide details of such non-compliance. The Supplier shall, at its own expense, undertake those actions required in order to comply with this Schedule within one calendar month following such notification or on a date as agreed by the Parties. For the avoidance of doubt, any failure to comply with this Schedule within the required

timeframe (regardless of whether such failure is capable of remedy) shall constitute a Supplier Termination Event entitling the Buyer to exercise its rights under Clause 11.3 (*When the Buyer can end this Contract*).

4 Cyber Essentials Scheme

- 4.1 The Supplier shall, and shall procure that any Key Sub-Contractor (as applicable) shall, obtain and maintain certification to Cyber Essentials (the “Cyber Essentials Certificate”) in relation to the Deliverables during Contract Period. The Cyber Essentials Certificate shall be provided by the Supplier to the Buyer annually on the dates as agreed by the Parties.
- 4.2 The Supplier shall notify the Buyer of any failure to obtain, or the revocation of, a Cyber Essentials Certificate within 2 Working Days of confirmation of such failure or revocation. The Supplier shall, at its own expense, undertake those actions required in order to obtain a Cyber Essentials Certificate following such failure or revocation. For the avoidance of doubt, any failure to obtain and/or maintain a Cyber Essentials Certificate during the Contract Period after the first date on which the Supplier was required to provide a Cyber Essentials Certificate in accordance with Paragraph 4.1 (regardless of whether such failure is capable of remedy) shall constitute a Supplier Termination Event entitling the Buyer to exercise its rights under Clause 11.3 (*When the Buyer can end this Contract*).

5 Risk Management

- 5.1 The Supplier shall operate and maintain policies and processes for risk management (the “Risk Management Policy”) during the Contract Period which includes standards and processes for the assessment of any potential risks in relation to the Services and processes to ensure that the provisions of this Schedule are met (the “Risk Assessment”). The Supplier shall provide the Risk Management Policy to the Authority upon request within 10 Working Days of such request. The Buyer may, at its absolute discretion, require changes to the Risk Management Policy to comply with this Schedule. The Supplier shall, at its own expense, undertake those actions required in order to implement the changes required by the Buyer within one calendar month of such request or on a date as agreed by the Parties.
- 5.2 The Supplier shall carry out a Risk Assessment (i) at least annually, (ii) in the event of a material change in the Supplier System or in the threat landscape or (iii) at the request of the Buyer. The Supplier shall provide the report of the Risk Assessment to the Buyer, in the case of at least annual Risk Assessments, within 5 Working Days of completion of the Risk Assessment or, in the case of all other Risk Assessments, within one calendar month after completion of the Risk Assessment or on a date as agreed by the Parties. The Supplier shall notify the Buyer within 5 Working Days if the Risk Profile in relation to the Services has changed materially, for example, but not limited to, from one risk rating to another risk rating.
- 5.3 If the Buyer decides, at its absolute discretion, that any Risk Assessment does not meet this Schedule, the Supplier shall repeat the Risk Assessment within one calendar month of such request or as agreed by the Parties.
- 5.4 The Supplier shall, and shall procure that any Key Sub-Contractor (as applicable) shall, co-operate with the Buyer in relation to the Buyer’s own risk management processes regarding the Services.

- 5.5 For the avoidance of doubt, the Supplier shall pay all costs in relation to undertaking any action required to meet the requirements stipulated in this Paragraph 5. Any failure by the Supplier to comply with any requirement of this Paragraph 5 (regardless of whether such failure is capable of remedy), shall constitute a Supplier Termination Event entitling the Buyer to exercise its rights under Clause 11.3 (*When the Buyer can end this Contract*).

6 Security Audit and Assurance

- 6.1 The Supplier shall, and shall procure that any Key Sub-Contractor (as applicable) shall, complete the information security questionnaire in the format stipulated by the Buyer (the "Information Security Questionnaire") at least annually or at the request by the Buyer. The Supplier shall provide the completed Information Security Questionnaire to the Buyer within one calendar month from the date of request.
- 6.2 The Supplier shall conduct Security Tests to assess the Information Security of the Supplier System and, if requested, the Buyer System. In relation to such Security Tests, the Supplier shall appoint a third party which i) in respect of any Penetration Test, is duly accredited by CHECK, CREST (International), or Tigerscheme and, ii) in respect of any Security Test to which PCI DSS apply, is an approved scanning vendor duly accredited by the PCI. Such Security Test shall be carried out (i) at least annually, (ii) in the event of a material change in the Supplier System or in the Buyer System or (iii) at the request of the Buyer which request may include, but is not limited to, a repeat of a previous Security Test. The content, and format of any report of such Security Tests shall be approved in advance of the Security Test by the Buyer. The Supplier shall provide any report of such Security Tests within 1 calendar month following the completion of such Security Test or on a date agreed by the Parties. The Supplier shall, at its own expense, undertake those actions required to rectify any risks identified by any Security Test in the manner and within the timeframe required by the Buyer in its absolute discretion.
- 6.3 The Buyer shall be entitled to send the Buyer's Authorised Representative to witness the conduct of any Security Test. The Supplier shall provide to the Buyer notice of any Security Test at least one month prior to the relevant Security Test.
- 6.4 Where the Supplier provides code development services to the Buyer, the Supplier shall comply with this Schedule in respect of code development within the Supplier System and the Buyer System.
- 6.5 Where the Supplier provides software development services, the Supplier shall comply with the code development practices specified in the Specification or in this Schedule
- 6.6 The Buyer, or an agent appointed by it, may undertake Security Tests in respect of the Supplier System after providing advance notice to the Supplier. If any Security Test identifies any non-compliance with this Schedule, the Supplier shall, at its own expense, undertake those actions required in order to rectify such identified non-compliance in the manner and timeframe as stipulated by the Buyer at its absolute discretion. The Supplier shall provide all such co-operation and assistance in relation to any Security Test conducted by the Buyer as the Buyer may reasonably require.
- 6.7 The Buyer shall schedule regular security governance review meetings which the Supplier shall, and shall procure that any Key Sub-Contractor (as applicable) shall, attend.

7 PCI DSS Compliance and Certification

- 7.1 Where the Supplier obtains, stores, processes or transmits payment card data, the Supplier shall comply with the PCI DSS.
- 7.2 The Supplier shall obtain and maintain up-to-date attestation of compliance certificates ("AoC") provided by a qualified security assessor accredited by the PCI and up-to-date self-assessment questionnaires ("SAQ") completed by a qualified security assessor or an internal security assessor, in each case accredited by the PCI (each with the content and format as stipulated by the PCI and such reports the "PCI Reports"), during the Contract Period. The Supplier shall provide the respective PCI Reports to the Buyer upon request within 10 Working Days of such request.
- 7.3 The Supplier shall notify the Buyer of any failure to obtain a PCI Report or a revocation of a PCI Report within 2 Working Days of confirmation of such failure or revocation. The Supplier shall, at its own expense, undertake those actions required in order to obtain a PCI Report following such failure or revocation within one calendar month of such failure or revocation.

8 Security Policies and Standards

- 8.1 The Supplier shall, and shall procure that any Key Sub-Contractor (as applicable) shall, comply with the Security Policies and Standards set out Annex A and B.
- 8.2 Notwithstanding the foregoing, the provisions of this Schedule applicable to the Deliverables may be subject to change following certain events including, but not limited to, any relevant change in the delivery of the Services. Where any such change constitutes a Variation, any change in the provisions of this Schedule resulting from such Variation (if any) shall be agreed by the Parties in accordance with the Variation Control Procedure. Where any such change constitutes an Operational Variation, any change in the provisions of this Schedule resulting from such Operational Variation (if any) shall be agreed by the Parties and documented in the relevant Operational Variation.
- 8.3 The Supplier shall, and shall procure that any Key Sub-Contractor (as applicable) shall, maintain appropriate records and is otherwise able to demonstrate compliance with the Security Policies and Standards.

9 Cyber Security Information Sharing Partnership

- 9.1 The Supplier may become a member of the Cyber Security Information Sharing Partnership in accordance with the recommendations by the NCSC during the Contract Period. The Supplier may participate in the Cyber Security Information Sharing Partnership for the exchange of cyber threat information.
- 9.2 Where the Supplier becomes a member of the Cyber Security Information Sharing Partnership, it shall review the NCSC weekly threat reports on a weekly basis and implement recommendations in line with the Supplier's Risk Management Policy.

Annex A: Authority Security Policies and Standards

The Security Policies are published on:

<https://www.gov.uk/government/publications/dwp-procurement-security-policies-and-standards> unless specified otherwise:

- a) Acceptable Use Policy
- b) Information Security Policy
- c) Physical Security Policy
- d) Information Management Policy
- e) Email Policy
- f) Technical Vulnerability Management Policy
- g) Remote Working Policy
- h) Social Media Policy
- i) Forensic Readiness Policy
- j) SMS Text Policy
- k) Privileged Users Security Policy
- l) User Access Control Policy
- m) Security Classification Policy
- n) Cryptographic Key Management Policy
- o) HMG Personnel Security Controls – May 2018 (published on <https://www.gov.uk/government/publications/hmg-personnel-security-controls>)
- p) NCSC Secure Sanitisation of Storage Media (published on <https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media>)

Annex B: Security Standards

The Security Standards are published on:

<https://www.gov.uk/government/publications/dwp-procurement-security-policies-and-standards>:

- a) SS-001 - Part 1 - Access & Authentication Controls
- b) SS-001 - Part 2 - Privileged User Access Controls
- c) SS-002 - PKI & Key Management
- d) SS-003 - Software Development
- e) SS-005 - Database Management System Security Standard
- f) SS-006 - Security Boundaries
- g) SS-007 - Use of Cryptography
- h) SS-008 - Server Operating System
- i) SS-009 - Hypervisor
- j) SS-010 - Desktop Operating System
- k) SS-011 - Containerisation
- l) SS-012 - Protective Monitoring Standard for External Use
- m) SS-013 - Firewall Security
- n) SS-014 - Security Incident Management
- o) SS-015 - Malware Protection
- p) SS-016 - Remote Access
- q) SS-017 - Mobile Devices
- r) SS-018 - Network Security Design
- s) SS-019 - Wireless Network
- t) SS-022 - Voice & Video Communications
- u) SS-023 - Cloud Computing
- v) SS-025 - Virtualisation
- w) SS-027 - Application Security Testing
- x) SS-028 - Microservices Architecture
- y) SS-029 - Securely Serving Web Content

- z) SS-030 - Oracle Database
- aa) SS-031 - Domain Management
- bb) SS-033 - Patching

Call-Off Schedule 10

Exit Management

1 Obligations during the Contract Period to Facilitate Exit

1.1 The Supplier shall:

1.1.1 create (prior to the Commencement Date) and maintain throughout the Contract Period a register of all:

- (i) Assets, detailing their:
 - (A) description;
 - (B) make, model and asset number;
 - (C) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
 - (D) Net Book Value;
 - (E) condition and physical location; and
 - (F) use (including technical specifications); and
- (ii) Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Deliverables;

1.1.2 during the Contract Period:

- (i) create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Deliverables, which shall contain sufficient detail to permit the Buyer and/or Replacement Supplier to understand how the Supplier provides the Deliverables and to enable the smooth transition of the Deliverables with the minimum of disruption;
- (ii) agree the format of the Registers with the Buyer as part of the process of agreeing the Exit Plan; and
- (iii) at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.

1.2 The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Contract.

1.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within 1 month of the Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager

has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Contract and all matters connected with this Schedule and each Party's compliance with it.

2 Obligations to Assist on re-Tendering of Deliverables

2.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Buyer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Buyer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:

- 2.1.1 details of the Service(s);
- 2.1.2 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
- 2.1.3 an inventory of Government Data in the Supplier's possession or control;
- 2.1.4 details of any key terms of any third party contracts and licences, particularly as regards termination, assignment and novation;
- 2.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Deliverables;
- 2.1.6 to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Contract; and
- 2.1.7 such other material and information as the Buyer shall reasonably require, (together, the "**Exit Information**").

2.2 The Supplier acknowledges that the Buyer may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Buyer is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Buyer may not under this Paragraph 2.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).

2.3 The Supplier shall:

- 2.3.1 notify the Buyer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Deliverables and shall consult with the Buyer regarding such proposed material changes; and
- 2.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Buyer.

- 2.4 The Supplier may charge the Buyer for its reasonable additional costs to prepare any such update.
- 2.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
 - 2.5.1 prepare an informed offer for those Deliverables; and
 - 2.5.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).
- 2.6 From the Effective Date the Supplier shall:
 - 2.6.1 include in the terms and conditions of employment for all new employees; and
 - 2.6.2 use all reasonable endeavours to include in any updates to the terms and conditions of employment of any existing employees,

in each case where such employees are delivering, or are reasonably likely to be delivering, the Services or any part thereof,

such term or terms (at all times compliant with all applicable Law) enabling the Supplier to comply with its obligations under Paragraph 2.1.6.

3 Exit Plan

- 3.1 The Supplier shall, within 1 (one) month after the Start Date, deliver to the Buyer an Exit Plan which:
 - 3.1.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Buyer and/or its Replacement Supplier on expiry or termination of this Contract;
 - 3.1.2 complies with the requirements set out in Paragraph 3.3; and
 - 3.1.3 is otherwise reasonably satisfactory to the Buyer.
- 3.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 3.3 The Exit Plan shall set out, as a minimum:
 - 3.3.1 how the Exit Information is obtained;
 - 3.3.2 a detailed plan and programme for the execution of TUPE transfer of personnel to new suppliers to ensure all milestones are achieved, maximum engagement and staff retention and all risks are proactively managed;
 - 3.3.3 the management structure to be employed during both transfer and cessation of the Deliverables;

- 3.3.4 the management structure to be employed during the Termination Assistance Period;
 - 3.3.5 a detailed description of both the transfer and cessation processes, including a timetable;
 - 3.3.6 how the Deliverables will transfer to the Replacement Supplier and/or the Buyer, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Buyer's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);
 - 3.3.7 the scope of the Termination Assistance that may be required for the benefit of the Buyer to the extent that the Buyer has provided the Supplier with the details of such Termination Assistance;
 - 3.3.8 a timetable and critical issues for providing the Termination Assistance, to the extent that the Buyer has provided the Supplier with the details of such Termination Assistance;
 - 3.3.9 any charges that would be payable for the provision of the Termination Assistance (calculated in accordance with the methodology that would apply if such Deliverables were being treated as a Variation and using the Charges in respect of those Supplier Personnel), together with a capped estimate of such charges;
 - 3.3.10 how the Termination Assistance would be provided (if required) during the Termination Assistance Period, to the extent that the Buyer has provided the Supplier with the details of such Termination Assistance;
 - 3.3.11 procedures to deal with requests made by the Buyer and/or a Replacement Supplier for Staffing Information pursuant to Call-Off Schedule 2 (*Staff Transfer*); and
 - 3.3.12 how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Deliverables from the Supplier to the Replacement Supplier and/or the Buyer with the aim of ensuring that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period.
- 3.4 The Parties acknowledge that the migration of the Deliverables from the Supplier to the Buyer and/or its Replacement Supplier may be phased, such that certain of the Deliverables are handed over before others.
- 3.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule within 1 (one) month following the Commencement Date and if requested by the Buyer following the occurrence of a Financial Distress Event, within fourteen (14) days of such request, to reflect any changes in the Deliverables that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Buyer for review. Within ten (10) Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that ten (10) Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

Finalisation of the Exit Plan

- 3.6 Within twenty (20) Working Days after service of a Termination Notice by either Party or six (6) months prior to the expiry of this Contract, the Supplier will submit for the Buyer's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Deliverables that have occurred since the Exit Plan was last agreed.
- 3.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days following its delivery to the Buyer then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Assistance in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

4 Termination Assistance

Notification of Requirements for Termination Assistance

- 4.1 The Buyer shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- 4.1.1 the date from which Termination Assistance are required;
 - 4.1.2 the nature of the Termination Assistance required; and
 - 4.1.3 the period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) months after the date that the Supplier ceases to provide the Deliverables.
- 4.2 The Buyer shall have:
- 4.2.1 an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) months after the date the Supplier ceases to provide the terminated Deliverables or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire; and
 - 4.2.2 the right to terminate its requirement for Termination Assistance by serving not less than twenty (20) Working Days' written notice upon the Supplier to such effect.

Termination Assistance Period

- 4.3 Throughout the Termination Assistance Period, or such shorter period as the Buyer may require, the Supplier shall:

- 4.3.1 continue to provide the Deliverables (as applicable) and, if required by the Buyer pursuant to Paragraph 4.1, provide the Termination Assistance;
 - 4.3.2 in addition to providing the Deliverables and the Termination Assistance, provide to the Buyer any reasonable assistance requested by the Buyer to allow the Deliverables to continue without interruption following the termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Buyer and/or its Replacement Supplier;
 - 4.3.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 4.3.2 without additional costs to the Buyer;
 - 4.3.4 provide the Deliverables and the Termination Assistance at no detriment to the standards required under this Contract (including the Service Description) save to the extent that the Parties agree otherwise; and
 - 4.3.5 at the Buyer's request and on reasonable notice, deliver up-to-date Registers to the Buyer.
- 4.4 Without prejudice to the Supplier's obligations under Paragraph 4.3.3, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 4.3.2 without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Assistance or the Exit Plan shall be subject to the Variation Control Procedure.

Termination Obligations

- 4.5 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 4.6 At the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance and its compliance with the other provisions of this Schedule) the Supplier shall:
 - 4.6.1 cease to use the Government Data;
 - 4.6.2 provide the Buyer and/or the Replacement Supplier with a complete and uncorrupted version of the Government Data in electronic form (or such other format as reasonably required by the Buyer);
 - 4.6.3 erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Government Data and promptly certify to the Buyer that it has completed such deletion;
 - 4.6.4 return to the Buyer such of the following as is in the Supplier's possession or control:
 - (i) all copies of the Buyer's Assets and any other software licensed by the Buyer to the Supplier under this Contract;
 - (ii) all materials created by the Supplier under this Contract in which the IPRs are owned by the Buyer;

- (iii) any equipment which belongs to the Buyer; and
 - (iv) any items that have been on-charged to the Buyer, such as consumables;
- 4.6.5 vacate any Buyer Premises;
- 4.6.6 provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to twelve (12) months after the expiry or termination of this Contract to:
 - (i) such information relating to the Deliverables as remains in the possession or control of the Supplier; and
 - (ii) such members of the Supplier Personnel as have been involved in the design, development and provision of the Deliverables and who are still employed by the Supplier, provided that the Buyer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 4.6.6(ii).
- 4.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Deliverables and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Deliverables or Termination Assistance or for statutory compliance purposes.
- 4.8 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Buyer to the Supplier in relation to the terminated Deliverables shall be terminated with effect from the end of the Termination Assistance Period.

5 Assets, Sub-Contracts and Software

- 5.1 Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Buyer's prior written consent:
 - 5.1.1 terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Deliverables or the Charges;
 - 5.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
 - 5.1.3 terminate, enter into or vary any licence for software in connection with the Deliverables.
- 5.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 4.3.5, the Buyer shall provide written notice to the Supplier setting out:

5.2.1 which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier ("**Transferring Assets**");

5.2.2 which, if any, of:

(i) the Exclusive Assets that are not Transferable Assets; and

(ii) the Non-Exclusive Assets,

the Buyer and/or the Replacement Supplier requires the continued use of; and

5.2.3 which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the "**Transferring Contracts**"),

in order for the Buyer and/or its Replacement Supplier to provide the Deliverables from the expiry of the Termination Assistance Period. Where requested by the Buyer and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Buyer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Buyer and/or its Replacement Supplier requires to provide the Deliverables or Replacement Deliverables.

5.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:

5.3.1 a Termination Payment is payable by the Buyer to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or

5.3.2 the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Contract, in which case the Buyer shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.

5.4 Risk in the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) on payment for the same.

5.5 Where the Supplier is notified in accordance with Paragraph 5.2.2 that the Buyer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:

5.5.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Buyer) for the Buyer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which

5.5.2 procure a suitable alternative to such assets and the Buyer or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.

- 5.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Buyer and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignment.
- 5.7 The Buyer shall:
- 5.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
 - 5.7.2 once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 5.8 The Supplier shall hold any Transferring Contracts on trust for the Buyer until such time as the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has been effected.
- 5.9 The Supplier shall indemnify the Buyer against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Buyer (and/or Replacement Supplier) pursuant to Paragraph 5.6 both:
- 5.9.1 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract; and
 - 5.9.2 in relation to any matters arising after the date of assignment or novation of such Transferable Contracts where the loss, liability or cost arises as a result of the Supplier's failure to comply with Clause 9 (*Intellectual Property Rights*).

6 Supplier Personnel

- 6.1 The Buyer and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Deliverables or part of them for any reason, Call-Off Schedule 2 (*Staff Transfer*) shall apply.
- 6.2 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Deliverables from transferring their employment to the Buyer and/or the Replacement Supplier.
- 6.3 During the Termination Assistance Period, the Supplier shall give the Buyer and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Buyer and/or the Replacement Supplier.
- 6.4 The Supplier shall immediately notify the Buyer or, at the direction of the Buyer, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 6.5 The Supplier shall not for a period of twelve (12) months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-Contractors whose employment or engagement is transferred to the Buyer and/or the Replacement

Supplier, except that this Paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

7 Charges

- 7.1 During the Termination Assistance Period (or for such shorter period as the Buyer may require the Supplier to provide Termination Assistance), the Buyer shall pay the Charges to the Supplier in respect of the Termination Assistance in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Assistance is changed and this results in a change to the costs of such Termination Assistance, the estimate may be varied with the Buyer's prior written consent.
- 7.2 For the purpose of calculating the costs of providing the Termination Assistance for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Assistance shall be determined in accordance with the Variation Control Procedure using the Charges in respect of those Supplier Personnel on an hourly rate already.
- 7.3 Except as otherwise expressly specified in this Contract, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Buyer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

8 Apportionments

- 8.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- 8.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
- 8.1.2 the Buyer shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
- 8.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 8.2 Each Party shall pay (and/or the Buyer shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 8.1 as soon as reasonably practicable.

Call-Off Schedule 11

Personal Data

Part 1: Personal Data

1 Processing Personal Data

1.1 The Processor shall comply with any further written instructions with respect to processing by the Controller.

1.2 Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of Controller for each Category of Personal Data	<p>The Buyer is Controller and the Supplier is Processor.</p> <p>The Parties acknowledge that in accordance with this Call-Off Schedule 11 (<i>Personal Data</i>) and for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor of the following Personal Data:</p> <ul style="list-style-type: none">• Title• First name and surname• Postal/home address• Gender• Email address• Landline and/or mobile phone number• Employer and position• Date of birth and age <p>relating to any staff, (including without limitation volunteers, agents, and temporary workers), representatives and officers of the Buyer, members of the public and such Personal Data is offered to the Supplier by the Buyer with instructions as to how the Personal Data is to be processed.</p> <p>The Parties are Joint Controllers</p> <p>The Parties acknowledge that in accordance with Paragraph 1 of Part 2 of this Call-Off Schedule 11 (<i>Personal Data</i>) and for the purposes of the Data Protection Legislation they may be Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none">• Personal Data which the Buyer and the Supplier jointly determine the purposes and means of processing of from time to time. <p>In respect of Personal Data under Joint Control, Paragraphs 2 and 4 of Part 2 of this Call-Off Schedule 11 (<i>Personal Data</i>) will not apply and the Parties will process Personal Data in accordance with the Annex to this Schedule.</p> <p>The Parties are Independent Controllers of Personal Data</p> <p>The Parties acknowledge that in accordance with Paragraph 1 of Part 2 of this Call-Off Schedule 11 (<i>Personal Data</i>) and for the purposes of the Data Protection Legislation the Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none">• Business contact details of Supplier Personnel, and• Business contact details of any directors, officers, employees, agents, consultants and contractors of the

	<p>Buyer (excluding the Supplier Personnel) engaged in the performance of the Buyer's duties under this Contract).</p> <p>In respect of Personal Data where the Parties are Independent Controllers, Paragraph 4 of Part 2 of this Call-Off Schedule 11 (<i>Personal Data</i>) will apply.</p>
Duration of the processing	The duration shall be until the expiry/termination of this Contract (including any Termination Assistance Period), and the duration of any relevant data retention obligations extending beyond such expiry or termination.
Nature and purposes of the processing	<p>Nature Collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) in so far as those activities relate to the Deliverables or to comply with a statutory obligation</p> <p>Purpose For all reasonable purposes for the Parties to comply with their obligations in accordance with the Contract.</p>
Type of Personal Data	Name, address, date of birth, NI number, telephone number, pay, images, biometric data
Categories of Data Subject	<p>The following individuals may form the Data Subjects from time to time:</p> <p>Directors, officers, employees, agents, consultants and contractors of the Buyer and members of the public</p>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	Personal Data shall be retained for only as long as is necessary for the Supplier to comply with this Contract and shall be returned or destroyed upon the Buyer's instructions.

Part 2: Protection of Personal Data

1 Status of the Controller

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Contract will determine the status of each Party under the Data Protection Legislation. A Party may act as:

1.1.1 “**Joint Controller**” (where both Parties are considered to jointly control the same Personal Data);

1.1.2 “**Independent Controller**” of the Personal Data where the other Party is also “Controller” of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in Part 1 of this Call-Off Schedule 11 (*Personal Data*) which scenario or scenarios are intended to apply under this Contract.

2 Where one Party is Controller and the other Party its Processor

- 2.1 Where a Party is a Processor, the only processing that it is authorised to do is listed in Part 1 of this Call-Off Schedule 11 (*Personal Data*) by the Controller.

- 2.2 The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.

- 2.3 The Processor shall (at the Controller’s cost, in accordance with the charging principles set out in this Contract) provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

2.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;

2.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Deliverables;

2.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

2.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

- 2.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

2.4.1 process that Personal Data only in accordance with Part 1 of this Call-Off Schedule 11 (*Personal Data*), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Buyer before processing the Personal Data unless prohibited by Law;

2.4.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

2.4.3 ensure that:

- (i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular this Call-Off Schedule 11 (*Personal Data*));
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this Call-Off Schedule 11 (*Personal Data*) and Clauses 15 (*Data protection and information*) and 16 (*What you must keep confidential*);
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;

2.4.4 not transfer Personal Data to a Third Country unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or DPA 2018 Section 75) as determined by the Controller;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

- (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
- 2.4.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.
- 2.5 Subject to Paragraph 2.6, the Processor shall notify the Controller immediately if it:
 - 2.5.1 receives a Data Subject Request (or purported Data Subject Request);
 - 2.5.2 receives a request to rectify, block or erase any Personal Data;
 - 2.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 2.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - 2.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 2.5.6 becomes aware of a Data Loss Event.
- 2.6 The Processor's obligation to notify under Paragraph 2.5 shall include the provision of further information to the Controller in phases, as details become available.
- 2.7 Taking into account the nature of the processing, the Processor shall provide the Controller (at the Controller's cost, in accordance with the charging principles set out in this Contract) with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Paragraph 2.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
 - 2.7.1 the Controller with full details and copies of the complaint, communication or request;
 - 2.7.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 2.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 2.7.4 assistance as requested by the Controller following any Data Loss Event; and/or
 - 2.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

- 2.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Part 2 of Call-Off Schedule 11 (*Personal Data*). This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 2.8.1 the Controller determines that the processing is not occasional;
 - 2.8.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - 2.8.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor by complying with its obligations in respect of audits set out in this Contract.
- 2.10 Each of the Parties shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- 2.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
- 2.11.1 notify the Controller in writing of the intended Sub-processor and processing;
 - 2.11.2 obtain the written consent of the Controller;
 - 2.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Paragraph 2 such that they apply to the Sub-processor; and
 - 2.11.4 provide the Controller with such information regarding the Sub- processor as the Controller may reasonably require.
- 2.12 The Processor shall remain liable for all acts or omissions of any of its Sub-processors as if they were the acts or omissions of the Processor itself.
- 2.13 The Buyer may, at any time, request revision of this Clause through Variation Control Procedure.

3 Where the Parties are Joint Controllers of Personal Data

- 3.1 In the event that the Parties are Joint Controllers in respect of Personal Data under this Contract, the Parties shall implement Clauses that are necessary to comply with GDPR Article 26 based on the terms set out in Annex 1 to this Call-Off Schedule 11 (*Personal Data*).

4 Where the Parties are Independent Controllers of Personal Data

- 4.1 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.

- 4.2 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 4.3 Where a Party has provided Personal Data to the other Party in accordance with Paragraph 4.1, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 4.4 The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the processing of Personal Data for the purposes of this Contract.
- 4.5 The Parties shall only provide Personal Data to each other:
- 4.5.1 to the extent necessary to perform the respective obligations under this Contract;
 - 4.5.2 in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
 - 4.5.3 where it has recorded it in Part 1 of Call-Off Schedule 11 (*Personal Data*).
- 4.6 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.
- 4.7 A Party processing Personal Data for the purposes of this Contract shall maintain a record of its processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.
- 4.8 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Contract (**"the Request Recipient"**):
- 4.8.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
 - 4.8.2 where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
 - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and

- (ii) provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 4.9 Each party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to this Contract and shall:
 - 4.9.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
 - 4.9.2 implement any measures necessary to restore the security of any compromised Personal Data;
 - 4.9.3 work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
 - 4.9.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 4.10 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Contract as specified in Part 1 of this Call-Off Schedule 11 (*Personal Data*).
- 4.11 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Contract which is specified in Part 1 of this Call-Off Schedule 11 (*Personal Data*).
- 4.12 Where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with this Paragraph 4.

Annex: Joint Controller Agreement

1 Joint Controller Status and Allocation of Responsibilities

- 1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex (Joint Controller Agreement) in replacement of Paragraph 2 of Part 2 of this Call-Off Schedule 11 (*Where one Party is Controller and the other Party is Processor*) and Paragraph 4 of Part 2 of this Call-Off Schedule 11 (*Independent Controllers of Personal Data*). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers, and each to provide the other with reasonable cooperation and assistance in so doing, including in responding to requests from Data Subjects to exercise their rights under the applicable Data Protection Legislation.

1.2 The Parties agree that:

- 1.2.1 the Supplier shall be responsible for all steps necessary to comply with the GDPR regarding the exercise by Data Subjects of their rights under the GDPR;
- 1.2.2 shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
- 1.2.3 each Party shall include in its published privacy notice the information required under Articles 13 and 14 of the GDPR in relation to Personal Data under Joint Control
- 1.2.4 each Party shall be responsible for establishing an appropriate legal basis for its own processing;
- 1.2.5 the Supplier shall make available to Data Subjects the essence of this Joint Controller Agreement (and notify them of any material changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the Supplier's privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing). Notwithstanding the terms of Paragraph 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Data Controller.

2 Undertakings of both Parties

2.1 The Supplier and the Buyer each undertake that they shall:

- 2.1.1 report to the other Party every three months on:
 - (i) the volume of Data Subject Access Requests (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
 - (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
 - (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
 - (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
 - (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- that it has received in relation to the subject matter of the Agreement during that period;

- 2.1.2 notify each other immediately if it receives any request, complaint or communication made as referred to in Paragraphs 2.1.1(i) to 2.1.1(v); and
- 2.1.3 provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Paragraphs 2.1.1(iii) to 2.1.1(v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation.
- 2.1.4 not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Deliverables and, for any disclosure or transfer of Personal Data to any third party, save where such disclosure or transfer is specifically authorised under this Contract or is required by Law). For the avoidance of doubt to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex.
- 2.1.5 request from the Data Subject only the minimum information necessary to provide the Deliverables and treat such extracted information as Confidential Information.
- 2.1.6 ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data
- 2.1.7 take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
- (i) are aware of and comply with their duties under this Annex (Joint Controller Agreement) and those in respect of Confidential Information
 - (ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;
 - (iii) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
- 2.1.8 ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
- (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures.
- 2.1.9 ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or

delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and

2.1.10 ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event.

2.2 Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations

3 Data Protection Breach

3.1 Without prejudice to Paragraph 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:

3.1.1 sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;

3.1.2 all reasonable assistance, including:

- (i) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
- (ii) co-operation with the other Party including taking such reasonable steps as are directed by the Buyer to assist in the investigation, mitigation and remediation of a Personal Data Breach;
- (iii) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach;
- (iv) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Paragraph 3.2.

3.2 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as if it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

3.2.1 the nature of the Personal Data Breach;

- 3.2.2 the nature of Personal Data affected;
- 3.2.3 the categories and number of Data Subjects concerned;
- 3.2.4 the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;
- 3.2.5 measures taken or proposed to be taken to address the Personal Data Breach; and
- 3.2.6 describe the likely consequences of the Personal Data Breach.

4 Audit

- 4.1 The Supplier shall permit audit of its compliance with this Annex 1 and the Data Protection Legislation in accordance with its auditing obligations under this Contract.

5 Impact Assessments

- 5.1 The Parties shall:
 - 5.1.1 provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to processing operations, risks and measures);
 - 5.1.2 maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with this Contract, in accordance with the terms of Article 30 GDPR.

6 ICO Guidance

The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. Either Party may request amendment of this Contract through the Variation Procedure to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.

7 Liabilities for Data Protection Breach

- 7.1 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the "**Claim Losses**"):
 - 7.1.1 if the Buyer is responsible for the relevant breach, then the Buyer shall be responsible for the Claim Losses;
 - 7.1.2 if the Supplier is responsible for the relevant breach, then the Supplier shall be responsible for the Claim Losses: and
 - 7.1.3 if responsibility is unclear, then the Buyer and the Supplier shall be responsible for the Claim Losses equally.

8 Termination

- 8.1 If the Supplier is in material Default under any of its obligations under this Annex 1 (Joint Control Agreement), this shall constitute a Supplier Termination Event the Buyer

shall be entitled to terminate this Contract under Clause 11.3 (*When the Buyer can end this Contract*).

9 Sub-Processing

9.1 In respect of any Processing of Personal performed by a third party on behalf of a Party, that Party shall:

9.1.1 carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by this Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and

9.1.2 ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

10 Data Retention

The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by a Party for statutory compliance purposes or as otherwise required by this Contract), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.

Call-Off Schedule 12

Not used

Call-Off Schedule 13

Mobilisation Plan

1 Formation of Mobilisation Plan

- 1.1 The Mobilisation Plan is set out in the Annex to this Schedule.
- 1.2 The Mobilisation Plan:
 - 1.2.1 must contain information at the level of detail necessary to manage the implementation stage effectively and as the Buyer may otherwise require; and
 - 1.2.2 must state how the Supplier will work with the incumbent supplier and the Buyer Supply Chain Members and the Buyer Authorised Representative to capture and load up information such as asset data;
 - 1.2.3 must contain a requirement for the Supplier to review the Due Diligence Information;
 - 1.2.4 must contain the details of any other relevant information and matters reasonably required by the Buyer;
 - 1.2.5 must state how the Supplier will familiarise itself with the Buyer CAFM System;
 - 1.2.6 must contain a communications plan, to be produced and implemented by the Supplier, but to be agreed with the Buyer, including the frequency, responsibility for and nature of communication with the Buyer and end users of the Deliverables; and
 - 1.2.7 shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.
- 1.3 The Supplier shall provide each of the Mobilisation Deliverable Items identified in the Mobilisation Plan at or before the expiry of the Mobilisation Period.
- 1.4 The Supplier shall notify the Buyer and the Buyer's Authorised Representative as soon as it becomes aware of an Inaccuracy in or between the Mobilisation Plan and any other document which forms part of this Contract. The Buyer's Authorised Representative shall state how each Inaccuracy should be resolved, including in accordance with Clause 1.4 (where applicable). The Supplier shall comply with the instruction from the Buyer's Authorised Representative, with no entitlement to a Variation, with no effect on the Charges and/or the Mobilisation Payment and the Supplier shall not be excused from the performance of any of its obligations under this Contract.
- 1.5 The Supplier shall monitor its performance against the Mobilisation Plan and Milestones (if any) and report to the Buyer on such performance.

2 Mobilisation Plan

- 2.1 During the Mobilisation Period, the incumbent supplier shall retain full responsibility for all existing services until the Start Date or as otherwise formally agreed with the Buyer.

- 2.2 The Supplier's obligation to provide the Deliverables commences on the Start Date.
- 2.3 In accordance with the Mobilisation Plan, the Supplier shall:
- 2.3.1 work cooperatively and in partnership with the Buyer, incumbent supplier and the Buyer Supply Chain Members, where applicable, to understand the scope of Deliverables to ensure a mutually beneficial handover of the Deliverables;
 - 2.3.2 work with the incumbent supplier and the Buyer Supply Chain Members and Buyer to assess the scope of the Deliverables and prepare a plan which demonstrates how they will mobilise the Deliverables; and
 - 2.3.3 liaise with the incumbent supplier and the Buyer Supply Chain Members to enable the full completion of the Mobilisation Plan and provide the Mobilisation Deliverable Items.
- 2.4 In addition, the Supplier shall:
- 2.4.1 mobilise all the Deliverables specified in the Specification;
 - 2.4.2 manage and report progress against the Mobilisation Plan;
 - 2.4.3 construct and maintain a mobilisation risk and issue register in conjunction with the Buyer detailing how risks and issues will be effectively communicated to the Buyer in order to mitigate them;
 - 2.4.4 attend progress meetings in accordance with the Buyer's requirements during the Mobilisation Period. Mobilisation meetings shall be chaired by the Buyer and all meeting minutes shall be kept and published by the Supplier; and
 - 2.4.5 ensure that all risks associated with the Mobilisation Period are minimised to ensure a seamless change of control between incumbent supplier and the Supplier.
- 2.5 If the Supplier considers that, as a result of a Mobilisation Failure, it will fail or is likely to fail to provide the Mobilisation Deliverable Items in accordance with the Mobilisation Plan, then the Supplier shall immediately notify the Buyer in writing and the Buyer, in its absolute discretion and without limiting any other of its rights, may instruct the Supplier to comply with the Rectification Plan Process.

3 Interaction with Buyer Supply Chain Members during the Mobilisation Period

- 3.1 In order for the Supplier to be able to assume its duties, during the Mobilisation Period the Supplier shall undertake the routine examinations and inspections of the Buyer Premises and consider the Deliverables that it will provide during the Contract Period.
- 3.2 The Supplier shall familiarise itself with the Buyer Premises and the needs of the building users.
- 3.3 As a result of the familiarisation, the Supplier shall ensure that it is appropriately equipped to deal with the level of liaison and stakeholder management required, to include, but not be limited to:

- 3.3.1 liaison;
 - 3.3.2 reporting;
 - 3.3.3 co-ordination and provision of services;
 - 3.3.4 attendance at meetings; and
 - 3.3.5 management and resolution of stakeholder issues.
- 3.4 By the end of the Mobilisation Period, the Supplier shall ensure that all the necessary arrangements with the Buyer Supply Chain Members and other relevant third parties to facilitate the continuous performance of its obligations under the Contract are assessed, and if required implemented, at and/or within the Buyer Premises.
- 3.5 The Supplier shall conduct site visits to Buyer Premises where weaknesses in asset data have been identified, to reassess the accuracy of the data.

4 Security during the Mobilisation Period

- 4.1 The Supplier shall note that it is incumbent upon them to understand the lead-in period for security clearances and ensure that all Supplier Staff have the necessary security clearance in place before the Start Date. The Supplier shall ensure that this is reflected in their Mobilisation Plans.
- 4.2 The Supplier shall ensure that all Supplier Staff and Subcontractors do not access the Buyer's IT systems, or any IT systems linked to the Buyer, unless they have satisfied the Buyer's security requirements.
- 4.3 The Supplier shall be responsible for providing all necessary information to the Buyer to facilitate security clearances for Supplier Staff and Subcontractors in accordance with the Buyer's requirements.
- 4.4 The Supplier shall provide the names of all Supplier Staff and Subcontractors and inform the Buyer of any alterations and additions as they take place throughout the Contract.
- 4.5 The Supplier shall ensure that all Supplier Staff and Subcontractors requiring access to the Buyer Premises have the appropriate security clearance. It is the Supplier's responsibility to establish whether or not the level of clearance will be sufficient for access. Unless prior approval has been received from the Buyer, the Supplier shall be responsible for meeting the costs associated with the provision of security cleared escort services.
- 4.6 If a property requires Supplier Staff or Subcontractors to be accompanied by the Buyer's Authorised Representative, the Buyer must be given reasonable notice of such a requirement, except in the case of emergency access.

5 Mobilisation Payment

- 5.1 The Mobilisation Payment shall be payable by the Buyer to the Supplier on the later of (and subject always to Paragraph 5.2):
- 5.1.1 the expiry of the Mobilisation Period;

- 5.1.2 the provision of all Mobilisation Deliverable Items by the Supplier to the Buyer; or
 - 5.1.3 the date on which the Buyer confirms (acting reasonably) satisfactory compliance with the Mobilisation Plan,

(the “**Mobilisation Payment Date**”).
- 5.2 If the Mobilisation Failure has occurred as a result of a Buyer Cause then the Mobilisation Payment Date will be the date on which the Mobilisation Period expires.
 - 5.3 Once the Mobilisation Payment Date has been achieved, the Mobilisation Payment shall be paid by the Buyer in accordance with Clause 4 (*Pricing and payments*).

Annex: Mobilisation Plan

The AQB1 Appendix A Mobilisation Plan Mitie VB is attached below.



01/07/2021 Contract No:

K10830

Rev:

B

Date started: 23/06/2021

Current Date:

30/06/2021

Project:

Life Systems Services 2 (LSS2)

Mob. Manager:

Nicola Cough

Customer:

DWP

Sponsor:

Andrew Rawdon

Mobilisation Plan, Life Systems Services 2 (LSS2), Version B						June 21					July 21				August 21					September 21				October 21									
Ref	Task	Owner	Support 1	Support 2	Sign Complete	Plan Start	Plan Finish	Days	FTs	hrs/Day	Task Freq	31/3	7/6	14/6	21/6	28/6	5/7	12/7	19/7	26/7	3/8	9/8	16/8	23/8	30/8	6/9	13/9	20/9	27/9	4/10	11/10	18/10	25/10
LIFE SYSTEMS SERVICES V2 MOBILISATION PLAN																																	
1.0 Programme Milestones																																	
1.1	Contract Award	NC				01/07/21	01/07/21	1	Misc	7.50	0																						
1.2	Commence Mobilisation	NC				02/07/21	02/07/21	1	Misc	7.50	0																						
1.3	Commencement of TUPE process	CS				02/07/21	02/07/21	1	Misc	7.50	0																						
1.4	Requests for information issued to buyer	NC				02/07/21	06/07/21	5	Misc	7.50	0																						
1.5	Commencement of customer activities	AR				19/08/21	02/09/21	11	Misc	7.50	0																						
1.6	Submit PTH schedules to buyer	RW				29/07/21	08/08/21	9	Misc	7.50	0																						
1.7	Supply chain in place	DY				19/08/21	03/09/21	12	Misc	7.50	0																						
1.8	IT systems & infrastructure tested and signed off	MG				19/08/21	02/09/21	11	Misc	7.50	0																						
1.9	Delivery to site of equipment, workwear, consumables etc	NC				26/08/21	03/09/21	7	Misc	7.50	0																						
1.10	Go live readiness sign off (internal)	NC				26/08/21	03/09/21	7	Misc	7.50	0																						
1.11	Service commencement date	NC				04/09/21	04/09/21	0	Misc	7.50	0																						
1.12	Staff transfer to Mite	CS				02/09/21	10/09/21	5	Misc	7.50	0																						
2.0 Project Planning & Governance																																	
Mobilisation Planning - Pre-mobilisation																																	
2.1	Confirm mobilisation team & workstream leads	NC				01/07/21	08/07/21	5	Misc	7.50	0																						
2.2	Set up project documents (e.g. actions log, issues log, risk log etc)	NC				02/07/21	09/07/21	5	Misc	7.50	0																						
2.3	Set up mobilisation SharePoint portal	NC				02/07/21	09/07/21	5	Misc	7.50	0																						
2.4	Draft mobilisation report(s) for buyer agreement	NC				02/07/21	13/07/21	10	Misc	7.50	0																						
2.5	Review & update Mobilisation Plan	NC				02/07/21	13/07/21	10	Misc	7.50	0																						
2.6	Submit revised Mobilisation Plan to buyer	NC				13/07/21	22/07/21	9	Misc	7.50	0																						
Mobilisation Kick-off																																	
2.7	Hold internal mobilisation kick-off meeting	NC				09/07/21	09/07/21	1	Misc	7.50	0																						
2.8	Hold joint mobilisation kick-off with buyer	NC				11/07/21	12/07/21	1	Misc	7.50	0																						
2.9	Agree process for any changes to plan	NC				11/07/21	12/07/21	1	Misc	7.50	0																						
2.10	Issue requests for information (RFI) to buyer	NC				09/07/21	22/07/21	10	Misc	7.50	0																						
2.11	Agree weekly mobilisation report	NC				11/07/21	11/07/21	0	Misc	7.50	0																						
2.12	Map Mite/buyer stakeholders & counterparts	NC				02/07/21	10/07/21	5	Misc	7.50	0																						
2.13	Map the lived reality of stakeholders & counterparts	NC				02/07/21	09/07/21	5	Misc	7.50	0																						
2.14	Set up joint work stream specific weekly meetings	NC				09/07/21	03/09/21	41	Misc	7.50	0																						
Customer and Go-Live																																	
2.15	Create customer plan	NC				11/07/21	07/08/21	5	Misc	7.50	0																						
2.16	Arrange internal weekly customer meetings	NC				01/08/21	03/09/21	25	Misc	7.50	0																						
2.17	Arrange joint "go live readiness" meetings	NC				01/08/21	03/09/21	25	Misc	7.50	0																						
2.18	Commence customer activities	NC				01/08/21	03/09/21	25	Misc	7.50	0																						
2.19	Conduct "go live readiness" meeting	NC				19/08/21	03/09/21	12	Misc	7.50	0																						
2.20	Go live readiness sign off	NC				26/08/21	03/09/21	7	Misc	7.50	0																						
2.21	Service commencement date	NC				04/09/21	04/09/21	0	Misc	7.50	0																						
Handover to Operations - Post Go-Live																																	
2.22	Document all post go live deliverables including audits & surveys	AM				19/08/21	26/08/21	5	Misc	7.50	0																						
2.23	Create Post Go Live action plan to track and manage activity	AM				19/08/21	03/09/21	12	Misc	7.50	0																						
2.24	Hold handover workshops for mobilisation & ops teams	NC				26/08/21	03/09/21	7	Misc	7.50	0																						
2.25	Conduct internal lessons learned exercise	NC				26/08/21	03/09/21	5	Misc	7.50	0																						
2.26	Conduct joint lessons learned exercise with buyer	NC				02/09/21	03/09/21	2	Misc	7.50	0																						
3.0 Commercial, Finance & Procurement																																	
Commercial & Finance																																	
3.1	Review service matrix with work stream leads	GH	GH			04/07/21	11/07/21	5	Misc	7.50	0																						
3.2	Document all contract deliverables & ownership	GH	GH			04/07/21	13/07/21	9	Misc	7.50	0																						
3.3	Create contract overview document for employees	GH	GH			04/07/21	13/07/21	9	Misc	7.50	0																						
3.4	Set up financial processes (AP, AR, cost codes etc)	GH	GH			09/07/21	08/08/21	20	Misc	7.50	0																						
3.5	Agree & document contract variation process	GH	GH			09/07/21	22/07/21	10	Misc	7.50	0																						
3.6	Agree and document income recovery process	GH	GH			09/07/21	08/08/21	20	Misc	7.50	0																						
3.7	Agree & document income retention process	GH	GH			09/07/21	08/08/21	20	Misc	7.50	0																						
3.8	Implement payroll process for all transferring staff	GH	GH			19/08/21	03/09/21	12	Misc	7.50	0																						
Plant																																	
3.9	Confirm any additional vehicle requirements	FA	HF			13/07/21	22/07/21	5	Misc	7.50	0																						
3.10	Review fleet management administration process	FA	HF			13/07/21	22/07/21	5	Misc	7.50	0																						
3.11	Review driver documentation, mandates and declarations	FA	HF			29/07/21	12/08/21	11	Misc	7.50	0																						
Selection & Management of Subcontractors																																	
3.12	Review details of sub contracts currently held	DY				09/07/21	13/07/21	3	Misc	7.50	0																						
3.13	Review preferred supplier list	DY				09/07/21	13/07/21	3	Misc	7.50	0																						
3.14	Produce required supplier/sub contractors list	DY				22/07/21	12/08/21	16	Misc	7.50	0																						
3.15	Establish and implement sub contractor selection procedure	DY	GH			22/07/21	12/08/21	16	Misc	7.50	0																						
3.16	Review subcontractor method statements & risk assessments	DY	AM			19/08/21	02/09/21	11	Misc	7.50	0																						
3.17	Create flow down of main contract for each sub contractor	GH	DY			19/08/21	02/09/21	11	Misc	7.50	0																						
3.18	Agreed supply chain sub contracts	DY				05/08/21	26/08/21	16	Misc	7.50	0																						
3.19	Confirm the supplier/sub contractors to be used with buyer	DY				12/08/21	19/08/21	5	Misc	7.50	0																						
3.20	Induct supply chain	DE	DY			26/08/21	27/08/21	2	Misc	7.50	0																						
Equipment, Materials & Consumables																																	
3.21	Review requirement for materials & consumables	RW				09/07/21	13/07/21	3	Misc	7.50	0												</										



01/07/2021 Contract No: KPD00 Rev: B Date started: 13/06/2021
Project: Life Systems Services 2 (LSS2)
Customer: DWP

Current Date: 30/06/2021
Mob. Manager: Nicola Cough
Sponsor: Andrew Rawlin

Mobilisation Plan, Life Systems Services 2 (LSS2), Version B											June 21					July 21				August 21				September 21				October 21					
Ref	Tasks	Owner	Support 1	Support 2	Tip Complete	Plan Start	Plan Finish	Days	FTEs	PhysDay /FTE	Task Hrs	30/3	7/6	14/6	21/6	28/6	5/7	12/7	19/7	26/7	2/8	9/8	16/8	23/8	30/8	6/9	13/9	20/9	27/9	4/10	11/10	18/10	25/10
6.32	QHSE Accident & Incident Mngt. and Hazard Spotting					04/09/21	11/09/21	3	PMsc	7.50	0																						
6.33	Ensure all PMsc employees are aware of Accident Reporting Procedure	DE	JO			04/09/21	11/09/21	3	PMsc	7.50	0																						
6.34	Accident investigation training (All managers and supervisors)	DE				04/09/21	11/09/21	3	PMsc	7.50	0																						
6.35	Haz Miss & Hazard Spotting procedure and form communicated to all staff	DE				04/09/21	11/09/21	3	PMsc	7.50	0																						
6.36	Audit, Inspection and Interventions					05/06/21	11/09/21	6	PMsc	7.50	0																						
6.37	Draft and set up monthly QHSE Operational audit schedule for each service area	DE	NC			05/06/21	12/06/21	6	PMsc	7.50	0																						
6.38	Allocate scheduled inspection responsibilities	DE	AM			12/06/21	19/06/21	6	PMsc	7.50	0																						
6.39	Establish minimum amount of Intervention Audits to be carried out and allocate responsibilities	AM				12/06/21	19/06/21	6	PMsc	7.50	0																						
6.40	Refresher training on interventions	DE	CS			04/09/21	11/09/21	3	PMsc	7.50	0																						
6.41	Ensure sites have been registered onto Safety 360 Database	DE	CS			12/06/21	19/06/21	6	PMsc	7.50	0																						
6.42	Ensure data is set for the site Comprehensive Audit	DE	LS			12/06/21	19/06/21	6	PMsc	7.50	0																						
6.43	Establish Sub-contractor auditing programme	DE	DY			19/06/21	26/06/21	6	PMsc	7.50	0																						
6.44	Personal Protective Equipment					15/07/21	11/09/21	6	PMsc	7.50	0																						
6.45	Carry out staff PPE analysis	DE	CS	AR		15/07/21	22/07/21	6	PMsc	7.50	0																						
6.46	Ascertain any additional measures required	DE				15/07/21	22/07/21	6	PMsc	7.50	0																						
6.47	Procure PPE required for staff	DE	CS	SH		22/07/21	19/08/21	31	PMsc	7.50	0																						
6.48	Draft PPE Record of Issue & Inspection Forms for all staff	DE	CS			19/08/21	11/09/21	17	PMsc	7.50	0																						
6.49	QHSE Competence, Induction & Training					29/07/21	02/08/21	6	PMsc	7.50	0																						
6.50	Review via Company Training Matrix	DE	CS			29/07/21	05/08/21	6	PMsc	7.50	0																						
6.51	Review I Care Programme Training & Induction Record for all staff	DE	CS			29/07/21	05/08/21	6	PMsc	7.50	0																						
6.52	Review Training Record filing system	DE	CS			29/07/21	05/08/21	6	PMsc	7.50	0																						
6.53	Review staff Driving Licenses for company vehicle drivers - ensure copy on record	DE	CS			29/07/21	05/08/21	6	PMsc	7.50	0																						
6.54	Plant and Equipment including Calibration					29/07/21	02/08/21	6	PMsc	7.50	0																						
6.55	Identify all equipment that requires inspection and testing	DE				29/07/21	05/08/21	6	PMsc	7.50	0																						
6.56	Establish weekly checklist requirements	DE				29/07/21	05/08/21	6	PMsc	7.50	0																						
6.57	QHSE Communication					09/07/21	11/09/21	6	PMsc	7.50	0																						
6.58	Establish Management Review process	DE				09/07/21	13/07/21	3	PMsc	7.50	0																						
6.59	Establish Internal QHSE Meetings	DE				09/07/21	13/07/21	3	PMsc	7.50	0																						
6.60	Establish Subcontractor QHSE Meetings	DE				29/07/21	26/08/21	6	PMsc	7.50	0																						
6.61	Identify Toolbox talk requirements - Provide refresher training	DE				26/08/21	11/09/21	12	PMsc	7.50	0																						
6.62	Produce a programme of toolbox talks	DE				26/08/21	11/09/21	12	PMsc	7.50	0																						
6.63	Control of Contractors					29/07/21	19/08/21	6	PMsc	7.50	0																						
6.64	Formal system in place for control of contractors, induction, PTW issue etc	DE	AM			29/07/21	05/08/21	6	PMsc	7.50	0																						
6.65	Ensure PTW issue responsibilities are clear	DE	AM			29/07/21	05/08/21	6	PMsc	7.50	0																						
6.66	Ensure contractors are formally approved for their work	DE	AM			05/08/21	19/08/21	11	PMsc	7.50	0																						
6.67	Business Contingency & Continuity					09/07/21	12/08/21	6	PMsc	7.50	0																						
6.68	Review & update business continuity plans	DE	AM	AR		09/07/21	22/07/21	10	PMsc	7.50	0																						
6.69	Update staff contingency plans	DE	AM	AR		22/07/21	29/07/21	6	PMsc	7.50	0																						
6.70	Update collaborative site based BCP	DE	AM	AR		22/07/21	29/07/21	6	PMsc	7.50	0																						
6.71	Sign off Contingency & Continuity Plans	DE	AM	AR		05/08/21	12/08/21	6	PMsc	7.50	0																						
7.0	Service Delivery					02/07/21	11/09/21	6	PMsc	7.50	0																						
7.1	Method statements					15/07/21	29/07/21	6	PMsc	7.50	0																						
7.2	Document service method statements for all services	FR	RW	AM		15/07/21	22/07/21	6	PMsc	7.50	0																						
7.3	Document task based method statements	FR	RW	AM		22/07/21	29/07/21	6	PMsc	7.50	0																						
7.4	Statutory Maintenance					02/07/21	19/08/21	6	PMsc	7.50	0																						

Call-Off Schedule 14

Key Performance Indicators

1 KPI Agreement

- 1.1 The Supplier shall at all times provide the Deliverables to meet or exceed the KPI Performance Measure for each KPI.
- 1.2 The Supplier acknowledges that any KPI Failure shall entitle the Buyer to the rights set out in Part A of this Schedule including the right to any KPI Credits and that any KPI Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to meet any KPI Performance Measure. The Parties agree that the KPI Credits are reasonable and proportionate.
- 1.3 The Supplier shall send Performance Monitoring Reports to the Buyer (detailing the level of service performance which was actually achieved by the Supplier) in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.
- 1.4 A KPI Credit shall be the Buyer's exclusive financial remedy for a KPI Failure except where:
 - 1.4.1 the KPI Failure:
 - (i) has arisen due to a Prohibited Act or wilful Default by the Supplier;
 - (ii) results in the corruption or loss of any Government Data; and/or
 - (iii) results in the Buyer being required to make a payment to one or more third parties;
 - 1.4.2 a Persistent KPI Failure occurs and/or the Buyer is otherwise entitled to or does terminate this Contract pursuant to Clauses 11.3 and 11.4 (*When the Buyer can end this Contract*);
 - 1.4.3 a Critical Failure Event occurs or a Critical Failure Event is likely to occur;
 - 1.4.4 a material Default occurs; and/or
 - 1.4.5 the Buyer is entitled to rely on any of its rights under the Contract or otherwise.
- 1.5 Not more than once in each Contract Year, the Buyer may, on giving the Supplier at least three (3) Months' notice, change the weighting of the KPI Performance Measure in respect of one or more KPIs and the Supplier shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:
 - 1.5.1 the total number of KPIs for which the weighting is to be changed does not exceed the number applicable as at the Start Date; and
 - 1.5.2 the principal purpose of the change is to reflect changes in the Buyer's business requirements and/or priorities or to reflect changing industry standards; and
 - 1.5.3 there is no change to the At Risk %.

2 Persistent KPI Failure

2.1 On the occurrence of a Persistent KPI Failure:

- 2.1.1 any KPI Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and
- 2.1.2 the Buyer shall be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Persistent KPI Failure**"),

Provided that the operation of this Paragraph 2 shall be without prejudice to the right of the Buyer to terminate this Contract and/or to claim damages from the Supplier for material Default.

3 Bedding-In

3.1 There shall be a Bedding-In Period and the following provisions shall apply during such period:

- 3.1.1 from the Start Date until the month in which the Bedding-In Period expires the Supplier shall, within ten (10) Working Days after the end of each Month, submit a report to the Buyer containing:
 - (i) the Management Information;
 - (ii) the Performance Monitoring Report; and
 - (iii) any other information reasonably requested by the Buyer;
- 3.1.2 subject to paragraphs 3.2.3 and 3.3 of this of Schedule 14, the Buyer shall defer until the first month proceeding the expiry of the Bedding-In Period any adjustment to be made to any invoices in respect of any applicable KPI Credits accrued by the Supplier during the Bedding-In Period; and

3.2 During the Bedding-In Period:

- 3.2.1 the Supplier shall provide the Deliverables and shall comply with its obligations under the Contract and it shall not be relieved of any of its obligations under this Contract;
- 3.2.2 the KPI Credits accrued by the Supplier shall be recorded on the Performance Monitoring Reports; and
- 3.2.3 there shall be no relief during any period of the Bedding-In Period in respect of any Critical Failure Event that occurs or is likely to occur and the Buyer shall be entitled to make any relevant adjustment to any invoices in respect of any applicable KPI Credits accrued by the Supplier in relation to a Critical Failure Event that occurs or is likely to occur during the Bedding-In Period.

- 3.3 Without prejudice to paragraph 4.1 of Part A of this Schedule, during the first Month after the expiry of the Bedding-In Period:
- 3.3.1 if the At Risk Amount is equal to or less than 4% of the At Risk %, for such Month, the Buyer shall not adjust any invoices in respect of any applicable KPI Credits accrued by the Supplier during the Bedding-In Period; or
- 3.3.2 if:
- (i) the if the At Risk Amount is greater than 4% of the At Risk % for such Month; and/or
 - (ii) a Critical Failure Event occurs or is likely to occur in such Month,
- the Buyer may adjust any invoices in respect of any applicable KPI Credits accrued by the Supplier during the Bedding-In Period with no double counting.

Part A: KPIs and KPI Credits

1 KPIs

1.1 If the level of performance of the Supplier:

1.1.1 is likely to or fails to meet any KPI Performance Measure; or

1.1.2 is likely to cause or causes a Persistent KPI Failure to occur,

the Supplier shall immediately notify the Buyer in writing and the Buyer, in its absolute discretion and without limiting any other of the Buyer's rights under the Contract, may:

1.1.3 require the Supplier to immediately take all preventative and/or remedial action that is reasonable to mitigate the impact on the Buyer and to rectify or prevent a KPI Failure or Persistent KPI Failure from taking place or recurring;

1.1.4 instruct the Supplier to comply with the Rectification Plan Process;

1.1.5 if a KPI Failure has occurred, deduct the applicable KPI Credits payable by the Supplier to the Buyer; and/or

1.1.6 if a Persistent KPI Failure has occurred, exercise its right to Compensation for Persistent KPI Failure (including the right to terminate for material Default).

2 KPI Credits

2.1 Without prejudice to paragraph 3 of Part B of this Schedule 14, the Buyer shall use the Performance Monitoring Reports supplied by the Supplier to verify the calculation and accuracy of the KPI Credits, if any, applicable to each Service Period.

2.2 KPI Credits are a reduction of the amounts payable in respect of the Deliverables and do not include VAT. The Buyer shall recover the value of any KPI Credits in accordance with Call-Off Schedule 5 (*Pricing*).

3 KPI Credit calculation

At Risk Amount

3.1 For a Service Period, the At Risk Amount shall be calculated by reference to the relevant provisions set out in Call-Off Schedule 5 (*Pricing*).

KPI Category At Risk Amount

3.2 The KPI Category At Risk Amount shall be calculated as follows: for each KPI Category, the At Risk Amount shall be apportioned to it in accordance with the KPI Category Weightings in the column headed KPI Weighting in the KPI Table 2 of the Performance Criteria tab of the KPI Model.

KPI At Risk Amount

3.3 The KPI At Risk Amount shall be calculated as follows: the KPI Category At Risk Amount that applies to the KPI Category in which the relevant KPI resides, shall be

further apportioned in accordance with the KPI Measure Weightings in the column headed KPI Weighting in the Measures - Table 3 of the Performance Criteria tab of the KPI Model.

KPI Credit

- 3.4 The KPI Credit to be applied to a KPI in a Service Period for a KPI Failure shall be calculated in accordance with the Measures tab of the KPI Model by:

3.4.1 deducting from 100% the actual standard of performance (as a percentage calculated using the Scoring Scales tab of the KPI Model) achieved by the Supplier against the KPI Performance Measure in that Service Period; and

3.4.2 multiplying the resultant percentage by the KPI At Risk Amount,

and such KPI Credit may be adjusted by the Ratchet.

4 KPI Credit Ratchet

- 4.1 From the expiry of the Bedding-In Period:

4.1.1 a ratchet will apply to the calculation of KPI Credits for frequent and repeated KPI Failures and/or in relation to any Critical Failure Event ("**Ratchet**"), the details of which are set out in paragraph 4.4 of this Part A; and

4.1.2 any KPI Failures which occurred during the Bedding-In Period shall not be taken into account when determining whether the Ratchet applies.

- 4.2 The Ratchet will be applied to the calculation of KPI Credits if, following the expiry of the Bedding-In Period, one or more of the following circumstances occur:

4.2.1 KPI Failures occur in relation to any one or more of the KPIs comprised in the same KPI Category in consecutive Service Periods;

4.2.2 KPI Failures occur in relation to any one or more of the KPIs comprised in the same KPI Category in any four (4) or more of the immediately preceding twelve (12) Service Periods; or

4.2.3 a KPI Failure also leads to or is likely to lead to a Critical Failure Event in any Service Period.

- 4.3 The value of the Ratchet and when it is to be applied pursuant to Paragraph 4.2, is set out in the 'Worked Example' tab of the Payment Mechanism.

- 4.4 When the Ratchet is to be applied, the relevant KPI Credit shall be the number of KPI Credits that would normally accrue for an initial KPI Failure multiplied by the value of the Ratchet, for example:

4.4.1 if a KPI Failure in respect of any one or more KPIs comprised in the same KPI Category occurs in two (2) consecutive Service Periods, the KPI Credits for each of the KPI Failures in the subsequent Service Periods will be 1.5 times the KPI Credit that would have been applicable to them for an initial KPI Failure;

- 4.4.2 if a KPI Failure in respect of any one or more KPIs comprised in the same KPI Category occurs in any four (4) Service Periods in the immediately preceding twelve (12) Service Periods, the KPI Credits for each of the KPI Failures in that fourth Service Period will be 1.75 times the KPI Credit that would have been applicable to them for an initial KPI Failure; and
- 4.4.3 if a KPI Failure also results in a Critical Failure Event or is likely to result in a Critical Failure Event, the KPI Credits for each KPI Failure will be 2.0 times the KPI Credit that would have been applicable to such KPI Failure.
- 4.5 If more than one Ratchet applies to a KPI Failure in the same Service Period, the Ratchet resulting in the higher KPI Credit will be used.

5 Persistent KPI failure

- 5.1 A Persistent KPI Failure shall arise when one or both of the following takes place:
 - 5.1.1 a KPI Failure in respect of any one or more of the KPIs comprised in the same applicable KPI Category occurs in five (5) consecutive Service Periods; and/or
 - 5.1.2 a KPI Failure in respect of any one or more of the KPIs comprised in the same applicable KPI Category occurs in any seven (7) Service Periods in the immediately preceding twelve (12) Service Periods.
- 5.2 A Persistent KPI Failure shall constitute a material Default of this Contract by the Supplier.

6 Permitted Event

- 6.1 If the Supplier fails to Complete:
 - 6.1.1 a PPM Task by the relevant date set out in the PPM Plan; and/or
 - 6.1.2 any item of Remedial Work within the relevant Remedial Work Completion Period,
- and such failure is due to the occurrence of a Permitted Event, the Buyer shall not apply the relevant KPI Credits for such failure.

Annexes to Part A

Annex A: KPI Model

See separate document titled, “A3C DWP LS2 Key Performance Indicators (Final)”.

Annex B: Payment Mechanism

To be inserted following development of the payment mechanism during the Mobilisation Period

Annex C:

KPIs and Performance Measures

1 Key Performance Indicator 1 (CFM M1)

KPI Category	KPI Name	Value Achieved	KPI Performance Measure	Data Source
CAFM and Coordination and Coordination with the Supply Chain Integrator	The Supplier shall Submit reports containing Management Information	The Measure for KPI 1 is calculated in accordance with paragraph 1.2 of this Part C.	100%	Reports submitted via email to the Buyer and Buyer's Integrator.

1.1 For each Service Period, the Contractor shall record the number of:

- 1.1.1 reports and/or documents containing Management Information that were due to be Submitted for that Service Period;
- 1.1.2 reports and/or documents containing Management Information Submitted for that Service Period; and
- 1.1.3 reports and/or documents containing Management Information that were not Submitted in any previous Service Period that the Supplier has not Submitted by the first calendar day of the current Service Period.

1.2 For each Service Period, the monthly Valued Achieved for KPI 1 shall be calculated as:

1.2.1 subject to paragraph 1.2.2 of this Part C, $A/(B+C) \times 100$ where:

- (i) A is the total number of reports and/or documents containing Management Information Submitted as recorded pursuant to paragraph 1.1;
- (ii) B is the number of reports and/or documents containing Management Information that were due to be Submitted as recorded pursuant to paragraph 1.1; and
- (iii) C is the number of reports and/or documents containing Management Information that were not Submitted in any previous Service Period which the Supplier has not Submitted by the first calendar day of the current Service Period recorded pursuant to paragraph 1.1; or

1.2.2 where any failure to Submit a report and/or document containing Management Information is also a Critical Failure Event, the Value Achieved shall be 0%.

1.3 If the Value Achieved for KPI 1 in a Service Period is 100% the Buyer shall not be entitled to any KPI Credit for KPI 1 for that Service Period.

2 **Key Performance Indicator 2 (MAINT M1)**

KPI Category	KPI Name	Value Achieved	KPI Performance Measure	Data Source
Maintenance Services	The Supplier shall achieve PPM Task Completion for each PPM Task by the relevant date set out in the PPM Plan	The Measure for KPI 2 is calculated in accordance with paragraph 2.2 of this Part C.	98%	Buyer's Integrator's CAFM system

2.1 For each Service Period, the Contractor shall record the number of:

- 2.1.1 PPM Tasks that have achieved PPM Task Completion by the relevant date set out in the PPM Plan for that Service Period;
- 2.1.2 PPM Tasks that were due to achieve PPM Task Completion by the relevant date set out in the PPM Plan for that Service Period; and
- 2.1.3 PPM Tasks that have not achieved PPM Task Completion by the relevant date set out in the PPM Plan in any previous Service Period and which the Supplier has not remedied by the first calendar day of the current Service Period.

2.2 For each Service Period, the monthly Valued Achieved Percentage for KPI 2 shall be calculated as:

2.2.1 subject to paragraph 2.2.2 of this Part C, $A/(B+C) \times 100$ where:

- (i) A is the total number of PPM Tasks that have achieved PPM Task Completion by the relevant date set out in the PPM Plan recorded pursuant to paragraph 2.1;
- (ii) B is the number of PPM Tasks that were due to achieve PPM Task Completion by the relevant date set out in the PPM Plan recorded pursuant to paragraph 2.1; and
- (iii) C is the number of PPM Tasks that have not achieved PPM Task Completion by the relevant date set out in the PPM Plan in any previous Service Period which the Supplier has not remedied by the first calendar day of the current Service Period, recorded pursuant to paragraph 2.1; or

2.2.2 where any failure to achieve PPM Task Completion for a PPM Task by the relevant date set out in the PPM Plan is also a Critical Failure Event, the Value Achieved shall be 0%.

2.3 If the Value Achieved for KPI 2 in a Service Period is 98% or more, the Buyer shall not be entitled to any KPI Credit for KPI 2 for that Service Period.

3 **Key Performance Indicator 3 (MAINT M2)**

KPI Category	KPI Name	Value Achieved	KPI Performance Measure	Data Source
Maintenance Services	The Supplier shall Upload the relevant PPM Deliverables	The Measure for KPI 2 is calculated in accordance with paragraph 3.2 of this Part C.	100%	Buyer's Integrator's CAFM system

3.1 For each Service Period, the Contractor shall record the number of:

- 3.1.1 PPM Deliverables that were due to be Uploaded for that Service Period;
- 3.1.2 PPM Deliverables Uploaded for that Service Period; and
- 3.1.3 PPM Deliverables that were not Uploaded in any previous Service Period that the Supplier has not Uploaded by the first calendar day of the current Service Period.

3.2 For each Service Period, the monthly Valued Achieved for KPI 3 shall be calculated as:

3.2.1 subject to paragraph 3.2.2 of this Part C, $A/(B+C) \times 100$ where:

- (i) A is the total number of PPM Deliverables Uploaded for that Service Period, recorded pursuant to paragraph 3.1;
- (ii) B is the number of PPM Deliverables that were due to be Uploaded for that Service Period, recorded pursuant to paragraph 3.1; and
- (iii) PPM Deliverables that were not Uploaded in any previous Service Period that the Supplier has not Uploaded by the first calendar day of the current Service Period, recorded pursuant to paragraph 3.1; or

3.2.2 where any failure to Upload a PPM Deliverable is also a Critical Failure Event, the Value Achieved shall be 0%.

3.3 If the Value Achieved for KPI 3 in a Service Period is 100%, the Buyer shall not be entitled to any KPI Credit for KPI 3 for that Service Period.

4 **Key Performance Indicator 4 (MAINT M3)**

KPI Category	KPI Name	Value Achieved	KPI Performance Measure	Data Source
Maintenance Services	Within 5 Working Days of carrying out a PPM Task on an Asset, the Supplier shall revise the Remedial Work Programme to record any Remedial Work which are required for that Asset	The Measure for KPI 4 is calculated in accordance with paragraph 4.2 of this Part C.	98%	Buyer's Integrator's CAFM system

4.1 For each Service Period, the Contractor shall record the number of:

4.1.1 Remedial Work items that should have been successfully added or revised to the Remedial Work Programme for that Service Period, following the carrying out of a PPM Task on an Asset or following receipt of any other relevant information during that Service Period. For the purposes of this paragraph 4 of Part C, 'successfully' shall be deemed to include where each revised Remedial Work Programme:

- (i) is in the format specified in this Contract;
- (ii) include all information specified in this Contract or any other information requested by the Buyer (acting reasonably);
- (iii) is accurate; and/or
- (iv) has been Uploaded;

4.1.2 Remedial Work items successfully added or revised to the Remedial Work Programme for that Service Period, following the carrying out of a PPM Task on an Asset or following receipt of any other relevant information during that Service Period; and

4.1.3 Remedial Work items that should have been have been successfully added, omitted or revised to the Remedial Work Programme in any previous Service Period that the Supplier has not successfully added or revised to the Remedial Work Programme by the first calendar day of the current Service Period.

4.2 For each Service Period, the monthly Valued Achieved for KPI 4 shall be calculated as:

4.2.1 subject to paragraph 4.2.2 of this Part C, $A/(B+C) \times 100$ where:

- (i) A is the total number of Remedial Work items successfully added or revised to the Remedial Work Programme, recorded pursuant to paragraph 4.1;

- (ii) B is the number of Remedial Work items that should have been successfully added or revised to the Remedial Work Programme recorded pursuant to paragraph 4.1; and
- (iii) C is the number of Remedial Work items that should have been have been successfully added or revised to the Remedial Work Programme in any previous Service Period that the Supplier has not successfully added or revised to the Remedial Work Programme by the first calendar day of the current Service Period, recorded pursuant to paragraph 4.1; or

4.2.2 where any failure successfully to add or revise the Remedial Work Programme is also a Critical Failure Event, the Value Achieved shall be 0%.

4.3 If the Value Achieved for KPI 4 in a Service Period is 98% or more, the Buyer shall not be entitled to any KPI Credit for KPI 4 for that Service Period.

5 Key Performance Indicator 5 (MAINT M4)

KPI Category	KPI Name	Value Achieved	KPI Performance Measure	Data Source
Maintenance Services	Within 5 Working Days of carrying out a PPM Task on an Asset, the Supplier shall revise the Remedial Work Programme to include the price and programme details set out in the Remedial Work Proposal (as defined in Attachment 3 to Annex F of the Remedial Specification) for any Remedial Work added or revised to the Remedial Work Programme.	The Measure for KPI 4 is calculated in accordance with paragraph 5.2 of this Part C.	95%	Buyer's Integrator's CAFM system

5.1 For each Service Period, the Contractor shall record the number of:

- 5.1.1 Remedial Work Proposal that should have been successfully added or revised to the Remedial Work Programme for that Service Period, following the carrying out of a PPM Task on an Asset or following receipt of any other relevant information during that Service Period. For the purposes of this paragraph 5 of Part C 'successfully' shall have the same meaning set out in paragraph 4.1 of this Part C;
- 5.1.2 Remedial Work Proposal successfully added or revised to the Remedial Work Programme for that Service Period, following the carrying out of a PPM Task on an Asset or following receipt of any other relevant information during that Service Period; and
- 5.1.3 Remedial Work Proposal that should have been have been successfully added or revised to the Remedial Work Programme in any previous Service Period that the Supplier has not successfully added or revised to the Remedial Work Programme by the first calendar day of the current Service Period.

5.2 For each Service Period, the monthly Valued Achieved for KPI 5 shall be calculated as:

- 5.2.1 subject to paragraph 4.2.2 of this Part C, $A/(B+C) \times 100$ where:

- (i) A is the total number of Remedial Work Proposals successfully added or revised to the Remedial Work Programme, recorded pursuant to paragraph 5.1;
- (ii) B is the number of Remedial Work Proposals that should have been successfully added or revised to the Remedial Work Programme recorded pursuant to paragraph 5.1; and
- (iii) C is the number of Remedial Work Proposals that should have been have been successfully added or revised to the Remedial Work Programme in any previous Service Period that the Supplier has not successfully added, omitted or revised to the Remedial Work Programme by the first calendar day of the current Service Period, recorded pursuant to paragraph 5.1; or

5.2.2 where any failure successfully to add or revise the Remedial Work Programme is also a Critical Failure Event, the Value Achieved shall be 0%.

5.3 If the Value Achieved for KPI 5 in a Service Period is 95% or more, the Buyer shall not be entitled to any KPI Credit for KPI 5 for that Service Period.

6 Key Performance Indicator 6 (MAINT M1)

KPI Category	KPI Name	Value Achieved	KPI Performance Measure	Data Source
Maintenance Services	The Supplier shall achieve Remedial Work Completion for all Remedial Work items by the relevant date set out in the Remedial Work Programme	The Measure for KPI 6 is calculated in accordance with paragraph 6.2 of this Part C.	95%	Buyer's Integrator's CAFM system

6.1 For each Service Period, the Contractor shall record the number of:

- 6.1.1 Remedial Work items that have achieved Remedial Work Completion by the relevant date set out in the Remedial Work Programme for that Service Period;
- 6.1.2 Remedial Work items that were due to achieve Remedial Work Completion for that Service Period by the relevant date set out in the Remedial Work Programme; and
- 6.1.3 Remedial Work items that have not achieved Remedial Work Completion by the relevant date set out in the Remedial Work Programme in any previous Service Period and which the Supplier has not remedied by the first calendar day of the current Service Period.

6.2 For each Service Period, the monthly Valued Achieved Percentage for KPI 6 shall be calculated as:

6.2.1 subject to paragraph 6.2.2 of this Part C, $A/(B+C) \times 100$ where:

- (i) A is the total number of Remedial Work items that have achieved Remedial Work Completion by the relevant date set out in the Remedial Work Programme recorded pursuant to paragraph 6.1;
- (ii) B is the number of Remedial Work items that were due to achieve Remedial Work Completion by the relevant date set out in the Remedial Work Programme, recorded pursuant to paragraph 6.1; and
- (iii) Remedial Work items that have not achieved Remedial Work Completion by the relevant date set out in the Remedial Work Programme in any previous Service Period which the Supplier has not remedied by the first calendar day of the current Service Period, recorded pursuant to paragraph 6.1; or

6.2.2 where any failure to achieve Remedial Work Completion for any Remedial Work item by the relevant date set out in the Remedial Work Programme is also a Critical Failure Event, the Value Achieved shall be 0%.

- 6.3 If the Value Achieved for KPI 6 in a Service Period is 95% or more, the Buyer shall not be entitled to any KPI Credit for KPI 6 for that Service Period.

Part B: Performance Monitoring

1 Performance Monitoring and Performance Review

- 1.1 The Supplier shall by the fifteenth working day of each Service Period (or such other day as the Parties may agree) provide the Buyer with accurate and complete performance monitoring reports in the same format as that in the KPI Model ("**Performance Monitoring Reports**") which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
 - 1.1.1 for each KPI, the actual performance achieved in respect of that KPI over the relevant Service Period;
 - 1.1.2 a summary of all KPI Failures that occurred during that Service Period;
 - 1.1.3 details of any Persistent KPI Failures;
 - 1.1.4 without prejudice to the Buyer's other rights and/or the Supplier's other obligations under the Contract, for any repeat failures the actions taken to resolve the underlying cause and prevent recurrence;
 - 1.1.5 the KPI Credits (including details of any Ratchet) to be applied in respect of the relevant Service Period, indicating the KPI Failures to which the KPI Credits and any Ratchet relate; and
 - 1.1.6 such other details as the Buyer may reasonably require from time to time.
- 1.2 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a Monthly basis. The Performance Review Meetings will be the forum for the review by the Supplier and the Buyer of the Performance Monitoring Reports. The Performance Review Meetings shall:
 - 1.2.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier at such location and time (within normal business hours) as the Buyer shall reasonably require;
 - 1.2.2 be attended by the Supplier's Representative and the Buyer's Representative; and
 - 1.2.3 be fully minuted by the Supplier and the minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Buyer's Representative and any other recipients agreed at the relevant meeting.
- 1.3 The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Buyer's Representative at each meeting.
- 1.4 The Supplier shall provide to the Buyer such documentation and information as the Buyer may reasonably require in order to verify the level of the performance by the Supplier and to calculate the amount of KPI Credits for any specified Service Period.
- 1.5 At each Performance Review Meeting the Parties shall attempt in good faith to resolve any disputes relating to the applicable Performance Monitoring Reports and if such disputes are not resolved, the Dispute Resolution Procedure shall apply.

2 Satisfaction Surveys

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

3 Verification audits

- 3.1 The Buyer may undertake checks and verification audits of the Performance Monitoring Reports and the Supplier at no cost to the Buyer shall provide all information, documents or records as may reasonably be requested by the Buyer to support any such activity.
- 3.2 If, following a check or verification audit undertaken pursuant to paragraph 3.1 of this Part B, the Buyer (acting reasonably) determines that a Performance Monitoring Report is not an accurate reflection of the Supplier's performance against the KPIs the relevant Performance Monitoring Report shall be amended to reflect the Supplier's actual performance in the Service Period and the Buyer shall be entitled to rely on any rights it may have under the Contract in relation the Supplier's actual performance in the relevant Service Period.

Call-Off Schedule 15

Not used

Call-Off Schedule 16

Not used

Call-Off Schedule 17

Not used

Call-Off Schedule 18

Not used

Call-Off Schedule 19

Collateral Warranty Agreements

The Supplier shall provide collateral warranty agreement(s) in the form set out in part 1 of this Schedule when requested by the Buyer in accordance with Clause 3.22 (*Collateral Warranty Agreements*) and shall deliver executed copies in duplicate to the Buyer no later than 10 Working Days after the Buyer has provided the Supplier with appropriate collateral warranty agreements suitable for execution.

The Supplier shall procure collateral warranty agreement(s) in the form set out in part 2 of this Schedule when requested by the Buyer in accordance with Clause 3.22 (*Collateral Warranty Agreements*) from the Subcontractors in favour of the Buyer and also any other parties identified by the Buyer. The Supplier shall deliver executed copies in duplicate to the Buyer no later than 15 Working Days after the Buyer has provided the Supplier with appropriate collateral warranty agreements suitable for execution.

If the Supplier fails to deliver the required collateral warranty agreements in the manner and within the time stipulated by this Contract, one quarter (1/4) of the Charges payable under this Contract shall be retained from payments due to the Supplier until the Supplier has remedied the failure.

Part 1: Supplier Collateral Warranty

THIS DEED is made on

BETWEEN:

- (1) **[NAME OF SUPPLIER]** (company number) whose registered office is at [insert] ("**Supplier**"); and
- (2) **[NAME OF BENEFICIARY]** (company number) whose registered office is at [insert] ("**Beneficiary**" which term includes its legal successors and permitted assignees).

BACKGROUND:

- (A) The Buyer intends to procure the Deliverables.
- (B) By the Contract the Supplier has agreed with the Buyer to provide the Deliverables upon the terms and conditions of the Contract.
- (C) It has been agreed that the Supplier enters into this deed with the Beneficiary in relation to the Deliverables.

IT IS AGREED:

By this deed and in consideration of the sum of £10 paid by the Beneficiary (receipt of which the Supplier hereby acknowledges) the Supplier agrees to enter into the obligations set out in this deed.

1 Definitions and Interpretation

In this deed:

- 1.1 the following words and expressions have the following meanings, unless the context requires otherwise:

"Business Day" means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday;

"Contract" means the contract dated [insert date] made between the Buyer and the Supplier;

"Deliverables" means the works and services to be undertaken by the Supplier under the Contract;

"Documents" means all drawings, CAD materials, plans, designs, diagrams, details, specifications, technical data (including asset data and all other data held in the Buyer CAFM system, including paper based data that is held on documentation which has been delivered as part of the Deliverables), bills of quantities, reports and other design information which have been or are hereafter written, prepared or provided by or on behalf of the Supplier for any purpose whatsoever in connection with the Deliverables;

"Intellectual Property Rights" means copyrights, moral rights, related rights, patents, trademarks, trade names, service marks, design rights, database rights, semiconductor topography rights and any undisclosed or confidential information such as knowhow, trade secrets or inventions (whether patentable or not);

“Limitation Period” means the period of 12 years from the date of completion of the Deliverables (or, if sooner, 12 years after termination of the employment of the Supplier under the Contract); and

“Supplier” means [insert] [address].

1.2 unless the context requires otherwise:

1.2.1 reference to any gender includes all genders, reference to the singular includes the plural (and vice versa) and reference to persons includes bodies corporate, unincorporated associations and partnerships (whether or not any of them have a separate legal personality);

1.2.2 reference to a recital or clause is a reference to a recital to or clause of this deed; and

1.2.3 reference to any legislative provision will be deemed to include any subsequent re-enactment or amending provision;

1.3 the list of contents and clause headings are included for convenience only and do not affect its interpretation;

1.4 where a party comprises two or more persons:

1.4.1 any obligations on the part of that party contained or implied in this deed are deemed to be joint and several obligations on the part of those persons; and

1.4.2 references to that party include references to each and any of those persons; and

1.5 periods of time will be calculated in accordance with section 116 of the Housing Grants, Construction and Regeneration Act 1996.

2 Standard of Care

2.1 The Supplier warrants and undertakes to the Beneficiary that:

2.1.1 it has carried out and will carry out its duties and obligations under the Contract subject to and in accordance with the terms of the Contract; and

2.1.2 in addition to and without derogation from Paragraph 2.1:

(i) it has carried out and will continue to provide the Deliverables in a good and workmanlike manner;

(ii) it has exercised and will continue to exercise all the reasonable skill care and diligence to be expected of a competent contractor experienced in providing similar Deliverables for a project of the same size, scope and complexity as that related to the Deliverables in the design of the Deliverables or any part thereof insofar as the same have been or will be designed by the Supplier or by the Supplier's servants, agents, consultants, Subcontractors or suppliers on its behalf; and

- (iii) the Deliverables will on completion comply in all respects with the requirements of the Contract.

3 Materials

- 3.1 The Supplier further warrants to the Beneficiary that it has not specified or approved for use or used and will not specify or approve for use or use in connection with the Deliverables any materials which at the time of specification or use (as the case may be):
 - 3.1.1 are known to be deleterious when used in the manner in which they are to be used (either to health and safety or to the durability of the Deliverables); or
 - 3.1.2 contravene any relevant standard or code of practice issued from time to time by the BSI Group or under a European directive relating to standards or good building practice; or
 - 3.1.3 do not accord with the guidelines contained in the edition of the publication Good Practice in Selection of Construction Materials (British Council for Offices (BCO)), current at the date of specification or use.

4 Copyright Licence

- 4.1 The Supplier hereby grants to the Beneficiary an irrevocable, royalty free and nonexclusive licence to copy and use the Documents and to reproduce the designs and works contained in them for all purposes relating to or connected with the Deliverables including (but without limitation) the execution, completion, mortgaging, letting, management, sale, advertisement, extension, alteration, maintenance, reinstatement and repair of the same. The licence will carry the right to grant sub licences and be freely transferable to third parties.
- 4.2 The Supplier will not be liable or responsible for any use of the Documents for any purpose other than that for which the same was originally prepared and provided by the Supplier.
- 4.3 The Intellectual Property Rights in the Documents will remain vested in the Supplier. Insofar as ownership of any Intellectual Property Right in any Document is vested in any person other than the Supplier, including, without limitation, any sub Supplier, supplier or consultant, the Supplier will procure for the Beneficiary the benefit of such a licence as is referred to in Paragraph 4.1 for the purposes referred to in that paragraph.
- 4.4 The Supplier warrants to the Beneficiary that the use, by the Beneficiary, of any of the Documents for any purpose provided for in Paragraph 4.1 will not infringe the Intellectual Property Rights of any third party in relation to the Documents.
- 4.5 The Supplier will, if so requested at any time, execute such documents and perform such acts as may be required fully and effectively to assure to the Beneficiary or any third party the rights referred to in this Paragraph 4.
- 4.6 The Supplier will provide to the Beneficiary a copy of any of the Documents within 7 days of receipt by the Supplier of a written request from the Beneficiary to do so. The Beneficiary agrees to pay the reasonable copying charges of the Supplier for provision of the same to the Beneficiary.

5 Professional Indemnity Insurance

5.1 The Supplier warrants that:

5.1.1 it has maintained and will maintain, during the provision of the Deliverables and the Limitation Period, professional indemnity insurance with an insurer authorised to carry out insurance business in the United Kingdom for an amount not less than five million pounds (£5,000,000), in respect of any one claim and in the aggregate subject to one annual reinstatement or ten million pounds (£10,000,000) in respect of any one claim and without reinstatement, in respect of any negligence on the part of the Supplier in the performance of its design obligations under the Contract, so long as such insurance is available at commercially reasonable rates and on commercially reasonable terms; and

5.1.2 cover under the professional indemnity insurance is extended to include the Supplier's liabilities under this deed.

5.2 For the purposes of this Paragraph 5, insurance that is subject to any increased or additional premium because of the Supplier's claims record or other acts, omissions or circumstances particular to the Supplier will be deemed to be insurance available at commercially reasonable rates.

5.3 As and when required by the Beneficiary, the Supplier will produce for inspection documentary evidence that such insurance is being properly maintained.

5.4 If the Supplier is unable to obtain professional indemnity insurance at reasonably commercial rates and on reasonably commercial terms, or if its insurance policy becomes void or unenforceable, it will promptly give notice of this to the Beneficiary.

6 Assignment

6.1 The Beneficiary may without the consent of the Supplier assign all or any of its rights under this deed to any person provided that no more than two such assignments will be permitted. Any assignment by the Beneficiary to a subsidiary or associated company of the Beneficiary or a member of the same group of companies (as defined by Section 42 of the Landlord and Tenant Act 1954) will not count as an assignment pursuant to this Paragraph. *[Where the Beneficiary is a partnership, add: Any assignment between the Beneficiary and any other partner of [insert the name of the partnership] (or any successor firm or company of [insert the name of the partnership]) will not count towards the number of assignments permitted by this Paragraph].*

6.2 The Supplier undertakes for the benefit of the Beneficiary and any lawful assignee not to contend in any proceedings under this deed that any such assignee is to be precluded from recovering any loss resulting from any breach of this deed (whenever happening) by reason that the Beneficiary or any intermediate assignee of the Beneficiary escaped loss resulting from such breach by reason of the disposal of its rights under or interest in the same.

7 Liability of the Supplier

7.1 The Supplier's liability under this collateral warranty shall be no greater than the Supplier's liability under the Contract.

- 7.2 Unless the contrary is stated, no provision of this deed is intended to exclude any obligation or liability which would otherwise be implied whether by statute, the law of contract, tort, equity or otherwise.
- 7.3 The responsibility of the Supplier under this deed is not to be reduced or in any way released or limited by any enquiry or inspection by or on behalf of any person notwithstanding that such enquiry or inspection may give rise to a claim by the Beneficiary against a third party.
- 7.4 The rights and benefits conferred upon the Beneficiary by this deed are in addition to any other rights and remedies that the Beneficiary may have against the Supplier including (without prejudice to the generality of the foregoing) any remedies in negligence.

8 Expiry of Deed

- 8.1 The Beneficiary will be entitled to commence legal proceedings against the Supplier at any time up to the expiry of the Limitation Period. For the avoidance of doubt, the parties agree that any provision of the Limitation Act 1980 to the contrary will not apply to this deed.

9 Notices

- 9.1 All notices to be given under this deed shall be in writing and shall be delivered personally (which includes delivery by courier) or sent by special delivery post to the party concerned at its address set out in this deed or to such other addresses as may be notified by such party for the purposes of this Paragraph. Notices sent by email or fax shall not be valid for the purposes of this deed.
- 9.2 Subject to Paragraph 9.3, any notice given under this deed will be deemed to have been served as follows:
- 9.2.1 if delivered personally, at the time of delivery; and
- 9.2.2 if sent by special delivery post, upon receipt (to be evidenced by a paper copy or an electronic copy of a proof of delivery issued by the Royal Mail that the relevant notice was served and of the time and date it was served).
- 9.3 If service occurs either on a Business Day after 4.00pm or on a day which is not a Business Day, then service will be deemed to have occurred on the next Business Day.

10 Rights of Third Parties

A person who is not a party to this deed will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed. This Paragraph does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

11 Jurisdiction and Law

This deed is governed by and is to be construed according to English law and the English courts will have jurisdiction in relation to all matters arising under it.

EXECUTION

By Supplier

Executed as a deed by ***[INSERT NAME OF COMPANY]***)
by a director in the presence of a witness:)
)

Signature

Name (block capitals)

Director

Witness' signature:

Witness' name (BLOCK CAPITALS):

Witness' address:
.....
.....

By Beneficiary

Executed as a deed by ***[INSERT NAME OF COMPANY]***)
by a director in the presence of a witness:)
)

Signature

Name (block capitals)

Director

Witness' signature:

Witness' name (BLOCK CAPITALS):

Witness' address:
.....
.....

Part 2: Subcontractor Collateral Warranty

THIS AGREEMENT is made on

BETWEEN:

- (1) [**NAME OF SUBCONTRACTOR**] (company number) whose registered office is at (insert) OR [THE SEVERAL PERSONS named in the schedule hereto carrying on business in partnership under the name of [*name of Subcontractor's firm*] at [*address*]] ("**Subcontractor**"; and
- (2) [**NAME OF BENEFICIARY**] (company number) whose registered office is at (insert) ("**Beneficiary**" which term includes its legal successors and permitted assignees); and
- (3) [**NAME OF SUPPLIER**] (company number) whose registered office is at (insert) ("**Supplier**").

BACKGROUND:

- (A) The Supplier intends to procure the Deliverables.
- (B) By the Contract the Supplier has agreed with the Supplier to provide the Deliverables upon the terms and conditions of the Contract.
- (C) By the Sub Contract the Subcontractor has agreed with the Supplier to provide the Sub Contract Deliverables upon the terms and conditions of the Sub Contract.
- (D) It has been agreed that the Subcontractor enters into this deed with the Beneficiary in relation to the Sub Contract Deliverables.

WITNESSES as follows:

By this deed and in consideration of the sum of £10 paid by the Beneficiary (receipt of which the Subcontractor hereby acknowledges), the Subcontractor agrees to enter into the obligations set out in this deed.

1 Definitions and Interpretation

1.1 Definitions

In this deed:

The following words and expressions shall have the following meanings, unless the context requires otherwise:

"Appointee" means the Beneficiary or any appointee or nominee of the Beneficiary notified in writing by the Beneficiary to the Subcontractor;

"Business Day" means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday;

"Buyer" means [*name*];

"Contract" means the contract dated (insert date) made between the Buyer and the Supplier;

“Deliverables” means the works and services to be undertaken by the Supplier under the Contract.

“Documents” means all drawings, CAD materials, plans, designs, diagrams, details, specifications, technical data (including asset data and all other data held in the Buyer CAFM system, including paper based data that is held on documentation which has been delivered as part of the Deliverables), bills of quantities, reports and other design information which have been or are hereafter written, prepared or provided by or on behalf of the Subcontractor for any purpose whatsoever in connection with the Deliverables;

“Intellectual Property Rights” means copyrights, moral rights, related rights, patents, trademarks, trade names, service marks, design rights, database rights, semiconductor topography rights and any undisclosed or confidential information such as knowhow, trade secrets or inventions (whether patentable or not);

“Limitation Period” means the period of 12 years from the date of completion of the Deliverables, as established pursuant to and for the purposes of the Contract (or, if sooner, 12 years after termination of the employment of the Supplier under the Contract);

“Site” means [address];

“Sub Contract” means the sub contract dated (insert date) made between the Supplier and the Subcontractor; and

“Sub Contract Deliverables” means the works and services to be undertaken by the Subcontractor under the Sub Contract.

1.2 Interpretation

Unless the context requires otherwise:

1.2.1 reference to any gender includes all genders, reference to the singular includes the plural (and vice versa) and reference to persons includes bodies corporate, unincorporated associations and partnerships (whether or not any of them have a separate legal personality);

1.2.2 reference to a recital or clause [or a schedule] is a reference to a recital to or clause of [or the schedule] to this deed; and

1.2.3 reference to any legislative provision will be deemed to include any subsequent re-enactment or amending provision.

1.3 The list of contents and clause headings are included for convenience only and do not affect its interpretation.

1.4 Where a party comprises two or more persons:

1.4.1 any obligations on the part of that party contained or implied in this deed are deemed to be joint and several obligations on the part of those persons; and

1.4.2 references to that party include references to each and any of those persons.

- 1.5 Periods of time will be calculated in accordance with section 116 of the Housing Grants, Construction and Regeneration Act 1996.

2 Standard of Care

- 2.1 The Subcontractor warrants and undertakes to the Beneficiary that:

- 2.1.1 it has carried out and will carry out its duties and obligations under the Sub Contract subject to and in accordance with the terms of the Sub Contract; and
- 2.1.2 in addition to and without derogation from Paragraph 2.1:
- (i) it has carried out and will continue to carry out and complete the Sub Contract Deliverables in a good and workmanlike manner;
 - (ii) it has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a competent contractor experienced in providing similar Deliverables for a project of the same size, scope and complexity as that relating to the Deliverables in the design of the Sub Contract Deliverables or any part thereof insofar as the same have been or will be designed by the Subcontractor or by the Subcontractor's servants, agents, consultants, sub subcontractors or suppliers on its behalf; and
- 2.1.3 the Sub Contract Deliverables will on completion comply in all respects with the requirements of the Sub Contract.

3 Materials

- 3.1 The Subcontractor further warrants to the Beneficiary that it has not specified or approved for use or used and will not specify or approve for use or use in connection with the Sub Contract Deliverables any materials which at the time of specification or use (as the case may be):
- 3.1.1 are known to be deleterious when used in the manner in which they are to be used (either to health and safety or to the durability of the Sub Contract Deliverables); or
- 3.1.2 contravene any relevant standard code of practice issued from time to time by the BSI Group or under a European directive relating to standards or good practice; or
- 3.1.3 do not accord with the guidelines contained in the edition of the publication Good Practice in Selection of Construction Materials (British Council for Offices (BCO)), current at the date of specification or use.

4 Copyright Licence

- 4.1 The Subcontractor hereby grants to the Beneficiary an irrevocable, royalty free and nonexclusive licence to copy and use the Documents and to reproduce the designs and works contained in them for all purposes relating to or connected with the Deliverables including (but without limitation) the execution, completion, mortgaging, letting, management, sale, advertisement, extension, alteration, maintenance,

reinstatement and repair of the same. The licence will carry the right to grant sub licences and be freely transferable to third parties.

- 4.2 The Subcontractor will not be liable or responsible for any use of the Documents for any purpose other than that for which the same was originally prepared and provided by the Subcontractor.
- 4.3 The Intellectual Property Rights in the Documents will remain vested in the Subcontractor. Insofar as ownership of any Intellectual Property Right in any Document is vested in any person other than the Subcontractor including, without limitation, any sub Subcontractor, the Subcontractor will procure for the Beneficiary the benefit of such a licence as is referred to in Paragraph 4.1 for the purposes referred to in that clause.
- 4.4 The Subcontractor warrants to the Beneficiary that the use, by the Beneficiary, of any of the Documents for any purpose provided for in Paragraph 4.1 will not infringe the Intellectual Property Rights of any third party in relation to the Documents.
- 4.5 The Subcontractor will, if so requested at any time, execute such documents and perform such acts as may be required fully and effectively to assure to the Beneficiary or any third party the rights referred to in this Paragraph 4.
- 4.6 The Subcontractor will provide to the Beneficiary a copy of any of the Documents within 7 days of receipt by the Subcontractor of a written request from the Beneficiary to do so. The Beneficiary agrees to pay the reasonable copying charges of the Subcontractor for provision of the same to the Beneficiary.

5 Professional Indemnity Insurance

- 5.1 The Subcontractor warrants that:
 - 5.1.1 it has maintained and will maintain, during the provision of the Sub Contract Deliverables and the Limitation Period, professional indemnity insurance with an insurer authorised to carry out insurance business in the United Kingdom for an amount not less than five million pounds (£5,000,000), in respect of any one claim and in the aggregate subject to one annual reinstatement or ten million pounds (£10,000,000) in respect of any one claim and without reinstatement, in respect of any negligence on the part of the Subcontractor in the performance of its design obligations under the Sub Contract, so long as such insurance is available at commercially reasonable rates and on commercially reasonable terms; and
 - 5.1.2 cover under the professional indemnity insurance is extended to include the Subcontractor's liabilities under this deed.
- 5.2 For the purposes of this Paragraph 5, insurance that is subject to any increased or additional premium because of the Subcontractor's claims record or other acts, omissions or circumstances particular to the Subcontractor will be deemed to be insurance available at commercially reasonable rates.
- 5.3 As and when required by the Beneficiary, the Subcontractor will produce for inspection documentary evidence that such insurance is being properly maintained.

- 5.4 If the Subcontractor is unable to obtain professional indemnity insurance at reasonably commercial rates and on reasonably commercial terms, or if its insurance policy becomes void or unenforceable, it will promptly give notice of this to the Beneficiary.

6 Substitution

- 6.1 The Subcontractor will not exercise nor seek to exercise any right of determination of its employment under the Sub Contract or to treat the Sub Contract as having been repudiated by the Supplier or to discontinue the performance of any of the Subcontractor's obligations in relation to the Sub Contract Deliverables by reason of breach on the part of the Supplier (or otherwise) without giving to the Appointee not less than 21 days' written notice of its intention to do so and specifying in such notice the grounds for the proposed termination. The Subcontractor will for the period of any such notice diligently and properly continue to perform the Subcontractor's obligations under the Sub Contract.
- 6.2 Any period stipulated in the Sub Contract for the exercise by the Subcontractor of a right of determination will nevertheless be extended as may be necessary to take account of the period of notice required under Paragraph 6.1.
- 6.3 Compliance by the Subcontractor with the provisions of Paragraph 6.1 will not be treated as a waiver of any breach on the part of the Supplier giving rise to the right of determination nor otherwise prevent the Subcontractor from exercising its rights after the expiration of the notice unless the right of determination will have ceased under the provisions of Paragraph 6.4.
- 6.4 The right of the Subcontractor to determine its employment under the Sub Contract or to treat the Sub Contract as having been repudiated or to discontinue the performance of any of its obligations in relation to the Sub Contract Deliverables will cease if within the period of 21 days referred to in Paragraph 6.1 the Appointee has given written notice to the Subcontractor:
- 6.4.1 requiring the Subcontractor to continue with the performance of all its obligations under the Sub Contract;
 - 6.4.2 acknowledging that the Appointee is assuming all the obligations of the Supplier under the Sub Contract; and
 - 6.4.3 undertaking to the Subcontractor to discharge all amounts payable to the Subcontractor under the terms of the Sub Contract,
- and pays to the Subcontractor any sums which have become due and payable to the Subcontractor under the Sub Contract but which remain unpaid.
- 6.5 Upon compliance by the Appointee with the requirements of Paragraph 6.4 the Sub Contract will continue in full force and effect as if the right of determination on the part of the Subcontractor had not arisen and in all respects as if the Sub Contract had been made between the Appointee and the Subcontractor to the exclusion of the Supplier.
- 6.6 Notwithstanding that as between the Supplier and the Subcontractor the Subcontractor's right of determination of its engagement under the Sub Contract may not have arisen the provisions of Paragraph 6.5 will nevertheless apply if the Appointee gives written notice to the Subcontractor and the Supplier to that effect and the Appointee complies with the requirements on its part under Paragraph 6.4.

- 6.7 The Subcontractor does not need to be concerned or required to enquire whether, and will be bound to assume that, as between the Supplier and the Appointee the circumstances have occurred permitting the Appointee to give notice under Paragraph 6.6.
- 6.8 By acting in accordance with the provisions of this Paragraph 6 will not by so doing incur any liability to the Supplier.
- 6.9 Unless and until the Appointee has given notice under this Paragraph 6:
- 6.9.1 the Appointee has no liability whatsoever to the Subcontractor in respect of amounts payable to the Subcontractor under the Sub Contract; and
 - 6.9.2 the Appointee has no authority to issue any direction or instruction to the Subcontractor in relation to the performance of the Subcontractor's duties under the Sub Contract.
- 6.10 Without prejudice to the provisions of Paragraphs 6.1 to 6.9 inclusive, if prior to the service of any notice under Paragraph 6.4 the employment of the Subcontractor under the Sub Contract is determined for any reason whatsoever the Subcontractor will, if requested in writing so to do by the Appointee no later than 12 weeks after the date of such determination, forthwith enter into a new agreement with the Appointee in relation to the carrying out of the Sub Contract Deliverables on the same terms as the Sub Contract, but with such revisions as the Appointee and the Subcontractor may reasonably require to reflect altered circumstances and the fact that it is the Appointee and not the Supplier employing the Subcontractor.

7 Assignment

- 7.1 The Beneficiary may without the consent of the Subcontractor assign all or any of its rights under this deed to any person provided that no more than two such assignments will be permitted. Any assignment by the Beneficiary to a subsidiary or associated company of the Beneficiary or a member of the same group of companies (as defined by Section 42 of the Landlord and Tenant Act 1954) will not count as an assignment pursuant to this Paragraph.
- 7.2 The Subcontractor undertakes for the benefit of the Beneficiary and any lawful assignee not to contend in any proceedings under this deed that any such assignee is to be precluded from recovering any loss resulting from any breach of this deed (whenever happening) by reason that the Beneficiary or any intermediate assignee of the Beneficiary escaped loss resulting from such breach by reason of the disposal of its rights under or interest in the same.

8 Liability of the Subcontractor

- 8.1 The Subcontractor's liability under this deed shall be no greater than the Supplier's liability under the Contract.
- 8.2 Unless the contrary is stated, no provision of this deed is intended to exclude any obligation or liability which would otherwise be implied whether by statute, the law of contract, tort, equity or otherwise.
- 8.3 The responsibility of the Subcontractor under this deed is not to be reduced or in any way released or limited by any enquiry or inspection by or on behalf of any person

notwithstanding that such enquiry or inspection may give rise to a claim by the Beneficiary against a third party.

- 8.4 The rights and benefits conferred upon the Beneficiary by this deed are in addition to any other rights and remedies that the Beneficiary may have against the Subcontractor including (without prejudice to the generality of the foregoing) any remedies in negligence.

9 Expiry of Deed

- 9.1 The Beneficiary will be entitled to commence legal proceedings against the Subcontractor at any time up to the expiry of the Limitation Period. For the avoidance of doubt, the parties agree that any provision of the Limitation Act 1980 to the contrary will not apply to this deed

10 Consent of Supplier

- 10.1 The Supplier consents to the terms of this deed.

11 Notices

- 11.1 All notices to be given under this deed shall be in writing and shall be delivered personally (which includes delivery by courier) or sent by special delivery post to the party concerned at its address set out in this deed or to such other addresses as may be notified by such party for the purposes of this Paragraph. Notices sent by email or fax shall not be valid for the purposes of this deed.
- 11.2 Subject to Paragraph 11.3, any notice given under this deed will be deemed to have been served as follows:
- 11.2.1 if delivered personally, at the time of delivery; and
- 11.2.2 if sent by special delivery post, upon receipt (to be evidenced by a paper copy or an electronic copy of a proof of delivery issued by the Royal Mail that the relevant notice was served and of the time and date it was served).
- 11.3 If service occurs either on a Business Day after 4.00pm or on a day which is not a Business Day, then service will be deemed to have occurred on the next Business Day.

12 Rights of Third Parties

A person who is not a party to this deed will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed. This Paragraph does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

13 Jurisdiction and Law

This deed is governed by and is to be construed according to English law and the English courts will have jurisdiction in relation to all matters arising under it.

EXECUTION

By Subcontractor

Executed as a deed by ***[INSERT NAME OF COMPANY]***)
by a director in the presence of a witness:)
)

Signature

Name (block capitals)

Director

Witness' signature:

Witness' name (BLOCK CAPITALS):

Witness' address:

.....

.....

By Beneficiary

Executed as a deed by ***[INSERT NAME OF COMPANY]***)
by a director in the presence of a witness:)
)

Signature

Name (block capitals)

Director

Witness' signature:

Witness' name (BLOCK CAPITALS):

Witness' address:

.....

.....

By Supplier

Executed as a deed by ***[INSERT NAME OF COMPANY]***)
by a director in the presence of a witness:)
)

Signature

Name (block capitals)

Director

Witness' signature:

Witness' name (BLOCK CAPITALS):

Witness' address:

.....
.....

Call-Off Schedule 20

Not used

Call-Off Schedule 21

Performance Bond

If requested by the Buyer in relation to any construction works, the Supplier provide a performance bond and the format of the performance bond which may be required from the Supplier is the “ABI Model Form of Guarantee Bond” published by the Association of British Insurers.

The performance bond shall be provided by a bank or insurer which the Buyer has accepted, for the amount which is 10% of the value of the construction works which may be requested by the Buyer. The value of the construction works shall be described within the Variation Authorisation Note that will be completed by the parties to record such works.

If the Supplier forthwith fails to deliver the performance bond, one tenth (1/10) of the Charges payable under the Contract shall be retained from payments due to the Supplier until the Supplier has remedied the failure.

DATED _____

[NAME OF CONTRACTOR] (1)

and

[BONDSMAN] (2)

and

[NAME OF EMPLOYER] (3)

PERFORMANCE BOND

THE GUARANTEE BOND is made as a deed **BETWEEN** the following parties whose names and registered offices are set out in the Schedule to this Bond (the “**Schedule**”):

- (1) The “**Contractor**” as principal;
- (2) The “**Bondsman**” as guarantor; and
- (3) The “**Employer**”.

WHEREAS

- (A) By a contract (the “**Contract**”) entered into or to be entered into between the Employer and the Contractor particulars of which are set out in the Schedule the Contractor has agreed with the Employer to execute works (the “**Works**”) upon and subject to the terms and conditions therein set out.
- (B) The Guarantor has agreed with the Employer at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Guarantee Bond subject to the limitation set out in Clause 2.

NOW THIS DEED WITNESSES AS FOLLOWS:

- 1 The Guarantor guarantees to the Employer that in the event of a breach of the Contract by the Contractor, the Guarantor shall subject to the provisions of this Guarantee Bond satisfy and discharge any damages sustained by the Employer as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract and taking into account all sums due or to become due to the Contractor (the “**Damages**”).
- 2 The maximum aggregate liability of the Guarantor and the Contractor under this Guarantee Bond shall not exceed the sum set out in the Schedule (the “**Bond Amount**”) but subject to such limitation and to Clause 5 the liability of the Guarantor to pay the Bond Amount shall be co-extensive with the liability of the Contractor to pay the Damages under the Contract.
- 3 The Guarantor shall not be discharged or released by any alteration of any of the terms, conditions and provisions of the Contract or in the extent or nature of the Works and no allowance of time by the Employer under or in respect of the Contract or the Works shall in any way release, reduce or affect the liability of the Guarantor under this Guarantee Bond.
- 4 For the avoidance of doubt any determination of the Contractor’s employment under [clause 25.11 “Termination on Insolvency”] of the Contract shall be conclusive evidence for the purposes of this Guarantee Bond of the Contractor’s failure duly to perform and observe the terms of the Contract.
- 5 Whether or not this Guarantee Bond shall be returned to the Guarantor the obligations of the Guarantor under this Guarantee Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of any breach of the Contract which has occurred or in the event the Contractor has become insolvent and in respect of which a claim in writing containing particulars of such breach or insolvency event and stating that the amount being demanded has been established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract and takes into account all sums due or to become due to the Contractor has been made upon the Guarantor at the address listed in the Schedule before Expiry.
- 6 The Contractor having requested the execution of this Guarantee Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract.
- 7 This Guarantee Bond and the benefit thereof shall be transferred or assigned without the prior written consent of the Guarantor and the Contractor on two occasions only. Any further assignments requires the written consent of the Guarantor and the Contractor (not to be unreasonably withheld or delayed)
- 8 The parties to this Guarantee Bond do not intend that any of its terms will be enforceable, by virtue of The Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person not a party to it.
- 9 The Guarantor shall be bound by any decision of any adjudicator under or in connection with the Contract.
- 10 This Guarantee Bond shall be governed by and construed in accordance with the laws of England and only the courts of England shall have jurisdiction hereunder.

The Bond Amount:	The sum of [] pounds (£[])
Expiry:	[insert]

Call-Off Schedule 22

The Specification

See separate documents titled:

- “A3A DWP LS2 Deliverables Matrix all Lots v1.1”;
- “A3B DWP LS2 Standards and Processes DWP Services Requirements (Final)”;
- “A3F DWP Remedial Specification (Final) v1.1”;
- “A3Gi Contractor Engineer User Guide - V1.01”

Call-Off Schedule 23

Redundancy Surcharge

1 Introduction

- 1.1 This Contract Schedule sets out the process for determining the Redundancy Surcharge or Service Charge Redundancy Surcharge in the event that:
- 1.1.1 following a Relevant Transfer, a Transferring Former Supplier Employee and/or a Transferring Buyer Employee is made Redundant by the Supplier as a result of an economic technical organisational reason entailing changes to the workforce; and
 - 1.1.2 the Buyer makes a change to the Services which results in the removal of any Services or closure of any of the Buyer Premises.

2 Redundancy Surcharge

- 2.1 Where a Relevant Transfer takes place, or will take place, the Supplier shall not make any Transferring Former Supplier Employee(s) and/or Transferring Buyer Employee(s) Redundant without consulting the Buyer.
- 2.2 The Supplier shall mitigate the effects of any Redundancy Surcharge by:
- 2.2.1 redeploying such people where it is practicable for the Supplier to do so; or
 - 2.2.2 where redeployment is not practicable, taking such reasonable mitigation steps to minimise the costs of Redundancy where practicable; and
 - 2.2.3 complying with the Law and any reasonable instructions from the Buyer.
- 2.3 The Redundancy Surcharge shall be zero unless:
- 2.3.1 the Supplier has consulted with the Buyer, pursuant to Paragraph 2.1 of this Call-Off Schedule 23 (*Redundancy Surcharge*) about the particular Transferring Former Supplier Employee(s) and/or Transferring Buyer Employee(s);
 - 2.3.2 save where the redundancy arises under section 139(1)(a)(ii) or 139(1)(b)(ii) of the Employment Rights Act 1996, the workforce of the Supplier and any notified Sub-Contractors prior to any Redundancies initiated under this Paragraph is greater in number than the number of staff used by the Supplier to calculate the Contract Price;
 - 2.3.3 The Supplier (or the notified Sub-Contractor, as the case may be) has followed a fair dismissal procedure (such that would be sufficient to establish fairness in accordance with section 98(4) of the Employment Rights Act 1996) and complied with all contractual and legislative requirements (save for a breach of notice entitlement where payment is made on termination in satisfaction of the employee's claim for damages) in respect of each termination for redundancy to which the redundancy Surcharge relates;

- 2.3.4 the supplier and/or the notified Subcontractor(s) has taken and continues to take all reasonable mitigation action to avoid or reduce the Redundancy Surcharge, including redeploying employees where practicable, transferring them to alternative roles and taking such reasonable mitigation steps to minimise the costs of Redundancy (including making them work their notice) where practicable;
 - 2.3.5 the effective date of termination of the relevant employee is within 120 days of the date of the Relevant Transfer date; and
 - 2.3.6 the Supplier complies with the remainder of this Paragraph 2.
- 2.4 The Supplier may request approval that the period referred to in Paragraph 2.3.5 is extended on the grounds that the Supplier or a notified Sub-Contractor proposes the Redundancy of any employee in respect of whom the Redundancy Surcharge would otherwise apply, save that the Supplier or a notified Sub-Contractor cannot lawfully effect the Redundancy or serve notice to dismiss within the period referred to in Paragraph 2.3.5 by reason of the terms of employment of the relevant employee or an applicable collective agreement. such requests must be made within one month of the date of the Relevant Transfer together with sufficient information for the Buyer to understand the reasons the Redundancy would not fall within the time period specified and the length of extension which is requested.
- 2.5 Where Redundancy is avoidable, the Supplier shall provide the Buyer with its estimate of the Redundancy Surcharge together with a breakdown and supporting evidence as may be necessary for the Buyer to corroborate and assess the calculation of the Redundancy Surcharge and to verify if the requirements of Paragraph 2.3 have been complied with.
- 2.6 On receipt of the Supplier's calculation of the Redundancy Surcharge the Buyer shall either:
- 2.6.1 notify the Supplier in writing of acceptance of the Redundancy Surcharge relating to the Relevant Transfer; and/or
 - 2.6.2 request further information/evidence; and/ or
 - 2.6.3 request a meeting to discuss/clarify the evidence provided.
- 2.7 Where the Redundancy Surcharge is agreed following the receipt of further information/evidence or following a meeting, the Buyer shall notify the Supplier in writing.
- 2.8 In the event that the Supplier and the Buyer are unable to agree the Redundancy Surcharge, they shall follow the Dispute Resolution Procedure.

3 Building Closures/Removal of Service(S)

- 3.1 Subject to Paragraph 3.2, Paragraph 3.3 and Paragraph 3.4 where the Supplier or any notified Sub-Contractor makes or intends to make a Redundancy Payment in relation to any termination for Redundancy made as a direct result of a Buyer instigated building closure or removal of service(s), the Supplier may be entitled to a Service Change Redundancy Surcharge.

- 3.2 The Supplier shall not be entitled to a Service Change Redundancy Surcharge under Paragraph 3.1 unless it has, before any relevant termination for Redundancy is made:
- 3.2.1 consulted the Buyer about the proposal to make any such termination for Redundancy;
 - 3.2.2 provided the Buyer with written estimates of any relevant Redundancy Payment together with a breakdown of such estimates and such supporting evidence as the Buyer may reasonably request to corroborate and assess the calculations; and
 - 3.2.3 provided the Buyer with details of the steps the Supplier, or the notified Sub-Contractor (as applicable), has taken (or proposes to take) to mitigate such costs in accordance with Paragraph 3.4
- 3.3 The Supplier shall not be entitled to a Service Change Redundancy Surcharge under Paragraph 3.1 unless it, or the notified Sub-Contractor (as applicable), has followed a fair dismissal procedure and complied with all contractual and legislative requirements (save for a breach of notice entitlement where payment is made on termination in satisfaction of the employee's claim for damages) in respect of each termination for redundancy to which the Service Change Redundancy Surcharge relates.
- 3.4 The Supplier shall (or, where relevant, shall procure that the notified Sub-Contractor shall) avoid having to make, or mitigate the extent of, any Redundancy Payment by:
- 3.4.1 redeploying any relevant person where it is practicable to do so;
 - 3.4.2 where redeployment is not practicable, taking reasonable steps to minimise the amount of Redundancy Payment, including requiring employees to work their notice where this is practicable;
 - 3.4.3 complying with the Law and any reasonable instructions.
- 3.5 The Supplier shall not be entitled to a Service Change Redundancy Surcharge under Paragraph 3.1 unless:
- 3.5.1 the Supplier (or, where relevant, notified Sub-Contractor) has consulted with the Buyer, pursuant to Paragraph 3.1, within one month of receiving notice by the Supplier of the building closure or removal of service(s); and
 - 3.5.2 the employment of any employee to whom the Redundancy Payment relates is terminated for Redundancy no later than one month after the relevant building closure or removal of service(s).
- 3.6 On receipt of the Supplier's calculation of the Redundancy Payments in accordance with Paragraph 3.2 the Buyer shall either:
- 3.6.1 notify the Supplier in writing of acceptance of the Service Change Redundancy Surcharge relating to the relevant building closure or removal of service(s); and/or
 - 3.6.2 request further information/evidence; and/ or
 - 3.6.3 request a meeting to discuss/clarify the evidence provided.

- 3.7 Where the Service Change Redundancy Surcharge is agreed following the receipt of further information/evidence or following a meeting, the Buyer shall notify the Supplier in writing.
- 3.8 In the event that the Supplier and the Buyer are unable to agree the Service Change Redundancy Surcharge, they shall follow the Dispute Resolution Procedure.

4 Redeployment or Re-Engagement of Redundant Employees

- 4.1 In the event that the Supplier or any notified Sub-Contractor (or any of its or their associated companies, as defined in the Employment Rights Act 1996) re-employs or re-engages any person in respect of whom a Redundancy Surcharge or Service Change Redundancy Surcharge is paid within three months of their effective date of termination the Supplier will notify the Buyer and reimburse any Redundancy Surcharge or Service Change Redundancy Surcharge paid by the Buyer in respect of said employee within 90 days of the date of the re-employment or re-engagement.

5 Double Recovery

- 5.1 For the avoidance of doubt, neither the Supplier nor any Sub-Contractor shall be entitled to double recovery from the Buyer nor shall the Buyer have any responsibility for any costs or liabilities arising from or in connection with the redundancy of any Transferring Former Supplier Employee(s) or transferring Buyer Employee(s) save the Redundancy Surcharge or the Service Change Redundancy Surcharge.