

SCHEDULE 4
CALL-OFF TERMS AND CONDITIONS
LOT 2

Call-Off Terms and Conditions
For
The Provision of Personal Independence Payment (PIP) Assessment Services
LOT 2

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A GENERAL PROVISIONS

A1 Definitions and Interpretation

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

“Acceptable Report(s)” means Chargeable Output(s) dated on or after the Second Variation Effective Date, whose quality is determined by quality audit pursuant to the Acceptable/ Unacceptable Criteria as “Acceptable”.

“Acceptable HP Learning Required Report(s)” means Chargeable Output(s) dated on or after the Second Variation Effective Date, whose quality is determined by quality audit pursuant to the Acceptable/ Unacceptable Criteria as “Acceptable HP Learning Required”.

“Acceptable Report Amendment Required Report(s)” means Chargeable Output(s) dated on or after the Second Variation Effective Date, whose quality is determined by quality audit pursuant to the Acceptable/ Unacceptable Criteria as “Acceptable Report Amendment Required”.

“Acceptable/ Unacceptable Criteria” means, from and including the Second Variation Effective Date, the quality audit methods and criteria set out in Section 4.4 (Quality Audit) and Section 4.5 (Quality Audit Criteria) of the “PIP Assessment Guide (1 May 2016)” which the Parties agree will be used to determine if Chargeable Outputs (which are referred to as “assessment reports” in the PIP Assessment Guide) shall be graded “Acceptable” or “Acceptable Report Amendment Required” or “Acceptable HP Learning Required” or “Unacceptable” for the purposes of the Contract.

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

“Agreed Margin” shall be the Provider's average margin, as set out in the Baseline Cost Model, for the period from the commencement date of the First Transition or each Subsequent Transition to the end of the Contract Period, calculated as the sum of Profit divided by the sum of total price for Chargeable Outputs (before deductions) for the relevant Transition Periods.

“Agreed Tolerance” means 0.03, being (for the purposes of the calculations associated with the No Pay Amount mechanism in paragraph 5B and paragraph 5C of Part A of Appendix 4 (Prices and Rates)) the maximum rate of Unacceptable Reports for the purposes of Service Level SC1 after the SC1 Transition Total Period which rate, as specified in Annex 1 of Appendix 14 (Service Credits), shall be three percent (3%).

“Allowable Costs” means all costs incurred by the Provider in its performance of the Services under the Contract, specifically excluding costs which are determined by the Authority under paragraph 1.2 of Part E of Appendix 4 as being Disallowable Costs, and specifically including the following items of cost (strictly and only to the following extent):

the cost of money at the rate of [REDACTED]%, which shall apply from 31 August 2017 (and not before), as specified on the “InpS” tab, cell F1162 of the Financial Model; and

corporate overheads at the rate of [REDACTED]%, which shall apply from 31 August 2017 (and not before), as specified in the 'InpS' tab, cell F1161 of the Financial Model.

“Allowable Costs Criteria” means the following criteria, namely that such costs are:

- (a) demonstrably reasonable and justifiable in nature;
- (b) (to the Authority’s reasonable satisfaction) unavoidably and necessarily incurred or accrued by the Provider in the course of the Provider performing the Services in accordance with the Contract during the relevant Profit Share Period;
- (c) as reported in the Provider’s own internal financial management accounts and as recorded in the Quarterly Reports, **subject to** any adjustment as a result of audit conducted by or on behalf of the Authority (in the event that the Authority exercises its right of audit in this regard); and
- (d) evidenced as being actually incurred by the Provider.

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

“Appendix” means an appendix attached to, and forming part of, the Contract.

“Approval” means the prior written consent of the Authority.

“Audit Agents” means any or all of the following:

- (a) the Authority's internal, external and/or statutory auditors;
- (b) HM Treasury and/or the Cabinet Office;
- (c) any person formally appointed by the Authority to carry out an audit, including any UK accountant or accountancy firm or practice or any UK auditor or audit firm or practice and (subject to the proviso below) any other person, firm or practice (in this defined term, **“Other Party”**); and
- (d) successors or assignees of any of the above,

provided that for the purposes of paragraph (c) of this definition, above, before appointing any Other Party to carry out an audit the Authority shall notify the Provider in writing of its proposal to appoint such Other Party (in this defined term, **“Audit Agent Notice”**) **and** the Provider shall treat the Audit Agent Notice and the information contained in or implied by it as being Confidential Information **and** if the Provider has any reasonable and evidenced objection to such appointment it must inform the Authority by written notice delivered to the Authority within the three (3) Working Days from and including the date of the Audit Agent Notice **and** if the Authority receives such notice from the Provider within such period of time then before appointing such Other Party the Authority shall take into account (acting reasonably) any material reason so notified by the Provider as to why the appointment of such other person or firm or practice by the Authority shall demonstrably have a material and adverse impact on the Provider and its provision of the Services.

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

"Authority Data" means

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

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

"Authority's Premises": means the Authority premises where the Services are to be supplied as set out in the Order Form and/or the Call-off Terms and Conditions.

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

"Average Actual Clearing Time" or "AACT" means the average length of time taken to Clear all Chargeable Clearances which are Normal Rules Referrals in any Month. The AACT is calculated using the following formula:

$$AACT = WDC/TNR$$

where:

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

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

"Baseline Clearance Profile" means the forecast number of Chargeable Clearances during the Extension Period, as set out in the Baseline Cost Model.

"Baseline Cost Model" means the cost model which is as set out at Annex 3 to Appendix 12A, and which the Parties agree is based on data extracted from the Provider's Model.

"Baseline Referral Forecast" means the forecast of volume of Referrals the Authority expects to make during the Extension Period which was provided by the Authority to the Provider on the 15 June 2018 and is reflected in the Baseline Cost Model.

"Breach of Security" means the occurrence of unauthorised access to or use of the Premises, the Services, the Authority ICT System, the Provider ICT System or data (including the Authority's Data), and any Personal Data and any Special Categories of Personal Data used by the Authority or the Provider in connection with this Contract.

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

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

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

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

"Change in Law" means any change in Law which comes into force after the Third Variation Date.

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

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

"Clear" shall mean the conclusion of a Referral and return to the Authority of the output of a Referral in accordance with the Specification (either by way of Chargeable Output or otherwise) and "Cleared" and "Clears" shall be construed accordingly, provided that a Referral shall be recorded as Cleared from the point at which it is properly and correctly closed on the Provider's ICT System.

"Clinic Adjustment Sum(s)" has the meaning given in paragraph 5D (Failure To Attend risk value sharing) of Part A of Appendix 4 (Prices and Rates).

"Clinic Consultation" means a Consultation Assessment which is not held at the Participant's home and is accordingly not a Home Consultation (as that term is defined in the Specification).

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

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

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

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

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

“Confidential Information” means:

- (a) any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored) including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Provider, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential; and
- (b) the Commercially Sensitive Information and does not include any information:
 - (i) which was public knowledge at the time of disclosure (otherwise than by breach of clause E4 (Confidential Information));
 - (ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
 - (iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
 - (iv) is independently developed without access to the Confidential Information.

“Consultation” has the meaning given in the Specification.

“Consultation Assessment” has the meaning given in the Specification.

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

“Contract” means the legally binding agreement for the provision of Services made between the Authority and the Provider comprising an Order Form and the Call-Off Terms and Conditions, Specification and any other documents expressly incorporated by the Order Form and any variations entered into from time to time between the Parties in respect of this Contract (including, but not limited to at the Third Variation Date, those amendments, variations and supplements referenced in Annex B to Appendix 1 of this Contract).

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

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

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

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

government departments, government and particular bodies, and government agencies.

"Data Controller" shall have the same meaning as given in Data Protection Legislation

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

"Data Processing" shall have the same meaning as set out in the Data Protection Legislation.

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

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

"Data Protection Legislation" means the GDPR, the LED and any applicable national implementing Laws as amended from time to time, the [DPA 2018], the Criminal Law Enforcement Data Protection Directive 2016/680, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable Law relating to the processing of Personal Data and Special Categories of Personal Data.

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

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

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

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

"Detailed Transition Requirement" means the requirements for Transition issued by the Authority in accordance with paragraph 2 of Appendix 12A.

"Directive" means EC Council Directive 2001/23/EC.

"Disallowable Costs" means costs determined by the Authority under paragraph 1.2 of Part E of Appendix 4 as not meeting the Allowable Costs Criteria, and including the examples of the cost items described in Annex 2 (Disallowable Costs) of Appendix 4 (Prices and Rates) which examples the Parties agree do not meet the Allowable Costs Criteria.

"Dispute Resolution Procedure" means the dispute resolution procedure set out at clause 12 of the Contract.

"DPA" means the Data Protection Act 2018 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

"DWP Offshoring Policy" means the Authority's policy and procedures as advised to the Provider by the Authority from time to time.

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

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

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

"Estate Lease" shall be as defined in paragraph 2B of Appendix 12.

"Excess Profit" means, for the purposes of Part E (Profit Share) of Appendix 4 of the Contract, the amount resulting from the following formula:

Revenue x the Excess Profit Margin

Where **"Revenue"** means the total payments made by the Authority to the Provider under the Contract during the relevant Profit Share Period, and **"Excess Profit Margin"** has the meaning as defined below in this clause A1.1, and for the avoidance of doubt the Excess Profit Margin is expressed as a percentage.

"Excess Profit Margin" means, for the purposes of Part E (Profit Share) of Appendix 4 of the Contract, the amount by which the Profit Margin exceeds the Trigger Profit Margin, expressed as a percentage.

"Exit and Service Transfer Arrangements" means (a) the arrangements set out in Appendix 12 which shall apply in the event of the expiry or termination (howsoever arising) of the Contract and/or (b) the arrangements set out in Appendix 12A upon the issuance of a Transition Notice by the Authority.

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

"Failure To Attend" has the meaning given in Paragraphs 10.13 and 10.14 of the Specification and the terms **"Fails To Attend"** and **"Fail To Attend"** shall be construed accordingly.

"Financial Distress Event" means the occurrence of one or more of the events listed in paragraphs 3.1 or 4.1 of Appendix 13 (Financial Distress).

"Financial Distress Service Continuity Plan" means a plan setting out how the Provider will ensure the continued performance and delivery of the Services in accordance with this Contract in the event that a Financial Distress Event occurs.

"Financial Model" means the Financial Model projecting the Contract Price in relation to the provision of Services prepared by the Provider as at the Second Variation Effective Date, as set out at "PIP [REDACTED] Price Review Model – Dec 15 referrals Term to 31 July 2019 18022016 XISM" at <https://dwp.bravosolution.co.uk/>.

"Fixed Cost Recovery Rate" shall be in the event that no Transition takes place a sum of [REDACTED]; or in the event that one or more Transitions take place a sum determined and agreed in accordance with paragraph 6.5.2 of Appendix 12.

"Fixed Cost True Up" shall mean the review and calculation in relation to the Provider's fixed costs undertaken in accordance with the process set out at paragraph 6 of Appendix 12.

"Fixed Cost True Up Payment" means the payment to be made by the Authority in accordance with paragraph 6 of Appendix 12.

"Fixed Cost True Up Report" means the report issued by the Provider in accordance with paragraph 6.3 of Appendix 12.

"FM Staff Role" means any Staff role that is included in the Financial Model, on the basis that roles are separate from the member of Staff allocated to such role.

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

"Force Majeure" means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

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

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

"FTA Period" means the FTA Period 1 or FTA Period 2 or FTA Period 3 (as applicable).

"FTA Period 1" means the period commencing on and from 1 June 2016 up to and including 31 December 2016 or the last day of the Contract Period in the event of earlier termination during this FTA Period.

"FTA Period 2" means the period commencing on and from 1 January 2017 up to and including 31 December 2017 or the last day of the Contract Period in the event of earlier termination during this FTA Period.

"FTA Period 3" means the period commencing on and from 1 January 2018 up to and including 31 July 2019 or the last day of the Contract Period in the event of earlier termination during this FTA Period.

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

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

"GDPR" means the General Data Protection Regulation (Regulation (EU) 2016/679). For the avoidance of doubt, the Contractor Provider shall not be required to ensure that its provision of the Services or its other obligations under the Contract comply with the provision of the GDPR until 25 May 2018, although it may expressly elect or agree in writing to be compliant before that date.

"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 Provider) or which generally affects or relates to the supply of services which are the same as or similar to the Services.

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

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

"Grade B Report(s)" means Chargeable Output(s) dated before the Second Variation Effective Date, whose quality is determined by quality audit pursuant to the quality audit methods and criteria set out in Section 4.4 (Quality Audit) and Section 4.5 (Quality Audit Criteria) of the PIP Assessment Guide (28 July 2015) as "B" grade.

"Grade C Report(s)" means Chargeable Output(s) dated before the Second Variation Effective Date, whose quality is determined by quality audit pursuant to the quality audit methods and criteria set out in Section 4.4 (Quality Audit) and Section 4.5 (Quality Audit Criteria) of the PIP Assessment Guide (28 July 2015) as "C" grade.

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

"Guarantor" is the organisation which signs the Parent Company Guarantee issued with the Order Form at Call off.

"Head of Work Threshold" means 22,000 Referrals made to the Provider and not yet Cleared by the Provider on the first Working Day of any Month.

"Home Adjustment Sum(s)" has the meaning given in paragraph 5D (Failure To Attend risk value sharing) of Part A of Appendix 4 (Prices and Rates).

"Home Consultation" has the meaning given in the Specification.

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

“ICT” means information and communications technology.

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

“Independent Audit” has the meaning given in clause F5A.5.2 of the Contract.

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

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

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

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

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

“Lancaster Model” means the model known as such, which was developed by the Authority, together with the associated instructions (document reference:

“Clarification of the use of “Lancaster tool” for calculating a sample of reports for quality audit” dated 18 April 2016) and which the Parties agree shall be used to identify sample size and selection in connection with quality audits carried out by the Provider under this Contract.

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

“Law” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Provider is bound to comply.

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

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

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

“Malicious Software” means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its

operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

"Managed Reassessments" has the meaning given in the Specification.

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

"Monitoring Requirements" means Appendix 3 which contains details of the monitoring arrangements.

"Month" means calendar Month.

"New PCG" means a guarantee to be entered into by the Guarantor in accordance with clause G5 substantially in the form set out at Appendix 11, Part 2.

"No Pay Amount" means the amount calculated and applied in accordance with paragraph 5A and paragraph 5C of Part A of Appendix 4 (Prices and Rates) or (as appropriate) in accordance with paragraph 5B and paragraph 5C of such Part A.

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

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

"Operation Clearance Profile" shall mean the clearance profile agreed between the Authority and the Provider under clause F5.2C.2. The latest Operative Clearance Profile shall replace the previous Operative Clearance Profile on the day on which the Latest Forecast becomes the Operative Forecast.

"Operative Forecast" means the operative forecast of the volume of Referrals provided by the Authority as referred to in clause F5.2C.2 where a Latest Forecast shall become the Operative Forecast on the first day of the Month immediately following the date falling exactly 6 (six) Months (or such shorter period as the Parties may agree from time to time) after the date of such Latest Forecast.

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

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

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

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

"Over-referral Period" means a continuous period of one (1) or more Month(s) during which the number of Referrals made by the Authority during that period is

105% or more of the number of Referrals forecast for that period, based on the Operative Forecast (and in each case where the % Referrals goes to four or more decimal places, the % shall be rounded to the nearest three decimal places, and for any % where the fourth decimal place is a value of five (5) the % shall be rounded up to three decimal places).

"Overall Profit" means 80% of the aggregate sum of the Profit (expressed as a sum in pounds, not as a percentage margin) which, by reference to the Baseline Cost Model (Row 30, Tab 1(a), Contract Price Summary), the Provider would have expected to generate through provision of the Services from the commencement date of the First Transition until the end of the Contract Period.

"Paper Based Review" means the initial paper based review conducted by the Contractor upon receipt of a Referral.

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

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

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

"Party" means a party to the Contract.

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

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

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

"PIP Assessment Guide" means guidance for Healthcare Professionals carrying out assessment activity and for those responsible for putting in place and delivering processes to ensure the quality of assessments. The PIP Assessment Guide can be found here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/519147/pip-assessment-guide.pdf

"PIPAT" means the Personal Independence Payment Assessment Tool, being a centrally provided and hosted computer system provided by the Authority for use during the completion of all Chargeable Outputs.

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

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

"Prices & Rates Appendix" means Appendix 4 which contains details of the Contract Price.

"Professional Day" means for any of the Staff, 7.5 hours of labour.

"Profile Chargeable Clearances" means the Chargeable Clearances forecast in any Month under the Operative Clearance Profile.

"Profit" means the amount of the Provider's operating profit under the Contract (on an accrual accounting basis and prior to any adjustments) during the relevant Profit Share Period, calculated using the following formula:

$$Profit = (B - C) + D$$

where:

'B' is the total payments made by the Authority to the Provider under the Contract during the relevant Profit Share Period, including Clinic Adjustment Sums and Home Adjustment Sums paid by the Authority to the Provider in accordance with paragraph 5D of Part A of Appendix 4 of the Contract during such period, and before taking account of Service Credits or No Pay Amounts;

'C' is, subject always to the Authority's rights under paragraph 1.2 of Part E of Appendix 4, the total Allowable Costs for the relevant Profit Share Period and also:

- (a) Service Credits paid to and No Pay Amounts received by the Authority during such Profit Share Period; and
- (b) Clinic Adjustment Sums and Home Adjustment Sums paid by the Provider to the Authority in accordance with paragraph 5D of Part A of Appendix 4 of the Contract during such Profit Share Period; and
- (c) the cost component of the inter-company charges referred to in the definition of 'D', below, including the cost component of such inter-company charges as may be approved by the Authority (if any) pursuant to paragraph 1.2 of Part E of Appendix 4 of the Contract; and

'D' is profit of the Affiliates of the Provider on inter-company charges levied on the Provider by such Affiliates during the relevant Profit Share Period, being:

- (a) 7% of the total charges levied by Capita IT Services;
- (b) 5% of the total charges levied by Capita Document and Information Services for print costs, excluding postage;
- (c) 5% of the total charges levied by Capita Resourcing for human resource services; and
- (d) such amount of profit (calculated and expressed as a percentage of the total charges levied) as may be approved by the Authority under paragraph 1.2 of Part E of Appendix 4 of the Contract, in respect of any additional such inter-company services as may be approved by the Authority (if any) pursuant to paragraph 1.2 of Part E of Appendix 4 of the Contract.

"Profit Margin" means the Profit divided by the sums due to the Provider for the relevant Profit Share Period, expressed as a percentage.

"Profit Share Period" means the Profit Share Period 1 or Profit Share Period 2 or Profit Share Period 3 or Profit Share Period 4 (as applicable).

"Profit Share Period 1" means the period commencing on and from 1 January 2016 up to and including 31 December 2016 or the Service Transfer End Date in the event of earlier termination during this Profit Share Period.

"Profit Share Period 2" means the period commencing on and from 1 January 2017 up to and including 31 December 2017 or the Service Transfer End Date in the event of earlier termination during this Profit Share Period.

"Profit Share Period 3" means the period commencing on and from 1 January 2018 up to and including the 31 July 2019.

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

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

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

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

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

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

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

"Provider's Model" means the financial model used by the Provider in the calculation of the Unit Prices for the Extension Period, extracts of which form the Baseline Cost Model.

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

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

"Quality Standards" means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International

Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.

“Quarter” means each period of three (3) Months starting in January each year, the first such period being January to March (inclusive), the second such period being April to June (inclusive), the third such period being July to September (inclusive) and the final such period being October to December (inclusive).

“Quarterly Report” has the meaning given in Appendix 4 (Prices and Rates), Part D (Financial Model, Reporting, Risk and Audit), paragraph 2 (Quarterly Report).

“Rate Card” means the table of that name as set out in Annex 3 (Rate Card) of Appendix 4 (Prices and Rates) of the Contract.

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

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

“Region” means any of the following geographical regions (described by postcode):

- (a) East Midlands (DE, LE, LN, NG, PE);
- (b) West Midlands (B, CV, DY, NN, ST, TF, WR, WS, WV); or
- (c) Wales (CF, HR, LD, LL, NP, SA, SY, GL, CH).

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

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

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

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

“Replacement Provider” means any third party service provider appointed by the Authority to supply any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services or any Crown body who takes responsibility for the provision of any services which are substantially similar to any of the Services, in either case following any Transition or following the expiry, termination or partial termination of the Contract.

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

“Returning Employees” means those employees wholly or mainly engaged in the provision of the Services immediately before the expiry or earlier termination of this

Contract whose employment transfers to the Authority and/or (as appropriate) a Replacement Provider pursuant to the TUPE Regulations.

“Rolling Quarter” means, for each relevant Month, the period of three (3) consecutive Months ending with such Month.

“SC1 TP Tolerance” means:

- (a) for the SC1 Transition P1, 9.5% **and** for the purposes of the calculations associated with the No Pay Amount mechanism in paragraph 5A and paragraph 5C of Part A of Appendix 4 (Prices and Rates), the SC1 TP Tolerance value for SC1 Transition P1 is 0.095;
- (b) for the SC1 Transition P2, 3.5% **and** for the purposes of the calculations associated with the No Pay Amount mechanism in paragraph 5A and paragraph 5C of Part A of Appendix 4 (Prices and Rates), the SC1 TP Tolerance value for SC1 Transition P2 is 0.035;
- (c) for the SC1 Transition P3, three percent (3%) **and** for the purposes of the calculations associated with the No Pay Amount mechanism in paragraph 5A and paragraph 5C of Part A of Appendix 4 (Prices and Rates), the SC1 TP Tolerance value for SC1 Transition P3 is 0.03.

“SC1 Transition P1” means the period from and including 1 June 2016 to and including 31 August 2016.

“SC1 Transition P2” means the period from and including 1 September 2016 to and including 30 November 2016.

“SC1 Transition P3” means the period from and including 1 December 2016 to and including 31 December 2016.

“SC1 Transition Period” means SC1 Transition P1 or SC1 Transition P2 or SC1 Transition P3 (as applicable).

“SC1 Transition Total Period” means the period from and including the date on which SC1 Transition P1 starts, to and including the date on which SC1 Transition P3 ends.

“Second Variation Deed” means the Deed of Variation dated 2 June 2016 and made between (1) the Authority and (2) the Provider and (3) Capita Group.

“Second Variation Effective Date” means 1 June 2016.

“Security Plan” means the Provider’s security plan prepared pursuant to paragraph 3 of Appendix 6 (Security Requirements & Plan).

“Security Policy” means the Authority’s Security Policy annexed to the Appendix (Security Requirements and Plan) as updated from time to time.

“Security Tests” means conduct tests of the processes and countermeasures contained in the Security Plan

“Services” means the services to be supplied as specified in the Specification.

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

"Service Credit Let Period" means a three (3) Month period commencing on the first day of the Month which is one (1) Month after the end of the Over-referral Period (so that, by way of illustration: (a) if an Over-referral Period continues for the Month of January (but not February), the Service Credit Let Period shall be the three (3) Month period beginning on 1 March and ending on 31 May; and (b) if that Over-referral Period continues for the Months of January and February (but not March), the Service Credit Let Period shall be the three (3) Month period beginning on 1 April and ending on 30 June).

"Service Credit Lets" means a relief (in whole or part) calculated in accordance with clauses F5.2D to F5.2G of any Service Credits which would otherwise be credited by the Provider to the Authority in respect of a failure by the Provider to meet Service Levels SC4(a) and/or SC4(b).

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

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

"Service Transfer End Date" means the date stated in the exit management timetable (which shall be prepared in accordance with paragraph 3.2.14 of Appendix 12 (Exit and Service Transfer Arrangements)) as being the date by which the Provider must complete the implementation of the Service Transfer Plan.

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

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

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

"Specific Change in Law" means a Change in Law that relates specifically to the business of the Authority and/or the nature of the Services.

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

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

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

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

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

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

"Third Variation Date" means 16 July 2019 .

"Threshold Level" means:

- (a) for each Service Level and Service Credit stated in paragraph 1 and paragraph 2 of Annex 1 (Service Levels, Service Credits and Termination Thresholds) of Appendix 14 (Service Levels), the level stated in the column headed "C"; and
- (b) for each Service Level stated in paragraph 3 of such Annex 1, the level stated in the column headed "Threshold Level",

which, in each case, if such level is not complied with (whether such Service Level requires the Provider to meet the relevant Threshold Level exactly, or not to exceed the relevant Threshold Level, or to exceed the relevant Threshold Level), results in the Service Level being breached and a Service Credit (where applicable) falling due.

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

"Total Monthly Price" means the price (exclusive of any applicable VAT) for the delivery of Chargeable Outputs in the relevant Month, before taking into account the effect of any adjustment of price (including No Pay Amounts, Service Credits, Clinic Adjustment Sums, Home Adjustment Sums and any Profit shared between the Parties in accordance with Part E (Profit Share) of Appendix 4 (Prices and Rates)) during such period. For the avoidance of doubt the "Total Monthly Price" will not include pass through costs specified in Appendix 4 (Prices and Rates) Annex 1 (Rates Payable), Table D (Further Medical Evidence) in respect of Further Medical Evidence.

"Total SC1 Period Price" means the price (exclusive of any applicable VAT) for the delivery of Chargeable Outputs in the relevant SC1 Transition Period (being the aggregate of the Total Monthly Price for each Month of the relevant SC1 Transition Period), before taking into account the effect of any adjustment of price (including No Pay Amounts, Service Credits, Clinic Adjustment Sums, Home Adjustment Sums and any Profit shared between the Parties in accordance with Part E (Profit Share) of Appendix 4 (Prices and Rates)) during such period. For the avoidance of doubt the "Total SC1 Period Price" will not include pass through costs specified in Appendix 4 (Prices and Rates) Annex 1 (Rates Payable), Table D (Further Medical Evidence) in respect of Further Medical Evidence.

"Transition" means a transition of Services or Referrals to one or more Replacement Providers and/or the Authority following the issuance of a Transition Notice by the Authority as further described in paragraph 3 of Appendix 12A, and Transitions and Transitioned shall be construed accordingly. For these purposes:-

- (a) there may be multiple "Transitions" during the Extension Period, each of which is the subject of a separate process carried out under paragraph 2 of Appendix 12A and results in the creation of particular documents, including an agreed Transition Plan and an agreed Transition Cost Model, which

relate to the particular service transition arrangements specified in the relevant Detailed Transition Requirement issued by the Authority in order to initiate the relevant process under such paragraph; and

- (b) in such circumstances, the first such Transition shall be referred to as the First Transition and the second and (if applicable) any third or other subsequent Transition shall each be referred to as a Subsequent Transition.

"Transition Activities" shall mean any activities to be undertaken by the Provider to deliver Transition in accordance with a Transition Plan.

"Transition Clearance Profile" means, in respect of a particular Transition, the forecast number of Chargeable Clearances during the period from the commencement date of that Transition until the end of the Contract Period, as set out in the relevant agreed Transition Cost Model.

"Transition Cost Model" means a cost model to be provided by the Provider as part of a Transition Pricing Review, and (for the avoidance of doubt) references to an agreed Transition Cost Model shall mean the relevant cost model as agreed by the Parties pursuant to such Transition Pricing Review in respect of a particular Transition (whether the First Transition or, if applicable, any particular Subsequent Transition).

"Transition Notice" means a notice issued by the Authority requiring the commencement of Transition Activities and detailing the information referenced in paragraph 3 of Appendix 12A.

"Transition Period" means the period to which a particular Transition relates. For these purposes:-

- (a) where there is only one Transition (the First Transition) the relevant period shall be the period from the date of commencement of that Transition until the end of the Extension Period; and
- (b) where there is more than one Transition, the relevant period in respect of the First Transition shall be the period from the date of commencement of the First Transition until the date on which the next Subsequent Transition commences, and the relevant period in respect of each Subsequent Transition shall be the period from the date of commencement of that Subsequent Transition until the date on which the next Subsequent Transition commences or (as the case may be, if there is no next Subsequent Transition) until the end of the Extension Period.

"Transition Plan" means a plan to be produced by the Provider on receipt of a Detailed Transition Requirement or a Transition Notice in accordance with paragraph 4 of Appendix 12A and (for the avoidance of doubt) references to an agreed Transition Plan shall mean the relevant plan as agreed by the Parties pursuant to the applicable provisions of Appendix 12A.

"Transition Pricing Review" means a review of the Charges and certain other matters (as set out in Annex 1 of Appendix 12A) under this Contract which may be instituted by the Provider following issue of a Transition Notice which shall be conducted in accordance with Annex 1 of Appendix 12A.

"Transition Referral Forecast" means, in respect of a particular Transition, the forecast volume of Referrals the Authority expects to make during the period from the commencement date of that Transition until the end of the Contract Period, as

set out in the relevant agreed Transition Cost Model and provided by the Authority with the Detailed Transition Requirements;

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

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

“Transparency Objectives” means in respect of this Contract, the Authority's requirement for transparency from the Provider in order for the Authority to:

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

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

“Trigger Profit Margin” means [REDACTED] per cent ([REDACTED] %).

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

“Unacceptable Report(s)” means Chargeable Output(s) dated on or after the Second Variation Effective Date, whose quality is determined by quality audit pursuant to the Acceptable/ Unacceptable Criteria as “Unacceptable”.

“Under Referral Period” has the meaning given to it in clause C1A.

“Unit Price” means the fixed unit prices for the provision of Services as set out in Annex 1 of Appendix 4 (as updated from time to time in accordance with this Contract).

“Variation” has the meaning given to it in clause F3.1 (Variation).

“Variation Staff Member” means a member of Staff who the Provider has appointed to any FM Staff Role and who the Provider proposes to release from the

FM Staff Role and allocate for the purposes of or in connection with any Variation so that the FM Staff Role shall be backfilled by another member of Staff.

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

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

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

- (a) Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) Words importing the masculine include the feminine and the neuter;
- (c) Reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) Reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (e) Reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) The words “include”, “includes” and “including” are to be construed as if
- (g) they were immediately followed by the words “without limitation” and shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall take effect as, limiting the generality of any preceding words;
- (h) The words “day”, “month” and “year” means calendar day, calendar month and calendar year unless stated otherwise;
- (i) References to currency are to British Pounds Sterling and the symbol “£” means British Pounds Sterling;
- (j) References in the Contract to “Management Information”, “management information” and “MI” shall be construed as references to the relevant Management Information requirement(s), as set out in Annex G (List of Management Information Requirements) of Appendix 1 (The Services) of the Contract and any references in the Contract or in the Specification to Annex 8 (Management Information) or to Annex 8(G) (Management Information) of the Specification or to Annex Eight of the Specification shall be deemed to refer to Annex G of Appendix 1 (The Services) of the Contract.
- (k) Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

A2 Initial Contract Period

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

A3 Provider's Status

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

A4 Authority's Capacity and Obligations

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

A4.2 The Authority shall comply with its obligations set out in Appendix 1 Annex H.

A5 Entire Agreement

A5.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

A5.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.

A5.3 Nothing in clauses 5.1 or 5.2 shall operate to exclude fraud or fraudulent misrepresentation.

A5.4 In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:-

- (a) the Order Form;
- (b) the clauses of the Contract; and
- (c) any other document referred to in the clauses of the Contract.

A5.5 The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

A6 Notices

A6.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

A6.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by electronic procurement system (ePS), hand, post, registered post or by the recorded delivery service) or by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause A6.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of submission via ePS, electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

A6.3 For the purposes of clause A6.2, the address of each Party shall be:

(a) as set out in the Order Form.

A6.3.2 Either Party may change its address for service by serving a notice in accordance with this clause.

A7 Mistakes in Information

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

A8 Conflicts of Interest

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

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

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

A9 Prevention of Fraud

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

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

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

A10 Exclusivity

- A10.1 Save as otherwise expressly provided in the Contract, the Authority gives no guarantee, warranty or assurance as to either the type, frequency, amount or level of the Services which shall be carried out by the Provider, or which the Authority shall procure from the Provider, pursuant to this Contract or as to the frequency or amount of any fees, payment, remuneration or income which the Provider shall receive pursuant to this Contract.

- A10.2 The Provider shall be the Authority's exclusive contractor for the provision of the Services, save that such exclusivity shall not apply:
- A10.2.1 where the Specification specifies that exclusivity shall not apply;
 - A10.2.2 where subject to Appendix 14, paragraph 7.2, the Authority is entitled to make alternative arrangements for the provision of the Services or any part of the Services pursuant to clauses F5, F10, and H (Remedies in the event of Inadequate Performance, Authority Step-In, Default Disruption and Termination) or any express provisions of the Contract;
 - A10.2.3 to services of the same or substantially the same nature which are not part of the Services;
 - A10.2.4 in respect of Services which have been omitted pursuant to a Variation;
 - A10.2.5 in respect of (i) Award Review as undertaken currently by the Authority; and (ii) trials to be undertaken by the Authority (provided that such trials may include Referrals of no more than 3% of the Referrals forecast in the Operative Forecast applicable to the period of the trial) or (iii) such other activity to be undertaken by the Authority which the Parties agree in writing; or
 - A10.2.6 to any Services which are the subject of a Transition Notice from the date set out in the Transition Notice for such Transition.

B SUPPLY OF SERVICES

B1 The Services

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

B2 Provision and Removal of Equipment

- B2.1 Unless otherwise stated in the Order Form, the Provider shall provide all the Equipment necessary for the supply of the Services.
- B2.2 The Provider shall not deliver any Equipment nor begin any work on the Authority's Premises without obtaining prior Approval.
- B2.3 All Equipment brought onto the Premises shall be at the Provider's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Provider is able to demonstrate that such loss or damage was caused or contributed

to by the Authority's Default. The Provider shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed or stipulated in the Specification, Equipment brought onto the Premises will remain the property of the Provider.

- B2.4 The Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- B2.5 The Provider shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
- (a) remove from the Premises any Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with the Contract; and
 - (b) replace such item with a suitable substitute item of Equipment.
- B2.6 On completion of the Services the Provider shall remove the Equipment together with any other materials used by the Provider to supply the Services and shall leave the Authority's Premises in a clean, safe and tidy condition. The Provider is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Provider or any Staff.
- B2.7 The Authority may at its option purchase any item of Equipment from the Provider (i) on the expiry of the Contract Period; and (ii) on a Transition (where such Equipment is no longer required for the ongoing provision of the Services) if the Authority considers that the item is likely to be required in the provision of the Services following the expiry or termination of the Contract or any Transition. The purchase price to be paid by the Authority shall be the fair market value.

B3 Manner of Carrying Out the Services

- B3.1 The Provider shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Provider shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and in any event, the Provider shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- B3.2 While not in anyway limiting any other provision of this Contract, in delivering the Services, the Provider, or any of its Sub-contractors, shall comply with the DWP Offshoring Policy. The DWP Offshoring Policy shall apply to Landed Resources.
- B3.3 The Provider shall ensure that all Staff supplying the Services shall do so in accordance with Good Industry Practice and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- B3.4 The Authority will conduct a review of the performance of this contract at least annually during the Contract Period. During this review, a performance report will be agreed.
- B3.5 The Provider shall ensure that the Provider ICT System that relates to the Services interface with the Authority ICT System.
- B3.6 In respect of network, communications, computer or other equipment provided by or used by the Provider or its Sub-Contractors in the provision of the Services that do or are required to interface with the Authority ICT System, the Provider shall have primary management responsibility for incident or problem resolution, including:

- (a) for ensuring that such requirement does not interfere with the provision of the Services in accordance with the Contract; and
- (b) for taking all necessary steps within its power, and in full consultation with the Authority, to ensure that the interface is successfully achieved, including the provision of all necessary resources and personnel to rectify any incidents or problems.

Customer Complaints

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

The Merlin Standard

- B3.10 The Provider shall operate in accordance with the Merlin Standard and key values and principles of behaviour essential for creating healthy, high performing supply chains;
- B3.11 Where the Authority has approved the appointment of Sub-contractor, the Provider shall, at its own expense, at all times comply with the Merlin Standard (including for the avoidance of doubt, but without limitation, any mediation and/or arbitration arising out of, or in connection with, the Merlin Standard) and any other guidance and/or codes of practice issued by the Authority and, where applicable, shall maintain accreditation with the relevant Merlin Standard authorisation body. Any breach by the Provider of these clauses B3.10 and B3.11 shall be a Default for the purpose of this Contract.

B4 Key Personnel

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

B5 Provider's Staff

B5.1 The Authority may, by written notice to the Provider, refuse to admit onto, or withdraw permission to remain on, the Authority's Premises:

(a) any member of the Staff; or

(b) any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the reasonable opinion of the Authority, be undesirable.

B5.2 At the Authority's written request, the Provider shall provide a list of the names and business addresses of all persons who may require admission in connection with the Contract to the Authority's Premises, within seven (7) Working Days from date of request, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

B5.3 The decision of the Authority as to whether any person is to be refused access to the Authority's Premises and as to whether the Provider has failed to comply with clause B5.2 shall be final and conclusive.

B5.4 The Provider's Staff, engaged within the boundaries of the Authority's Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Authority's Premises.

B5.5 The Provider shall comply with all applicable legislation relating to safeguarding and protecting vulnerable groups, including the Safeguarding Vulnerable Groups Act 2006, the Safeguarding Vulnerable Groups Order (Northern Ireland) 2007 and the Protecting Vulnerable Groups Act 2007 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

B5.6 The Provider shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Provider confirms that all persons employed or engaged by the Provider shall have complied with the Staff Vetting Procedures prior to commencing the Services and accessing the Premises.

B5.7 The Provider shall provide training on a continuing basis for all Provider Staff employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan.

B5.8 The Provider shall be responsible for ensuring that its Staff are not claiming any Social Security Benefit, where payment of that Social Security Benefit is precluded due to earnings.

B5.9 The Provider shall further use all reasonable endeavours to ensure that its staff who are not EC nationals are legally entitled to be resident in the United Kingdom and have a work permit, where applicable. The Provider shall promptly take all reasonable steps to ensure compliance with this clause.

B5.10 Without prejudice to clause B5.2, if the Provider fails to comply with clause B5 and in the reasonable opinion of the Authority, such failure may be prejudicial to the interests of the Crown, then the Authority may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

B6 Inspection of Premises

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

B7 Licence to Occupy Premises

- B7.1** Any land or Premises made available from time to time to the Provider by the Authority in connection with the Contract shall be made available to the Provider on a non-exclusive licence basis free of charge and shall be used by the Provider solely for the purpose of performing its obligations under the Contract. The Provider shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- B7.2** The Provider shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Provider shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Authority may reasonably request.
- B7.3** The Provider shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Authority, and the Provider shall pay for the cost of making good any damage caused by the Provider or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- B7.4** The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Provider or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.
- B7.5** Should the Provider require modifications to the Authority's Premises, such modifications shall be subject to prior Approval and shall be carried out by the Authority at the Provider's expense. The Authority shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Authority

B8 Property

- B8.1** Where the Authority provides Property free of charge to the Provider such Property shall be and remain the property of the Authority and the Provider irrevocably licences the Authority and its agents to enter upon any premises of the Provider during normal business hours on reasonable notice to recover any such Property. The Provider shall not in any circumstances have a lien or any other interest on the Property and the Provider shall at all times possess the Property as fiduciary agent and Bailee of the Authority. The Provider shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- B8.2** The Property shall be deemed to be in good condition when received by or on behalf of the Provider unless the Provider notifies the Authority otherwise within five (5) Working Days of receipt.

B8.3 The Provider shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.

B8.4 The Provider shall ensure all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, is secured in accordance with the Authority's reasonable security requirements as published from time to time.

B8.5 The Provider shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Provider shall inform the Authority within two (2) Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

B9 Offers of Employment

B9.1 For the duration of either:

B9.1.1 the Contract Period; or

B9.1.2 (in the case of staff who are involved primarily in any Services to be Transitioned) the period up to the issue of a Transition Notice by the Authority;

and in either case for a period of twelve (12) Months thereafter, neither the Authority nor the Provider shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.

B10 TUPE and Employment Matters

Application of TUPE Regulations

B10.1 The Authority and the Provider agree that where the identity of a provider (including, if any, an Incumbent Provider) of any service which constitutes or which will constitute part of the Services is changed pursuant to this Contract (including upon termination of this Contract) then the change may constitute a Relevant Transfer.

B10.2 Following the Commencement Date, on the occasion of any Relevant Transfer during the Contract Period (but excluding, for the avoidance of doubt a Relevant Transfer upon termination of this Contract), the Provider shall and shall procure that any new provider (including any new Sub-contractor) of the relevant Services shall comply with all of its obligations under the TUPE Regulations and the Directive in respect of the Relevant Employees.

B10.3 The Authority and the Provider acknowledge and accept that to the extent that there is a Relevant Transfer, under the TUPE Regulations the contracts of employment of the Transferring Employees will have effect (except in relation to occupational pension scheme benefits excluded under Regulation 10 of the TUPE Regulations) from the Transfer Date as if originally made between the Transferring Employees and the Provider.

Sub-contractors

B10.4 In the event that the Provider enters into any Sub-contract in connection with this Contract, it shall impose obligations on its Sub-contractor in the same terms as those imposed on it pursuant to this Clause B10 and Clause B11 and shall procure that the Sub-contractor complies with such terms. The Provider shall indemnify the Authority and keep the Authority indemnified in full from and against all direct, indirect or

consequential liability or Loss awarded against or incurred or paid by the Authority as a result of or in connection with any failure on the part of the Sub-contractor to comply with such terms.

Emoluments and Outgoings

- B10.5 The Parties acknowledge that the Provider (including the Incumbent Provider) is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees or Relevant Employees as applicable, including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions, pension contributions and otherwise, up to the date of the Relevant Transfer. Should any potential Transferring Employees be identified whether prior to, on or after the Commencement Date, the Authority at the request of the Provider will use reasonable endeavours, to procure that any employee provisions of termination contained within the Authority's contract with such Incumbent Provider for the benefit of a Replacement Provider will be notified to the Provider, for the Provider to enforce as it considers appropriate.
- B10.6 The Provider shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees and all employees employed by the Provider or any Sub-contractor on the provision of the Services from the Commencement Date (including, for the avoidance of doubt, the Transferring Employees in the event of there being a Relevant Transfer on the Commencement Date) and throughout the Contract Period, including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Commencement Date. The Provider will indemnify/keep indemnified and hold the Authority harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may incur in respect of the same.

Provision of Information

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

Indemnities

- B10.9 The Provider shall indemnify the Authority from and against all Loss in connection with or as a result of any claim or demand by any Transferring Employee or Relevant Employee arising out of the employment of or termination of the employment of any Transferring Employee or Relevant Employee provided that this arises directly or indirectly from any act, negligence, fault or omission of the Provider or any Sub-contractor or their employees in relation to any Relevant Employee or Transferring Employee, on or after the date of the Relevant Transfer.
- B10.10 The Provider shall indemnify the Authority from and against all Loss in connection with or as a result of any claim by any Transferring Employee or Relevant Employee that the identity of the Provider or Sub-contractor is to that Transferring Employee's or Relevant Employee's detriment or that the terms and conditions to be provided by the Provider or any Sub-contractor or any proposed measures of the Provider or any Sub-contractor are to that employee's detriment whether such claim arises before or after the Transfer Date.

B10.11 The Provider shall indemnify the Authority from and against all Loss in connection with or as a result of any failure by the Provider to comply with its obligations under Regulations 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Authority to comply with any of its obligations under Regulation 13 of TUPE.

B10.12 The Provider shall indemnify the Authority from and against all Loss in connection with or as a result of any claim (including any individual employee's entitlement under or consequent on such a claim) by any trade union or other body or person representing any Transferring Employees arising from or connected with any failure by the Provider to comply with any legal obligations to such trade union, body or person.

Pension Protection

B10.13 The Provider shall, from the date of any Relevant Transfer during the Contract Period (including, for the avoidance of doubt, from the Commencement Date, in the event of there being a Relevant Transfer on that date), comply and procure that each Sub-contractor shall comply with the Cabinet Office Statement and any related governmental guidance or codes of practice.

B10.14 Without prejudice to the generality of Clause B10.13, the Provider shall, and shall procure that each Sub-contractor shall, ensure from the date of any Relevant Transfer during the Contract Period (including, for the avoidance of doubt, from the Commencement Date, in the event of there being a Relevant Transfer on that date) that –

- (a) Original Public Sector Employees who are eligible for public sector pension scheme to which the Cabinet Office Statement applies, shall be offered membership of a pension scheme broadly comparable to their pre-transfer pension scheme;
- (b) when employing staff who are not Original Public Sector Employees, such staff have access to good quality pension arrangements that comply with relevant legislation from time to time in force including the Pensions Act 2004, and the pension provisions of the Cabinet Office Statement;
- (c) it shall have certification from the Government Actuary's Department, that any pension arrangements provided to Original Public Sector Employees to which the Cabinet Office Statement applies, are at least, broadly comparable to their pre-transfer pension scheme.

B10.15 Without prejudice to the generality of Clause B10.13, the Provider shall, and shall procure that each Sub-contractor shall, ensure that from the date of any Relevant Transfer during the Contract Period (including, for the avoidance of doubt, from the Commencement Date, in the event of there being a Relevant Transfer on that date) and on expiry or termination of the Contract, that it will comply with the Cabinet Office Statement in respect of compliance with bulk transfer agreements received from any Replacement Provider and cooperate in the provision of information in respect of relevant bulk transfer agreements with any Replacement Provider.

B10.16 Clauses B10.13 to B10.16 are intended to confer rights on any Relevant Employees pursuant to the Contracts (Rights of Third Parties) Act 1999. Provided that if the Authority and the Provider rescind this Contract or vary any of its terms (including any release or compromise in whole or in part of liability) in accordance with the relevant provisions of this Contract or terminate this Contract, such rescission, variation or termination will not require the consent of any Relevant Employee.

B11 Employee Provisions On Expiry Or Termination

B11.1 Within thirty (30) days of (a) the beginning of the Extension Period or (b) the issue of a Transition Notice and thereafter again, during the six (6) Months preceding the expiry of this Contract (or during the period of six (6) Months following the giving by the Authority of notice to terminate this Contract) or at any other time as directed by the Authority, and within fifteen (15) Working Days of being so requested by the Authority, the Provider shall fully and accurately disclose to the Authority, and shall procure that any relevant Sub-contractor shall fully and accurately disclose, any and all information in relation to all personnel engaged in providing the Services, (whether engaged by the Provider or any Sub-contractor) ("**Employee Information**") including all Relevant Employees who are to transfer as a consequence of a Relevant Transfer as the Authority may request, in particular but not necessarily restricted to, any of the following:

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

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

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

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

B11.4 During either (a) the six (6) Months preceding the expiry of this Contract; or (b) the period of six (6) Months following notice to terminate this Contract for whatever reason having been given; or (c) following the issue of a Transition Notice by the Authority, the Provider shall allow the Authority or such other persons as may be authorised by the Authority to communicate with and meet the Relevant Employees

and their trade union or employee representatives as the Authority may reasonably request.

B11.5 During either (a) the six (6) Months preceding the expiry of this Contract; or (b) the period of six (6) Months following notice to terminate this Contract for whatever reason having been given; or (c) following the issue of a Transition Notice by the Authority, the Provider shall not without the prior written consent of the Authority unless bona fide in the ordinary course of business:

- (a) vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
- (b) increase or decrease the number of employees employed in connection with the Services; or
- (c) assign or redeploy any employee employed in connection with the Services to other duties unconnected with the Services.

B11.6 The Provider confirms that it will comply fully with its obligations under the TUPE Regulations in respect of providing information to any Replacement Provider and hereby warrants that any information provided in accordance with Regulation 11 shall be accurate and complete.

Indemnity

B11.7 The Provider shall indemnify the Authority and any Replacement Provider appointed by the Authority and keep the Authority and any Replacement Provider appointed by the Authority indemnified in full from and against all Loss awarded against or incurred or paid by the Authority or any Replacement Provider appointed by the Authority as a result of or in connection with:

- (a) the employment or termination of employment of any Relevant Employee or employee of any Sub-contractor during any period prior to and including the date of expiry or termination of this Contract.
- (b) any claim brought against the Authority or any Replacement Provider as a result of the Provider's failure to comply with any of its obligations under the TUPE Regulations.

B11.8 The Authority shall use reasonable endeavours, at the end of the Contract Period to procure from any Replacement Provider for the benefit of the Provider an indemnity on substantially similar terms to that in Clause B11.7 (a) in respect of any claim by any Relevant Employee brought against the Provider in respect of the period after the end of the Contract Period subject to the Authority procuring such an indemnity.

B11.9 Notwithstanding any other provisions of this Contract for the purposes of these Clauses B10 and B11, and in accordance with the Contracts (Rights of Third Parties) Act 1999, the parties accept that any Replacement Provider shall be entitled to enforce the benefits conferred by it here under. Provided that if the Parties rescind this Contract or vary any of its terms (including any release or compromise in whole or in part) in accordance with the relevant provisions of this Contract or terminate this Contract, the consent of any Replacement Provider shall not be required for such rescission, variation or termination.

B11.10 Clause B10 and this Clause B11 shall apply during the Contract Period and indefinitely thereafter.

C PAYMENT AND CONTRACT PRICE

C1 Contract Price

C1.1 Subject to clause C1A to C1C below, in consideration of the Provider's performance of its obligations under the Contract, the Authority shall pay the Contract Price in accordance with clause C2 (Payment and VAT).

C1A.1 The Parties agree that, where the number of Referrals made by the Authority during any Month, is less than the total number of Referrals forecast by the Authority for that Month (each an "**Under Referral Period**"), based on the Baseline Referral Forecast (or the latest Transition Referral Forecast, as the case may be), the Provider will be entitled either to:

C1A.1.1 an increase in the Unit Price payable in respect of a number of Chargeable Clearances (the "**Under Referral Adjustment Clearances**") which are to be invoiced in the Month which is one (1) Month after the end of the Under Referral Period (the "**Under Referral Adjustment Month**") (by way of illustration if the Under Referral Period occurred in January, the Under Referral Adjustment Month would be March); or

C1A.1.2 a price review of the Unit Price in accordance with clause C1C below;

Referrals made by the Authority in a given Under Referral Period expressed as a percentage of the total Referrals forecast (based on the Baseline Referral Forecast (or the latest Transition Referral Forecast, as the case may be)) in respect of that Under Referral Period ("Under Referral Percentage")	Unit Price payable in respect of the Under Referral Adjustment Month for the Under Referral Adjustment Clearances	
	F2F	PBR
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

unless one or more of the conditions set out at clause C1B has been satisfied.

Should Chargeable Outputs in any Under Referral Adjustment Month be significantly greater than that for the relevant Month in the Operative Clearance Profile, the Provider will provide the Authority with evidence to support and justify the difference. The Provider agrees that it shall not artificially move the delivery dates of Chargeable Outputs to maximise revenue from any adjusted price payable in accordance with this clause C1A. In the event that the Authority considers that the Provider has artificially

moved the delivery dates, it may dispute the application of the prices below, and the Parties shall refer the matter to the Dispute Resolution Procedure.

C1A.2 A worked example in respect of clause C1A.1 is set out at Annex 4 to Appendix 14.

C1B The conditions referred to in clause C1A above are as follows:

C1B.1 the number of Referrals made to the Provider and not yet Cleared at the beginning of the Under Referral Period is equal to or greater than the Head of Work Threshold; or

C1B.2 the under-referral is made by the Authority as a result of a failure of the Provider to meet Service Levels SC4(a) and SC4(b) for a period of three consecutive Months (save where such failure occurs during a Service Credit Let Period).

C1C Where the Provider is entitled to a price review pursuant to clause C1A (and subject to C1B) above, the Parties shall work together in good faith to agree an adjustment to the Unit Price for the remainder of the Contract Period. In proposing any Unit Price adjustment, the Provider shall ensure that:

C1C.1 it has calculated any such adjustment by reference to the principles, assumptions and formula in the Baseline Cost Model (or the latest Transition Cost Model, as the case may be) and the Provider's Model;

C1C.2 it has calculated any such adjustment solely by reference to the costs reasonably incurred by it (and mitigated to the fullest extent possible) directly as a result of the under-referral, and not otherwise recovered under any other payment made to the Provider in respect of the Services;

C1C.3 excluding any recommended one-off business restructuring costs, any proposed adjustment shall not result in the Total Monthly Price following a price review increasing to more than the forecast Total Monthly Price based on the Baseline Cost Model (or the latest Transition Cost Model, as the case may be) which would have been incurred for an Under Referral Period where the Under Referral Percentage is sixty-five (65); and

C1C.4 in the period during which a price review is being undertaken in accordance with this Clause C1C, the Authority shall pay to the Provider an interim Unit Price calculated as Unit Price * [REDACTED] for F2F and Unit Price * [REDACTED] for PBR until the adjustment to the Unit Price is agreed. Following agreement of such adjusted Unit Prices, the Provider may issue an invoice for any underpayment in such period, or shall issue a credit for any overpayment paid in such period

C1D The Parties agree and acknowledge that the Provider may request that the Authority reduces the number of Referrals to be made to the Provider in any Month, and such request may be agreed by the Authority solely at its discretion and upon any conditions it considers necessary. The Parties shall, acting reasonably, consider the applicability of any price adjustment or review in accordance with clause C1A.1 and/or the applicability of any Profit True Up in accordance with paragraph 7 of Appendix 12 as part of such request.

C1.2 The Authority shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

C2 Payment and VAT

- C2.1 The Authority shall pay all sums due to the Provider within thirty (30) days following receipt of a valid invoice, submitted Monthly in arrears.
- C2.2 The Authority shall pay all sums by direct credit transfer into a suitable bank account or by other electronic payment methods as appropriate.
- C2.3 The Provider shall ensure that each invoice contains a valid purchase order number. All appropriate references and a detailed breakdown of the Services supplied and any other documentation reasonably required by the Authority to substantiate the invoice should be supplied in accordance with the Order Form.
- C2.4 Where the Provider enters into a sub-contract for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Provider to the Sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.
- C2.5 The Provider shall add VAT to the Contract Price at the prevailing rate as applicable and the Authority shall pay the VAT to the Provider following its receipt of a valid VAT invoice.
- C2.6 The Provider shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under the Contract. Any amounts due under this clause C2.6 shall be paid by the Provider to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.
- C2.7 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate the Contract under clause H2.3 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- C2.8 Where payment by the Authority of all or any part of any invoice rendered or other claim for payment by the Provider is disputed, this dispute shall be resolved in accordance with the procedures set out in the Appendix (Administration Requirements).
- C3 Recovery of Sums Due
- C3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under the Contract or under any other agreement or contract with the Authority.
- C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Provider shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Provider.

C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C4 Not Used

C5 Euro

C5.1 Any requirement of Law to account for the Services in Euro (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Provider at nil charge to the Authority.

C5.2 The Authority shall provide all reasonable assistance to facilitate compliance with clause C5.1 by the Provider.

C6 Third Party Revenue

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

C7 Financial Distress

The Parties shall comply with the provisions of Appendix 13 (Financial Distress) in relation to the ongoing assessment of financial standing of the Provider and consequences of change to that financial standing.

D STATUTORY OBLIGATIONS AND REGULATIONS

D1 Prevention of Bribery and Corruption

D1.1 The Provider shall not, and shall procure that any Staff shall not, commit any of the prohibited acts listed in this clause D1 in relation to the prevention of bribery. For the purposes of this clause D1, a prohibited act is committed when the Provider or any Staff:

- (a) directly or indirectly offers, promises or gives any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) directly or indirectly requests, agrees to receive or accepts any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) commits any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to the Contract or any other contract with the Authority; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Authority

- D1.2 The Provider warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of the Contract, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of the Contract.
- D1.3 The Provider shall:
- (a) if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;
- D1.4 The Provider shall have an anti-bribery policy which prevents any Staff from committing any prohibited acts as in clause D1.1 a copy of this shall be provided to the Authority upon request.
- D1.5 If any breach of clauses D1.1 or D1.2 is suspected or known, the Provider must notify the Authority immediately.
- D1.6 If the Provider notifies the Authority that it suspects or knows that there may be a breach of clauses D1.1 or D1.2, the Provider must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation.
- D1.7 If the Provider, its Staff or anyone acting on the Providers behalf engages in conduct prohibited by clauses D1.1 or D1.2, the Authority may;
- (a) terminate the Contract and recover from the Provider the amount of any Loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or
 - (b) recover in full from the Provider any other Loss sustained by the Authority in consequence of any breach of those clauses.
- D1.8 Despite clause I (Disputes and Law), any dispute relating to:
- (a) the interpretation of clause D1; or
 - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Authority, acting reasonably having given due consideration to all relevant factors, and its decision shall be final and conclusive.
- D1.9 Any termination under clause D1.7 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.
- D1.10 In exercising its rights or remedies under clause D1.7, the Authority shall:
- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of, the person performing the conduct prohibited by clauses D1.1 or D1.2;
 - (b) give all due consideration, where appropriate, to action other than termination of the contract

D2 Discrimination

- D2.1 The Provider shall not unlawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex or sexual orientation and without prejudice to the generality of the foregoing the Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- D2.2 The Provider shall take all reasonable steps to secure the observance of clause D2.1 by all Staff.
- D2.3 The Provider shall comply with the provisions of the Human Rights Act 1998.
- D2.4 In delivering the Services, the Provider shall operate at all times in accordance with the diversity and equality requirements set out in Appendix 8 (Diversity and Equality Requirements) or such other diversity and equality requirements as notified by the Authority to the Provider from time to time.
- D2.5 Where delivering the Services in Wales, the Provider shall comply at all times with the requirements set out in Appendix 9 (Welsh Language Scheme) or such other requirements as notified by the Authority to the Provider from time to time.
- D2.6 In delivering the Services, the Provider shall operate at all times in accordance with the apprenticeships and skills requirements set out in Appendix 10 (Apprenticeships and Skills Requirements) or such other apprenticeships and skills requirements as notified by the Authority to the Provider from time to time.
- D3 The Contracts (Rights of Third Parties) Act 1999
- A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.
- D4 Environmental Requirements
- D4.1 The Provider shall, when working on the Premises, perform its obligations under the Contract in accordance with the Authority's environmental principles, which are to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances, minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- D4.2 In delivering the Services, the Provider shall comply at all times with the requirements set out in Appendix 7 (Sustainable Development Requirements) or such other requirements as may be reasonably notified by the Authority to the Provider from time to time.
- D5 Health and Safety
- D5.1 The Provider shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Authority shall promptly notify the Provider of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Provider in the performance of its obligations under the Contract.
- D5.2 While on the Authority's Premises, the Provider shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working there.

- D5.3 The Provider shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- D5.4 The Provider shall comply with the requirements of the Health and Safety at Work Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.
- D5.5 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work Act 1974) is made available to the Authority on request.

E PROTECTION OF INFORMATION

- E1 Authority Data
- E1.1 The Provider shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- E1.2 The Provider shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Provider of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- E1.3 To the extent that Authority Data is held and/or processed by the Provider, the Provider shall supply that Authority Data to the Authority as requested by the Authority.
- E1.4 The Provider shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- E1.5 The Provider shall perform secure back-ups of all Authority Data and shall ensure that up-to-date backups are stored off-site in accordance with the Provider's Business Continuity Plan. The Provider shall ensure that such backups are available to the Authority at all times on request.
- E1.6 The Provider shall ensure that any system or media on which the Provider holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy detailed in Annex K and Appendix 6 (Security Requirements and Plan).
- E1.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Provider's Default so as to be unusable, the Authority may;
- (a) require the Provider (at the Provider's expense) to restore or procure the restoration of the Authority Data or Personal Data and the Provider shall do so as soon as practicable but not later than twenty four (24) hours; and/or;
 - (b) itself restore or procure the restoration of the Authority Data or Personal Data, and shall be repaid by the Provider any reasonable expenses incurred in doing so.
- E1.8 If at any time the Provider suspects or has reason to believe that the Authority Data or Personal Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Provider shall notify the Authority immediately and inform the Authority of the remedial action the Provider proposes to take.

- E1.9 In accordance with the DWP Offshoring Policy and while not in any way limiting any other provision of this Contract, the Provider, or any of its Sub-contractors, shall not process, host at or access Authority Data from premises outside the United Kingdom without the prior written consent of the Authority, and where the Authority gives consent, the Provider shall comply with any reasonable instructions notified to it by the Authority in relation to the Authority Data in question.
- E1.10 Any breach by the Provider of this clause E1 shall be a material breach for the purposes of clause H2 (Termination on Default) and shall entitle the Authority (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2 (Termination on Default).
- E2 Protection of Personal Data
- E2.1 Each of the Parties including the personnel of each Party (personnel shall include directors, officers, employees, servants, agents, consultants, suppliers, Sub-processor and sub-contractors) will comply with all of its applicable requirements of the Data Protection Legislation and shall not knowingly or negligently by any act or omission, place the other Party in breach, or potential breach of Data Protection Legislation. This clause is in addition to and does not relieve, remove or replace a Party's obligations under the Data Protection Legislation.
- E2.2 With respect to the Parties' rights and obligations under the Contract, the Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Data Controller and the Provider is the Data Processor.
- E2.3 The Provider shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation. For the avoidance of doubt, this clause shall not relieve the Authority of its obligations under the Data Protection Legislation.
- E2.4 The Provider shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include (without limitation):-
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects;
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data and Special Categories of Personal Data; and
 - (e) upon request provide a copy of the record of the processing of any Personal Data and Special Categories of Personal Data it carries out on behalf of the Authority including (without limitation) the records specified in Article 30(2) of the GDPR.
- E2.5 The Provider shall, in relation to any Personal Data and Special Categories of Personal Data processed or to be processed in connection with its obligations under this Contract:-
- (a) process that Personal Data and Special Categories of Personal Data only to the extent and in such manner as is necessary for the purposes

specified in this Contract and in accordance with Appendix 15, unless the Provider is required to process the Personal Data and Special Categories of Personal Data otherwise by Law. In such case, the Provider shall inform the Authority of that legal requirement unless the Law prevents such disclosure on the grounds of public interest;

- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:-
 - (i) nature of the Personal Data and Special Categories of Personal Data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) implement any Protective Measures at the Provider's own expense and at no cost to the Authority;
- (c) review and approval of the Protective Measures by the Authority shall not relieve the Provider of its obligations under Data Protection Legislation including, for the avoidance of doubt, putting sufficient Protective Measures in place.
- (d) ensure that it and its Staff:-
 - (i) do not process Personal Data and Special Categories of Personal Data except in accordance with this Contract and Data Protection Legislation and access to such data is limited to those Staff who need to access Personal Data and Special Categories of Personal Data to meet the Provider's Data Processor duties under the Contract and Data Protection Legislation and only collect Personal Data and Special Categories of Personal Data on behalf of the Authority in the format agreed with the Authority which shall contain a data protection notice informing the Data Subject of the identity of the Data Controller, the identity of any data protection representative it may have appointed, the purpose(s) for which the Data Subject's Personal Data and Special Categories of Personal Data will be processed and any other information, which is necessary to comply with Data Protection Legislation. The Provider shall not modify the format agreed with the Authority without the prior written consent of the Authority;
 - (ii) take reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and Special Categories of Personal Data and ensure that they:-
 - (A) and comply with the Provider's duties under this clause E2;
 - (B) are subject to appropriate confidentiality undertakings including between the Provider and any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and Special Categories of Personal Data and do not publish, disclose or divulge any of the Personal Data and Special Categories of Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract or required to do so under a legal requirement/court order (provided

that the Provider shall give notice to the Authority of any disclosure of Personal Data and Special Categories of Personal Data that it or any of its Staff is required to make under such a legal requirement or court order immediately when it is made aware of such a requirement); and

- (D) have sufficient skills and have undergone adequate training in the use, care, protection and handling of Personal Data and Special Categories of Personal Data;
 - (e) not transfer Personal Data and Special Categories of Personal Data outside the United Kingdom unless the prior written consent of the Authority has been obtained and provided the following conditions are fulfilled:-
 - (i) the Authority or the Provider has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data and Special Categories of Personal Data that is transferred;
 - (iv) the Provider complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data and Special Categories of Personal Data;
 - (f) at the written direction of the Authority, delete or return Personal Data and Special Categories of Personal Data (and any copies of it) using a secure method of transfer to the Authority upon expiry or earlier termination of the Contract unless the Provider is required by Law to retain the Personal Data and Special Categories of Personal Data; g) permit the Authority or the Authority's representative (subject to reasonable and;
 - (g) permit the Authority or the Authority's representative (subject to reasonable and appropriate confidentiality undertakings save for cases of emergency) to inspect and audit the Provider's Data Processor activities (and/or those of its Staff) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify that the Provider is in full compliance with its obligations under this clause E2 and/or the Data Protection Legislation.
- E2.6 Subject to clause E2.7, the Provider shall notify the Authority without undue delay and in any event no later than within 5 Working Days (save for paragraph (f) where only the principle of undue delay applies) if it:-
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request;
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, notice, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data and Special Categories of Personal Data processed under this Contract;
 - (e) receives a request from any third party for disclosure of Personal Data and Special Categories of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- E2.7 The Provider's obligation to notify the Authority under clause E2.6 shall include the provision of further information to the Authority promptly.
- E2.8 Taking into account the nature of the processing, the Provider shall provide the Authority with assistance in relation to either Party's obligations under Data Protection Legislation arising under this Agreement and any complaint, communication or request made under clause E2.6 (and insofar as possible within the timescales reasonably required by the Authority) at no cost to the Authority including by promptly providing:-
- (a) the Authority with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request promptly;
 - (c) the Authority, at its request, with any Personal Data and Special Categories of Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Authority following any Data Loss Event to enable the Authority to mitigate the impact of the Data Loss Event, to ensure that Data Loss Event of the same nature do not occur again, to notify the competent regulatory body of the Data Loss Event and/or to notify the Data Subjects of the Data Loss Event;
 - (e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office;
 - (f) the Authority with any information requested by the Authority.
- E2.9 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with its Data Processor obligations under this clause E2..
- E2.10 The Contractor shall keep a record of any processing of Personal Data and Special Categories of Personal Data it carries out on behalf of the Authority including (without limitation) the records specified in Article 30(2) of the GDPR and shall permit the Authority or the Authority's representative to inspect and audit pursuant to clause E2.5(f).
- E2.11 The Provider shall designate a Data Protection Officer if required by Data Protection Legislation.
- E2.12 Before allowing any Sub-processor to process any Personal Data and Special Categories of Personal Data under this Contract, the Provider must:-
- (a) notify the Authority in writing of the intended Sub-processor and processing;

- (i) obtain the advance written consent of the Authority to allow the Sub-processor to process any Personal Data and Special Categories of Personal Data under the Contract; and
 - (ii) enter into a written contract with the Sub-processor which reflects the terms set out in this clause E2 such that they apply to the Sub-processor as a Data Processor.
- E2.13 The Provider shall remain fully liable for all acts or omissions of any Sub-processor and Staff.
- E2.14 Subject to the Variation procedure set out in F3 (which process has to be concluded within 30 Working Days following Authority's notice) the Authority may revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme under Article 42 of the GDPR (which shall apply when incorporated by an attachment to this Contract).
- E2.15 The Provider shall comply with guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Working Days' notice to the Provider amend this Contract to ensure that it complies with any guidance issued by the Information Commissioners Officer and/or any changes to Data Protection Legislation.
- E2.16 The Provider shall indemnify and keep the Authority indemnified in full from and against all claims, proceedings, actions, damages, loss, penalties, fines, levies, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of or in connection with, any breach by the Provider or any of its Staff of this clause E2.
- E3 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989
- E3.1 The Provider shall comply with, and shall ensure that it's Staff comply with, the provisions of;
 - (a) the Official Secrets Acts 1911 to 1989; and
 - (b) Section 182 of the Finance Act 1989.
- E3.2 In the event that the Provider or its Staff fails to comply with this clause, the Authority reserves the right to terminate the Contract with immediate effect by giving notice in writing to the Provider.
- E4 Confidential Information
- E4.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
 - (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- E4.2 Clause E4 shall not apply to the extent that;
 - (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause E5 (Freedom of Information);

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

- E4.9 In the event that the Provider fails to comply with clauses E4.1-3, the Authority reserves the right to terminate the Contract with immediate effect by notice in writing.
- E4.10 Clauses E4.1-6 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.
- E4.11 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- E4.12 Notwithstanding any other term of this Contract, the Provider hereby gives his consent for the Authority to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract, to the general public. The Authority may consult with the Provider to inform its decision regarding any redactions but the Authority will have the final decision in its absolute discretion. The Provider shall assist and co-operate with the Authority to enable the Authority to publish this Contract.
- E5 Freedom of Information
- E5.1 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- E5.2 The Provider shall and shall procure that its Sub-contractors shall;
- (a) transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - (b) provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and
 - (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- E5.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- E5.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- E5.5 The Provider acknowledges that (notwithstanding the provisions of clause E5) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Services;

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

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

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

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

E6 Publicity, Media and Official Enquiries

E6.1 The Provider shall not:

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

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

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

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

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

E7 Security

E7.1 The Provider shall take all measures necessary to comply with the provisions of any enactment relating to security that may be applicable to the Provider in the performance of the Services.

E7.2 Whilst on the Authority's Premises, Staff shall comply with all security measures implemented by the Authority in respect of Staff and other persons attending those Premises.

- E7.3 The Provider shall comply, and shall procure the compliance of the Provider Staff, with the Security Policy and the Security Plan. The Provider shall ensure that the Security Plan fully complies with the Security Policy.
- E7.4 The Authority shall notify the Provider of any changes or proposed changes to the Security Policy.
- E7.5 If the Provider believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may request a Variation to the Contract by written notice to the Authority. In doing so, the Provider must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Contract Price shall then be agreed in accordance with clause F3 (Variation).
- E7.6 Until and/or unless a change to the Contract Price is agreed by the Authority pursuant to clause E7.5 the Provider shall continue to perform the Services in accordance with its existing obligations.
- E8 Intellectual Property Rights
- E8.1 Save as granted under the Contract, neither the Authority nor the Provider shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights. The Provider acknowledges that the Authority Data is the property of the Authority and the Authority hereby reserves all Intellectual Property Rights which may subsist in the Authority Data.
- E8.1.1 The Authority shall grant the Provider a non exclusive, revocable, no cost licence for the Contract Period to use the Authority's Intellectual Property Rights where it is necessary for the Provider to supply the Services. The Provider shall have the right to sub license the Sub- Contractor's use of the Authority's Intellectual Property Rights. At the end of the Contract Period the Provider shall cease use, and shall procure that any Sub- Contractor ceases use, of the Authority's Intellectual Property Rights.
- E8.1.2 The Provider shall grant the Authority a non exclusive, revocable, no cost licence for the Contract Period to use the Provider's Intellectual Property Rights where it is necessary for the Authority in the provision of the Services. At the end of the Contract Period the Authority shall cease use of the Provider's Intellectual Property Rights.
- E8.2 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs, know-how or other material:
- (a) furnished to or made available to the Provider by or on behalf of the Authority shall remain the property of the Authority; and/or
- (b) prepared by or for the Provider on behalf of the Authority for use, or intended use, in relation to the performance by the Provider of its obligations under the Contract shall belong to the Authority,
- and the Provider shall not, and shall ensure that its Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any such Intellectual Property Rights.
- E8.3 The Provider shall obtain Approval before using any material, in relation to the performance of its obligations under the Contract which is or may be subject to any third party Intellectual Property Rights. The Provider shall use all reasonable endeavours to ensure that the owner of the rights grants to the Authority a non-

exclusive licence, or if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, any Replacement Provider or to any other third party supplying services to the Authority.

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

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

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

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

E8.6 The Authority shall promptly notify the Provider in writing if any claim or demand is made or action brought against the Authority or Crown to which Clause E8.4 may apply. The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any such claim or demand, provided always that the Provider:

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

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

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

- E8.9 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Provider is likely to be made, the Provider shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:
- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services; or
 - (b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority,
- and in the event that the Provider is unable to comply with clauses E8.9 (a) or (b) within twenty (20) Working Days of receipt of the Provider's notification the Authority may terminate the Contract with immediate effect by notice in writing.
- E9 Audit and the National Audit Office
- E9.1 The Provider shall keep and maintain until six (6) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Provider shall on request afford the Authority or the Authority's representatives such access to those records as may be requested by the Authority in connection with the Contract.
- E9.2 The Provider (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purpose of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the authority has used its resources. The Provider shall provide such explanations as are reasonably required for these purposes. This clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Provider under Section 6(3) (d) and (5) of the National Audit Act 1983.
- E9.3 Without prejudice to any other of the Authority's rights under the Contract or at law, the Provider shall comply with its obligations set out in Appendix 16 (Provider Assurance) and co-operate with the Authority in respect of any Provider Assurance Team review undertaken by the Authority from time to time.
- E10 Malicious Software
- E10.1 The Provider shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- E10.2 Notwithstanding clause E10.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

- E10.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause E10.2 shall be borne by the Parties as follows:
- E10.3.1 by the Provider where the Malicious Software originates from the Provider Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Provider); and
 - E10.3.2 by the Authority if the Malicious Software originates from the Authority Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Authority).

F CONTROL OF THE CONTRACT

F1 Transfer and Sub-Contracting

- F1.1 Except where F1.4 and F1.5 applies, the Provider shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Provider of any of its obligations or duties under the Contract.
- F1.2 The Provider shall be responsible for the acts and omissions of its Sub-contractors as though they are its own.
- F1.3 Where the Authority has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Authority, be sent by the Provider to the Authority as soon as reasonably practicable.
- F1.4 Notwithstanding clause F1.1, the Provider may assign to a third party (“**the Assignee**”) the right to receive payment of the Contract Price or any part thereof due to the Provider under this Contract (including any interest which the Authority incurs under clause C2.6). Any assignment under this clause F1.4 shall be subject to:
- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
 - (b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
 - (c) the Authority receiving notification under both clauses F1.5 and F1.6.
- F1.5 In the event that the Provider assigns the right to receive the Contract Price under clause F1.4, the Provider or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- F1.6 The Provider shall ensure that the Assignee notifies the Authority of the Assignee’s contact information and bank account details to which the Authority shall make payment.
- F1.7 The provisions of clause C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Authority.
- F1.8 Subject to clause F1.10, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to;
- (a) any Contracting Body;

- (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
- (c) any private sector body which substantially performs the functions of the Authority,

provided that any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under the Contract.

F1.9 Any change in the legal status of the Authority such that it ceases to be a Contracting Body shall not, subject to clause F1.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Authority.

F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F1.8 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Body (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):

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

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

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

F2 Waiver

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

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

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

F3 Variation

- F3.1 The Authority may from time to time during the Contract Period, by giving written notice to the Provider, require a variation of the Specification (whether by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided or otherwise the requirements for the Services). Such a change is hereinafter called a "Variation".
- F3.2 Subject to clauses F3.3 and F3.4, the Provider shall comply with any Variation required by the Authority pursuant to clause F3.1.
- F3.3 Following the giving of written notice by the Authority in accordance with clause F3.1, the Authority and the Provider shall enter into good faith negotiations (for a period of not more than thirty (30) Working Days from the date thereof or where, in the reasonable opinion of the Authority, the Variation is necessary as a matter of urgency due to circumstances outside the Parties' control, such shorter period as the Authority shall direct) to agree the variation in the Contract Price (if any) that, in all the circumstances, properly and fairly reflects the nature and extent of the proposed Variation, (a) having regard to the Rate Card, and (b) in compliance with the requirements set out in Appendix 4 (Prices and Rates) paragraph 6 (Prices for Contract Variations). The Provider shall provide such information additional to that set by out in Appendix 4 (Prices and Rates) as may be reasonably required by the Authority to enable any such variation to the Contract Price to be calculated.
- F3.4 If the Parties, acting reasonably, are unable to agree the variation in the Contract Price referred to in clause F3.3, the matter shall be referred to dispute resolution under clause I.2. Pending resolution of the matter the Provider shall nonetheless implement and comply with the Variation.
- F3.5 Any such Variation shall be communicated in writing by the Authority to the Provider in accordance with clause A6 (Notices). All Variations shall form an addendum to the Contract.

F3A Change in Law

- F3A.1 The Provider shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Unit Price as the result of:
- F3A.1.1 a General Change in Law; or
 - F3A.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Third Variation Date.
- F3A.2 If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in clause F3A.1.2), the Provider shall:
- F3A.2.1 notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
 - (a) whether any Variation is required to the Services, the Unit Price or this Contract; and
 - (b) whether any relief from compliance with the Provider's obligations is required, including any obligation to meet the Service Levels; and
 - F3A.2.2 provide the Authority with evidence:
 - (a) that the Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;

- (b) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (c) demonstrating that any expenditure that has been avoided has been taken into account in amending the Unit Price.
- F3A.2.4 Any Variation in the Unit Price or relief from the Provider's obligations resulting from a Specific Change in Law shall be implemented in accordance with clause F3

F4 Severability

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

F5 Remedies in the Event of Inadequate Performance

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

F5.2 Service Credits

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

- F5.2.2 The Parties agree and acknowledge that:

- (a) the mechanisms set out in clause F5.2 of the Contract and Appendix 14 (Service Credits) of the Contract and any resultant Service Credits have been set in view of the Authority's legitimate interest (and the legitimate interest of Participants) in receiving Services and Chargeable Outputs which comply with the Service Levels (whether such compliance requires the Provider to meet the relevant Threshold Level exactly, or to not exceed the relevant Threshold Level, or to exceed the relevant Threshold Level), and are intended to represent a proportionate price adjustment to reflect the reduced quality of performance under this Contract where such Service Levels are not complied with; and
- (b) in developing and agreeing the principles and mechanism provided under clause F5.2 of the Contract the Parties have comparable bargaining power and have been advised fully by solicitors; and
- (c) the provisions of clause F5.2 of the Contract are without prejudice to the Authority's other rights and remedies under the Contract or at law.

F5.2.3 The Parties agree that Appendix 14 (Service Credits) shall be interpreted as follows:

- (a) references to “failure” in relation to Service Levels shall be interpreted as meaning a failure to comply with the Service Levels; and
- (b) references to the Provider’s obligation to “meet” or “achieve” Service Levels shall be interpreted as referring to an obligation on the part of the Provider to comply with the Service Levels,

in each case whether such compliance requires the Provider to meet the relevant Threshold Level exactly, or to not exceed the relevant Threshold Level, or to exceed the relevant Threshold Level.

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

- (a) for the purpose of assessing whether a Service Termination Threshold has been reached; or
- (b) as a Default for the purposes of assessing whether a Persistent Breach has occurred and/or operating the provisions of clauses H2.2 and H2.3; or
- (c) for the purposes of determining whether an improvement plan is required under clause F5.3.2.

F5.2.5 Clause F5.2.3 shall not apply to the exercise by the Authority of any of its rights under clause F5.4 and clause F5.5.

F5.2A Subject to clauses F5.2D to F5.2F below, Service Credits shall be deducted:

F5.2A.1 during the continuance of the Contract, by the Provider issuing a credit note for the amount of Service Credits determined by the Authority at the Contract Delivery Board as being due under clause F5.2, and the Authority deducting the amount of such credit note against the next invoice issued by the Provider, provided that in the event that the value of such next valid invoice (after other deductions, such as No Pay Amounts) is insufficient to meet the amount of Service Credits due then the Authority shall carry forward the balance of Service Credits and apply them to the Provider’s subsequent valid invoice(s) until the Service Credits are met in full; and

F5.2A.2 in respect of Service Credits which remain outstanding after the termination or expiry of the Contract, in accordance with clause H4.4(c) of the Contract.

F5.2B In this Contract, including its Appendices and Annexes to such Appendices:

F5.2B.1 each reference to Service Levels and to “service levels” and to “SL” shall be construed as being a reference to the service level requirements as described in:

- (a) the columns headed “A”, “B” and “C” in paragraph 1 and paragraph 2 of Annex 1 (Service Levels, Service Credits and Termination Thresholds) to Appendix 14 (Service Levels) of the Contract; and
- (b) the columns headed “SLA” and “Threshold Level” in paragraph 3 of such Annex 1 of the Contract; and

- F5.2B.2 each reference to Service Credits and to “service credits” and to “SC” shall be construed as being a reference to the service credits defined against each Service Level as described in the column headed “D” in paragraph 1 and paragraph 2 of such Annex 1; and
- F5.2B.3 any references to Annex 7 or to Annex Seven of the Specification shall be deemed to refer to Annex 1 of Appendix 14 (Service Credit) of the Contract.
- F5.2C.1 By 31 January 2019, the Authority shall deliver to the Provider a forecast of the volume of Referrals it expects to make to the Provider for the duration of the Contract in respect of each Month and shall be entitled to update such forecast at any time (but such update shall not be less than every 6 Months) (the “Latest Forecast”), the Authority shall also deliver to the Provider from time to time operational data in relation to the Services.
- F5.2C.2 Within four (4) weeks of receiving each Latest Forecast and in any event not less than once every six (6) Months, the Provider shall deliver to the Authority the Proposed Clearance Profile for agreement by the Authority. In preparing the Proposed Clearance Profile the Provider shall use the template set out in Annex 2 to Appendix 14, and shall ensure that any assumptions are based on historical and other accurate data, and provide evidence, explanation or further information as reasonably required by the Authority in connection with any assumptions. Where the Authority does not agree the Proposed Clearance Profile, the Provider shall promptly review and update the Proposed Clearance Profile in accordance with the Authority's comments and promptly resubmit it for agreement. The Parties shall work together in good faith to agree the Proposed Clearance Profile as amended within four (4) weeks of the Authority first receiving the same from the Provider. Any disputes relating to the Proposed Clearance Profile shall be referred to the Dispute Resolution Procedure (and in the event of any such referral the Authority may determine which clearance profile should apply to the period pending resolution of dispute, whether the current Operative Clearance Profile or the Proposed Clearance Profile. The Parties shall make any retrospective adjustments necessary to the application of the Service Credit Let below, to reflect the Operative Clearance Profile once agreed for the period in which the Dispute Resolution Procedure was ongoing). The Proposed Clearance Profile as amended by the agreement of the Parties, including any changes arising through the Dispute Resolution Procedure, shall be the Operative Clearance Profile for the purposes of the calculations under this clause F5.2C.2 and shall come into effect on the date of commencement of the relevant Operative Forecast.
- F5.2D Without prejudice to any other rights of the Authority under this Contract (including without limitation in relation to any Service Credits payable in respect of any failure to meet any Service Levels to which a Service Credit Let is not applicable), if there is an Over-referral Period, Service Credit Lets (calculated in accordance with clause F5.2E below) shall apply for the Service Credit Let Period.
- F5.2E Where a Service Credit Let applies in accordance with clause F5.2D (whether due to a single Service Credit Let Period or multiple concurrent Service Credit Let Periods), the total Service Credits shall be as follows:
- F5.2E.1 where either (a) the Provider Clears 100% or more of the total number of Profile Chargeable Clearances (based on the Operative Clearance Profile) for a Service Credit Let Period (or multiple concurrent Service Credit Let Periods) during that Service Credit Let Period (or multiple concurrent

Service Credit Let Periods); or (b) the number of Referrals made to the Provider and not yet Cleared on the first Working Day of the Service Credit Let Period (or multiple concurrent Service Credit Let Periods) is lower than the Head of Work Threshold, the total Service Credits in respect of Service Level SC4(a) or SC4(b) due for any Month to which a Service Credit Let Period (or multiple concurrent Service Credit Let Periods) applies shall be zero; or

F5.2E.2 where the Provider Clears at least 85% but less than 100% of the total number of Profile Chargeable Clearances for a Service Credit Let Period (or multiple concurrent Service Credit Let Periods) (based on the Operative Clearance Profile) during that Service Credit Let Period (or multiple concurrent Service Credit Let Periods), the total Service Credits in respect of Service Level SC4(a) or SC4(b) due for any Month to which a Service Credit Let Period (or multiple concurrent Service Credit Let Periods) applies shall be 25% of the Service Credits which would otherwise be payable by the Provider in respect of Service Level SC4(a) or SC4(b) in respect of such Month; or

F5.2E.3 where the Provider Clears less than 85% of the total number of Profile Chargeable Clearances for a Service Credit Let Period (or multiple concurrent Service Credit Let Periods) (based on the Operative Clearance Profile) during that Service Credit Let Period (or multiple concurrent Service Credit Let Periods), the total Service Credits in respect of Service Level SC4(a) or SC4(b) due for any Month to which a Service Credit Let Period applies shall be 50% of the Service Credits which would otherwise be payable by the Provider in respect of Service Level SC4(a) or SC4(b) in respect of such Month.

F5.2F The amount of Service Credit Let which may apply in respect of any Month forming part of a Service Credit Let Period (or multiple concurrent Service Credit Let Periods) shall be calculated in respect of that Month, at the end of that Service Credit Let Period.

F5.2G A worked example in respect of clauses F5.2D and F5.2E is set out at Annex 4 to Appendix 14.

F5.3 In the event of the Provider, through its own Default, failing to perform the Services in accordance with all applicable standards and requirements of this Contract or otherwise failing to comply with any of its obligations under this Contract, the Authority shall (without prejudice to its other rights and remedies) be entitled to exercise one or more of the following remedies: –

F5.3.1 require the Provider, at the Provider's own expense, to remedy the Default and/or re-schedule and re-perform the Services affected by the Provider's failure (the "Affected Services") within such timescale as the Authority may reasonably require; and/or

F5.3.2 require the Provider to submit a performance improvement plan detailing why the failure has occurred and how it will be remedied within 10 Working Days following the date of such request or such other period as the Authority may direct; and/or

F5.3.3 withhold from payment to the Provider, or recover as a sum due from the Provider, the portion of the Contract Price allocable to the Default or the Affected Services (other than where Service Credits are applicable to such Provider's failure in which case clause F5.2 shall apply) or where No Pay Amounts are applicable to such Provider's failure in which case Appendix

4 Part A paragraph 5A and paragraph 5B and paragraph 5C shall apply **provided that** nothing shall prevent the Authority from exercising its rights under clause F5.2 and/or clause F5.3 and/or clause C3.1 of the Contract for the purposes of enforcing the deduction of Service Credits and/or No Pay Amounts); and/or

- F5.3.4 Without prejudice to clause F5.6, if the Provider fails to remedy the Default or re-schedule and re-perform the Affected Services in accordance with the timescale stipulated by the Authority under clause F5.3.1) the Authority may itself, or through a third party acting on its behalf, remedy the Default or re-perform the Affected Services and the Provider shall pay the reasonable costs incurred by the Authority in so doing.
- F5.4 In the event that the Authority is of the reasonable opinion that there has been a Default which is a material breach of the Contract by the Provider, then the Authority may, without prejudice to its other rights and remedies under the Contract including under clause H2 (Termination on Default), do any of the following:
- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Authority that the Provider will once more be able to supply all or such part of the Services in accordance with the Contract;
 - (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
 - (c) terminate, in accordance with clause H2 (Termination on Default), the whole of the Contract.
- F5.5 Without prejudice to its rights under clause C3 (Recovery of Sums Due), where the Authority exercises its rights under clause F5.4(a) or clause F5.4(b) the Authority may charge the Provider for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- F5.6 In the event that:
- (a) the Provider fails to comply with clause F5.3.1 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or
 - (b) the Provider persistently fails to comply with clause F5.3.1 above,
- the Authority may terminate the Contract by giving 10 Working Days' notice in writing.

F5A Quality Improvement Glide Path

- F5A.1 The Threshold Levels which the Provider shall not exceed for the purposes of Service Level SC1 shall be:
- (a) not more than 9.5% Unacceptable Reports during SC1 Transition P1;
 - (b) not more than 3.5% Unacceptable Reports during SC1 Transition P2; and

(c) not more than 3% Unacceptable Reports during SC1 Transition P3;

where, subject to clause F5A.5, the relevant percentage of Unacceptable Reports is determined by dividing the total number of Unacceptable Reports identified by the sampling during the relevant SC1 Transition Period by the total number of Chargeable Outputs sampled during the relevant SC1 Transition Period and multiplying that product by 100, such percentage (in this clause F5A, the **“Unacceptable Percentage”**) to be calculated within ten (10) Working Days from and including the date on which the relevant SC1 Transition Period ends.

F5A.2 Subject to clause F5A.5, from and including the date of the commencement of SC1 Transition P1 and for the duration of the SC1 Transition Total Period, the Provider shall, using the Lancaster Model:

F5A.2.1 daily during each Month (in this clause F5A, **“Relevant Month”**), select samples (in this clause F5A, each a **“Sample Case”**) of Chargeable Outputs from the Relevant Month, which the Provider shall select from all such Chargeable Outputs using the Lancaster Model;

F5A.2.2 within five (5) Working Days from the end of each Month, report to the Authority in writing (in this clause F5A, the **“Provider’s Monthly Report”**) on the sampling exercise, confirming the number of Sample Cases, and the Unacceptable Percentage determined pursuant to clause F5A.1 above.

F5A.3 Subject to clause F5A.5, from and including the date of the commencement of SC1 Transition P1 the Provider shall, within five (5) Working Days from and including the end of each SC1 Transition Period (in this clause F5A, **“Relevant SC1 Period”**), using the Lancaster Model, report to the Authority in writing (in this clause F5A, the **“Provider’s SC1 Period Report”**) on the sampling exercise, confirming the aggregate number of Sample Cases for the Relevant Months in the Relevant SC1 Period, and the average Unacceptable Percentage for the Relevant Months in the Relevant SC1 Period.

F5A.4 Subject to clause F5A.5, the Provider shall promptly (and in any event within five (5) Working Days) respond to any questions and enquiries raised by the Authority in connection with the Provider’s Monthly Report and/or the Provider’s SC1 Period Report, and shall take such action as the Authority reasonably requires (including, if necessary, revising the Provider’s Monthly Report and/or the Provider’s SC1 Period Report and/or conducting further sampling at the Provider’s own cost) to enable the Authority to approve a final version of each Provider’s Monthly Report and the Provider’s SC1 Period Report (in this clause F5A, the **“Final Report”**). If any such question or enquiry or action cannot be resolved between the Parties, the Parties agree to invoke the Dispute Resolution Procedure in respect of those matters.

F5A.5 The foregoing provisions of this clause F5A shall be without prejudice to the Authority’s right to:

F5A.5.1 conduct or commission from a third party, both during the SC1 Transition Total Period and/or before and/or after such period, its own sample of Chargeable Outputs and/or to conduct its own audit of the sampling conducted by the Provider; and/or

F5A.5.2 establish, in accordance with any rights of the Authority, an auditor and/or system of audit which is external to the Provider and the Affiliates of the Provider and which uses a methodology selected by such auditor and/or the Authority (in the Contract, **“Independent Audit”**) such that the audit of Chargeable Outputs for the purpose of determining whether Chargeable

Outputs are Unacceptable Reports or otherwise for the purposes of the Contract including this clause F5A shall be determined by Independent Audit and not by the Provider,

and when the Authority exercises its rights above, the foregoing provisions of this clause F5A shall be deemed amended so that where they refer to measurement and reporting by the Provider they shall be deemed to refer to measurement and reporting provided as part of Independent Audit and provided by the auditor(s) carrying out the Independent Audit. The Authority's rights in this clause F5A shall be without prejudice to its other rights, including rights to require any review or Variation or variation of the terms and conditions of the Contract to take account of Independent Audit.

F6 Remedies Cumulative

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

F7 Monitoring of Contract Performance

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

F8 Not Used

F9 Counterparts

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

F10 Authority Step-in

F10.1 Right to Step-In

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

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

F10.1.2 to discharge a statutory duty;

F10.1.3 because an Emergency has arisen and/or

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

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

F10.2 If clause F10.1 (Right to Step-In) applies and the Authority wishes to take action, the Authority shall notify the Provider in writing of the following:

F10.2.1 the action it wishes to take;

F10.2.2 the reason for such action;

- F10.2.3 the date it wishes to commence such action;
- F10.2.4 the time period which it believes will be necessary for such action; and
- F10.2.5 to the extent practicable, the effect on the Provider and its obligation to provide the Services during the period such action is being taken.

F10.3 Action by Authority

- F10.3.1 Following service of such notice, the Authority shall take such action as notified under clause F10.2 (Notice to the Provider) and any consequential additional action as it reasonably believes is necessary (together, the Required Action) and the Provider shall give all reasonable assistance to the Authority, including for the avoidance of doubt making available to the Authority such Staff, Premises, Equipment and data as currently utilised by the Provider in relation to the Services as the Authority may reasonably require to undertake the Required Action, while it is taking the Required Action. The Authority shall provide the Provider with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.
- F10.3.2 The Authority shall undertake the Required Action in accordance with Good Industry Practice and where the Required Action has been taken otherwise than as a result of a breach by the Provider, the Authority shall indemnify the Provider against all direct Losses where it fails to do so, subject to the Provider having taken all reasonable steps to mitigate such Losses.

F10.4 Step-In without Provider Breach

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

- F10.4.1 the Provider shall be relieved from its obligations to provide such part of the Services; and
- F10.4.2 in respect of the period in which the Authority is taking the Required Action and provided that the Provider provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent that incremental costs are incurred), the Contract Price due from the Authority to the Provider shall equal the amount the Provider would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period.

F10.5 Step-In on Provider Breach

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

- F10.5.1 the Provider shall be relieved of its obligations to provide such part of the Services; and
- F10.5.2 in respect of the period in which the Authority is taking the Required Action, the Contract Price due from the Authority to the Provider shall

equal the amount the Provider would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period, less an amount equal to all the Authority's costs of operation in taking the Required Action.

G LIABILITIES

G1 Liability, Indemnity and Insurance

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

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

G1.2 Subject to clause G1.3 and G1.12, the Provider shall indemnify the Authority and keep the Authority indemnified fully:

- (a) in respect of any personal injury incurred by the Authority or its employees and agents to the extent that such personal injury is directly caused by any Default of the Provider, its employees, agents or Sub-contractors or by circumstances within its or their control in connection with the performance or purported performance of the Contract; and
- (b) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) and any other liabilities in respect of any personal injury due to the Provider's acts or omissions which arises from or is incurred by reason of the use of the Services by any Participant.

G1.2B Subject to clause G1.3, G1.5, G1.6, and G1.12 the Provider shall indemnify the Authority and keep the Authority indemnified in respect of any loss of or damage to tangible property incurred by the Authority or its employees and agents to the extent that such loss of property is directly caused by any Default of the Provider, its employees, agents or Sub-contractors or by circumstances within its or their control in connection with the performance or purported performance of the Contract.

G1.2C Subject to clause G1.3, G1.5, G1.6 and G1.12, the Provider shall indemnify the Authority and keep the Authority indemnified against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) which may arise out of, or in consequence of the Provider's acts or omissions or Defaults in the supply, or the late or purported supply, of the Services or the Provider's acts or omissions or Defaults in the performance or non-performance of its obligations under the Contract or the presence of the Provider or any Staff on the Premises, including financial loss arising from any Defaults in the acts or omissions in the advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider.

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

G1.4 Responsibility for the control, management and supervision of all Participants shall rest entirely with the Provider subject to the Participant complying with all reasonable

instructions and directions which the Provider may issue to the Participant from time to time. The Authority shall not be liable for any personal injury, disease or death, or loss or damage whatsoever caused, by any act or omission of a Participant, except to the extent (if any) that it was also caused or contributed to by the negligent act or omission or wilful Default of some other person acting as a servant or agent of the Authority.

G1.5 Subject always to clause G1.1 and without prejudice to clause H2, the liability of either Party for Defaults, under this Contract, shall be subject to the following financial limit:

(a) the annual aggregate liability under the Contract of either Party for all Defaults (other than a Default governed by clauses E8.4 (Intellectual Property Rights) E2.16 (Protection of Personal Data) or G1.4) shall in no event exceed 75% of the Contract Price paid or payable by the Authority to the Provider in the year in which the liability arises.

G1.6 Subject always to clauses E2.16, G1.1, and G1.2, in no event shall either Party be liable to the other for any:

- (a) loss of profits, business, revenue or goodwill; and/or
- (b) loss of savings (whether anticipated or otherwise); and/or
- (c) indirect or consequential loss or damage.

G1.7 The Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of the Contract.

G1.8 The Provider shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.

G1.9 The Provider shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

G1.10 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

G1.11 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract. It shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any liability referred to in clause G1.2.

G1.12 The Authority shall take all reasonable steps to mitigate any claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) that are subject to the indemnities set out in G1.2.

G2 Professional Indemnity

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

G3 Warranties and Representations

The Provider warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Provider;
- (b) in entering the Contract it has not committed any fraud;
- (c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver,

administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;

- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) in the three (3) years prior to the date of the Contract:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (i) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

G4 Parent Company Guarantee

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

- (a) execute and deliver to the Authority the Guarantee; and
- (b) deliver to the Authority a certified copy of the board minutes of the Guarantor approving the execution of the Guarantee.

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

G5 New Parent Company Guarantee

On or about the date of the Third Variation Date (and in any event within 10 Working Days of the Third Variation Date), the Provider shall procure that the Guarantor shall:

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

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

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency and Change of Control

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

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in H1.1 (a)-(g) occurs under the law of any other jurisdiction.

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

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

H1.3 The Provider shall notify the Authority immediately if the Provider undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010

("Change of Control"). The Authority may terminate the Contract by notice in writing with immediate effect within six Months of:

- (a) being notified that a change of control has occurred; or
- (b) where no notification has been made, the date that the Authority becomes aware of the change of control,

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

H2 Termination on Default

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

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

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

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

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

H2.3 If:

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

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

- H2.4 In the event that the Provider's performance of the Services is such that any Service Termination Threshold is reached or exceeded, this shall be deemed to be a Default in respect of which the Authority shall be entitled, without prejudice to its other remedies under the Contract, to terminate under clause H2.
- H2.5 In the event that through any Default of the Provider, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- H2.6 If the Authority fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Provider may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C3.1 (Recovery of Sums Due).
- H2.7 The Authority may terminate this Contract by issuing a written notice to the Provider if any of the circumstances set out in paragraph 5 of Appendix 13 (Financial Distress) occur and termination shall take effect from the date stated in that notice.
- H3 Break
- The Authority shall have the right to terminate the Contract at any time by giving six (6) Months' written notice to the Provider. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Provider during the period of extension.
- H4 Consequences of Expiry or Termination
- H4.1 Where the Authority terminates the Contract under clause F5.4 or F5.6 (Remedies in the Event of Inadequate Performance) or clause H2 (Termination on Default) and then makes other arrangements for the supply of Services, then subject always to clause G1.5 (but not G1.6) the Authority may recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause F5.4 or F5.6 (Remedies in the Event of Inadequate Performance) or clause H2 (Termination on Default), no further payments shall be payable by the Authority to the Provider until the Authority has established the final cost of making those other arrangements.
- H4.2 Subject to clause H4.3, where the Authority terminates the Contract under clause H3 (Break), the Authority shall indemnify the Provider against any commitments, liabilities, or expenditure which would otherwise represent an unavoidable loss by the Provider by reason of the termination of the Contract, provided that the Provider takes all reasonable steps to mitigate such loss. Where the Provider holds insurance, the Provider shall reduce its unavoidable costs by any insurance sums available. The Provider shall submit a fully itemised and costed list of such loss with supporting evidence of losses reasonably and actually incurred by the Provider as a result of termination under clause H3 (Break), which may include (without limitation) any Fixed Cost True Up Payment calculated at the point of termination in accordance with paragraph 6 of Appendix 12 and any Profit True Up Payment calculated in accordance with paragraph 7 of Appendix 12. Any payment paid by the Authority in

accordance with this clause H4.2 shall be in full and final settlement of any claim, demand and/or proceedings of the Provider in relation to any termination by the Authority pursuant to clause H3 (Break), and the Provider shall be excluded from all other rights and remedies it would otherwise have been in respect of any such termination.

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

- (a) was claimable under insurance held by the Provider, and the Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the Provider under the Contract, exceeds the total sum that would have been payable (based on the Operative Clearance Profile applicable at the date of termination under clause H3 (Break)) to the Provider if the Contract had not been terminated prior to the expiry of the Contract Period.

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

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

and on the expiry or termination of this Contract:

- (c) within thirty (30) Working Days of the Service Transfer End Date, unless specified by the Authority in written notice to the Provider, the Provider shall account to the Authority for and in respect of all Service Credits and all No Pay Amounts and all Clinic Adjustment Sums and all Home Adjustment Sums and without prejudice to the Authority's right to recover any such amounts as sums due from the Provider, or deduct such amounts from any sums due under clause C3.1 (Recovery of Sums Due) of the Contract or otherwise:

- (i) in the event that any sum is to the Authority's account, the Authority shall be entitled to submit an invoice in such sum to the Provider; and
 - (ii) in the event that any sum is to the Provider's account, the Provider shall be entitled to submit an invoice in such sum to the Provider;

and in either case the addressee of the invoice shall pay the invoice within thirty (30) Working Days of the date of the invoice; and

- (d) unless specified by the Authority in written notice to the Provider, within thirty (30) Working Days of the Excess Profit amount for the relevant Profit Share Period being approved by the Authority at the Contract Delivery Board following the Service Transfer End Date, the Provider shall:

- (i) account to the Authority for and in respect of Profit for the relevant Profit Share Period in compliance with Part E (Profit Share) of Appendix 4 of the Contract, and without prejudice to the Authority's right to recover any such amounts as sums due from the Provider, or deduct such amounts from any sums due under such paragraph 2 of such Part E or under clause C3.1 (Recovery of Sums Due) of the Contract or otherwise; and
- (ii) pay the Authority's share of the Excess Profit in accordance with paragraph 2.2 of such Part E within such thirty (30) Working Day period.

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

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

H4.6 Not Used.

H5 Disruption

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

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

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

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

- H5.5 If the Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Authority, an appropriate allowance by way of extension of time will be approved by the Authority. In addition, the Authority will reimburse any additional expense reasonably incurred by the Provider as a direct result of such disruption.
- H5.6 The Provider shall have a Business Continuity Plan in place, agreed with the Authority by 23/05/13, to ensure that the Service to the Authority will be maintained in the event of disruption (including, but not limited to, disruption to information technology systems) to the Provider's operations, and those of Sub-contractors to the Provider, however caused. Such contingency plans shall be available for the Authority to inspect and to practically test at any reasonable time, and shall be subject to regular updating and revision throughout the currency of the contract.
- H6 Recovery upon Expiry or Termination
- H6.1 At the expiry or earlier termination of the Contract Period (howsoever arising) the Provider shall immediately deliver to the Authority or as directed upon request all Property (including materials, documents, information and access keys) used in the performance of its obligations under the Contract in its possession or under its control or in the possession or under the control of any permitted suppliers or Sub-contractors and in the event the Provider fails to do so, the Authority may recover possession thereof and the Provider grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted suppliers or Sub-contractors where any such items may be held.
- H6.2 At the expiry or earlier termination of the Contract Period (howsoever arising) and/or after the Contract Period, the Provider shall provide assistance to the Authority and any Replacement Provider in order to ensure an effective handover of all work then in progress, including as set out in Appendix 12 (Exit and Service Transfer Arrangements). Where the end of the Contract Period arises due to the Provider's Default, the Provider shall provide such assistance at nil charge. Where the Contract ends for other reasons the Authority shall pay the Provider's reasonable costs of providing the assistance (as such costs are capped in either a Service Transfer Plan or further to a Transition Price Review, or as otherwise provided for in Schedule 12A) and the Provider shall take all reasonable steps to mitigate such costs.
- H6.3 The Authority shall for a period of twelve (12) Months following expiry or termination (howsoever arising) of the Contract (or until the date on which the Provider fulfils all its duties and responsibilities pursuant to the Exit and Service Transfer Arrangements, if later) be entitled to require access to data and such information relating to and arising from the Services from the Provider as remains in the possession or control of the Provider.
- H6.4 On any Transition, the Provider shall comply with the provisions of clauses H6.1 to H6.3 in so far as they apply to any Services removed as a result of that Transition.
- H7 Force Majeure
- H7.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six (6) Months, either Party may terminate the Contract with immediate effect by notice in writing.

- H7.2 Any failure or delay by the Provider in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Provider.
- H7.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause H7.1 it shall immediately notify the other Party by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

I DISPUTES AND LAW

I1 Governing Law and Jurisdiction

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

I2 Dispute Resolution

- I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute ultimately to the Commercial Director (or such other person as he may direct) of each Party.
- I2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- I2.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I2.5 unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Provider does not agree to mediation.
- I2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Provider and its Staff shall comply fully with the requirements of the Contract at all times.
- I2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (the “Mediator”) shall be chosen by agreement between the Parties, or if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator, or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to a mediation provider to appoint a Mediator.
 - (b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to

be held. If considered appropriate, the Parties may at any stage seek assistance from a mediation provider to provide guidance on a suitable procedure.

- (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
- (f) If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 12.6.

12.6 Subject to clause 12.2, the Parties shall not institute court proceedings until the procedures set out in clauses 12.1 and 12.3 have been completed save that:

- (a) the Authority may at any time before court proceedings are commenced, serve a notice on the Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7.
- (b) if the Provider intends to commence court proceedings, it shall serve written notice on the Authority of its intentions and the Authority shall have twenty one (21) days following receipt of such notice to serve a reply on the Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7.
- (c) the Provider may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with clause 12.7, to which the Authority may consent as it sees fit.

12.7 In the event that any arbitration proceedings are commenced pursuant to clause 12.6:

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- (b) the Authority shall give a written notice of arbitration to the Provider (the **"Arbitration Notice"**) stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;
- (c) the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration in accordance with 12.7 (b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

- (d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (e) if the Parties fail to agree the appointment of the arbitrator within ten (10) days of the Arbitration Notice being issued by the Authority under clause 12.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

13 Records

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

APPENDIX 1 – THE SERVICES

Provider note the information required within this Appendix will be detailed in the Order Form at each Call off

1 General

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

Document	Dated
Specification	As defined at A1.1
Providers Tender	Submitted 21 May 2012
PIP Assessment Guide	See Supplying DWP website https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/519147/pip-assessment-guide.pdf
HMG Baseline Personnel Security Standard – a Guide for DWP Contractors	See Supplying DWP website

2 Plan to Set Up and Mobilise Operations

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

Activity	Date (As stated below or such other date that has been agreed in writing by the parties)
Security Accreditation in place	01/05/13: Lot 2
Business Operational Report by:	<ul style="list-style-type: none">17.5.13: Lot 2 (New Claims full roll-out)15.8.13 (Reassessment Controlled go-live)15.11.13 (Reassessment full roll-out)
Operational Readiness Confirmation by:	<ul style="list-style-type: none">23.05.13 Lot 2 (New Claims full go live)

3 Paragraph not in use

4 Working Hours

- 4.1 The Services shall be carried out at the following times; Monday to Friday from 8am to 8pm, but the Provider may at its discretion also carry out Services on a Saturday from 8am to 8pm.

5 Recruitment Through Jobcentre Plus

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

6 Annexes

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

- Annex A – List of Authority's Property
- Annex C – Provider's Anticipated Resource Structure
- Annex D – Provider and Sub-contractor Key Staff
- Annex E – Approved Sub-contractors
- Annex F – Site Areas
- Annex G – List of Management Information Requirements
- Annex H - Authority Obligations

Annex A – List of Authority's Property

1 Introduction

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

1.2 List of Authority Property:

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

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

Annex B

CV Number	Title of Change	Effective Date
CV CL2 01	Baselining Variation (including payment of DS1500s)	24.03.2014
CV CL2 02	PIPAT HP Resource	09.02.13
CV CL2 03	Rate for Reimbursement of Claimant Travel Expenses	10.06.2013
CV CL2 04	Removal of PA1	01.06.13
CV CL2 05	Re-work	10.06.2013
CV CL2 06	Audio Recording by Claimants	10.06.13
CV CL2 07	Unacceptable Claimant Behaviour	18.07.2014
CV CL2 08	PIP - Suspension of SLA 10	01.02.2014 to 31.07.2014
CV CL2 09	Claimant Enquiry Telephone Number	01.03.2014
CV CL2 10	Capita Room Size	11.02.2014
CV CL2 11	PIP Flyer	31.12.2014
CV CL2 12	Capita Heads of Terms Incentivisation on clearance of backlogs	10.04.2014 - 14.12.2104
CV CL2 13	Appendix 2 update	26.06.2014
CV CL2 14	Annex E Updates	31.07.2014
CV CL2 15	Claimants Living Abroad	07.08.2012
CV CL2 16	Change of Contract address	15.02.15
CV CL2 17	Call-Off Terms and Conditions (removal of requirement for monthly backup data)	08.10.2014
CV CL2 18	Changes to the HOT agreement	10.04.2014 - 14.12.2104
CV CL2 19	Changes to HP Criteria	02.06.2014
CV CL2 20	HP Approval Process	18.01.2018
NA	Supplementary Agreement	15.06.2015 to 14.10.2015

CV Number	Title of Change	Effective Date
N/A	Second Extension to Supplementary agreement	01.12.2015 to 31.01.2016
N/A	Third Extension to Supplementary agreement	01.02.2016 to 29.02.2016
N/A	Second Variation and Agreement relating to Personal Independence Payments Assessment Service	02.06.2016
CVCL2 21	Change to SRTI Service Level	01.05.18
CVCL2 21	GDPR	25.05.2018
CV CL23	PAT Clauses	13.05.2019

Annex C – Provider’s Anticipated Resource Structure Lot Specific and Overarching

[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]	[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]	[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]

Organisation Chart Lot 2 – Central England Wales
Overarching Organisation Chart

[REDACTED]

Annex D – Provider and Sub-contractor Key Staff

CONTRACTOR STAFF

FOR THE PROVISION OF: Personal Independence Payment (PIP) Assessment Service

LOT: Lot 2 Central England / Wales

Job Role	Numbers in Role (Av FTEs Year 2)	Percentage of time spent on PIP	Other duties undertaken outside of PIP
[REDACTED]	[REDACTED]	100%	N/A
[REDACTED]	[REDACTED]	100%	N/A
[REDACTED]	[REDACTED]	100%	N/A
[REDACTED]	[REDACTED]	100%	N/A
[REDACTED]	[REDACTED]	100%	N/A
[REDACTED]	[REDACTED]	100%	N/A
[REDACTED]	[REDACTED]	100%	N/A
[REDACTED]	[REDACTED]	100%	N/A
[REDACTED]	[REDACTED]	100%	N/A
[REDACTED]	[REDACTED]	100%	N/A
[REDACTED]	[REDACTED]	100%	N/A
[REDACTED]	[REDACTED]	100%	N/A
[REDACTED]	[REDACTED]	100%	N/A
[REDACTED]	[REDACTED]	100%	N/A

SUB-CONTRACTOR STAFF

LOT: Lot 2 Central England / Wales

Job Role	Numbers in Role	Percentage of time spent on PIP	Other duties undertaken outside of PIP
[REDACTED]	[REDACTED]	<15%	Same duties for other clients
[REDACTED]	[REDACTED]	<15%	Same duties for other clients
[REDACTED]	[REDACTED]	<15%	Same duties for other clients
[REDACTED]	[REDACTED]	0	Same duties for other clients
[REDACTED]	[REDACTED]	<15%	Same duties for other clients
[REDACTED]	[REDACTED]	<15%	Same duties for other clients
[REDACTED]	[REDACTED]	0	Same duties for other clients
[REDACTED]	[REDACTED]	<15%	Same duties for other clients
[REDACTED]	[REDACTED]	<15%	Same duties for other clients
[REDACTED]	[REDACTED]	<15%	Same duties for other clients
[REDACTED]	[REDACTED]	0	Same duties for other clients
[REDACTED]	[REDACTED]	100%	Same duties for other clients
[REDACTED]	[REDACTED]	<15%	Same duties for other clients

Annex E – Approved Sub-contractors

SCHEDULE OF APPROVED SUB-CONTRACTOR'S

FOR THE PROVISION OF: Personal Independence Payment (PIP) Assessment Service

LOT: Lot 2 Central England / Wales

ORGANISATIONS PROPOSED TO DELIVER SPECIFIC ELEMENTS OF THE SERVICE

NAME OF ORGANISATION	TYPE OF ORGANISATION Private, Public or Third Sector	ELEMENT(S) OF PROVISION TO BE DELIVERED BY THE ORGANISATION	ACTUAL DELIVERY LOCATION(S)	HOW MUCH OF THE SERVICE THEY WILL BE PROVIDING (%)
Disability Rights UK (DRUK)	Third Sector	Consulting	Locally in Region	< 1%
Assist UK	Third Sector	Consulting & Consultation Centres audits	Locally in Region	< 1%
Ciber	Private Sector	IT Development	Centralised	< 5%
Regus	Private Sector	Provision of temporary Consultation Centres	Locally in Region	< 1%
Circle of Health	Private Sector	Provision of temporary Consultation Centres	Locally in Region	< 1%
NHS – Heart of England FT	Public Sector	Provision of temporary Consultation Centres	Locally in Region	< 1%
WNDA (West Norfolk Deaf Association)	Private Sector	Provision of temporary Consultation Centres	Locally in Region	< 1%

NAME OF ORGANISATION	TYPE OF ORGANISATION Private, Public or Third Sector	ELEMENT(S) OF PROVISION TO BE DELIVERED BY THE ORGANISATION	ACTUAL DELIVERY LOCATION(S)	HOW MUCH OF THE SERVICE THEY WILL BE PROVIDING (%)
Access Independent	Private Sector	Contingency provision of HPs	Locally in Region	< 1%
APM UK Ltd	Private Sector	Contingency provision of HPs	Locally in Region	< 1%
ICS	Private Sector	Contingency provision of HPs	Locally in Region	< 1%
Pegasus Medical Locums	Private Sector	Temporary provision of HPs	Centralised	< 1%
Sungard Availability Services (UK)	Private Sector	Business Continuity	Locally in region	< 1%
WARP Technologies Limited	Private Sector	IT development	Centralised	< 5%

Annex F – Site Areas

Phase 1

Framework Lot	Government Office Region	Local Authority within which the site resides	Full Postcode	Address	Local Authority area(s) the Site will serve	Supply Chain Partner name	Site Provider Name

Phase 2

Framework Lot	Government Office Region	Local Authority within which the site resides	Full Postcode	Address	Local Authority area(s) the Site will serve	Supply Chain Partner name	Site Provider Name

Annex G – List of Management Information Requirements

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

Management Information Required	Frequency/Date Required
Submit copy of Board Minutes for Parent Company where PCG has been signed	On or about the effective date (and in any event no later than the first Commencement Date)
Full and final Security Plan in accordance with Appendix 6	Within twenty (20) Working Days after the Commencement Date (unless some other date is agreed in writing by the parties) and reviewed at least annually thereafter.
Sustainable Development Policy Statement & Sustainable Development Plan in accordance with Appendix 7	By 01/07/13 and annually thereafter.
Diversity & Equality Delivery Plan in accordance with Appendix 8	By 10/05/13 and at least annually thereafter.
Workforce Monitoring Declaration in accordance with Appendix 8	By 01/08/13 and at least annually thereafter.
Apprenticeships & Skills Report in accordance with Appendix 10	By 10/05/13 and annually thereafter.
HMG Baseline Personnel Security Standard - Provider's Declaration see HMG Baseline Personnel Security Standard - A Guide for DWP Contractors	Within four (4) weeks of contract start date and submitted for each calendar year thereafter within one Month of the end of each calendar year (i.e. by 31 st January for year ending 31 st December)

Annex G Management Information

No	MI Information	Report Level & Duration	Definition/further information
1	<p>Further Medical Evidence</p> <p>a) Number and % of referrals where FME is requested.</p> <p>b) Average number of days taken to obtain medical evidence (includes requesting further evidence where appropriate).</p> <p>c) Number of requests from the Dept for the Provider to provide Further Medical Evidence</p>	<p>a) Lot, Region and Sub-Region. And by individual HP if requested. Monthly.</p> <p>b) Lot, Region and Sub-Region. Monthly with a weekly breakdown</p> <p>c) Lot, Region and Sub-Region. Monthly.</p>	<p>a). A count of the number of referrals where Further Medical Evidence is requested by the Provider and the percentage of referrals where Further Medical Evidence is request by the Provider.</p> <p>b). Calculation of the average number of days taken to obtain medical evidence.</p> <p>c), Number of requests to the Provider from the DWP, to request further medical evidence, after an assessment report has been completed.</p>
2	<p>Number of requests for advice from DWP.</p>	<p>Lot. Monthly.</p>	<p>The Provider must provide the number of requests for supplementary advice reports received from DWP (no categorisation will be needed).</p>
3	<p>Provide a Continuous improvement regime report each Quarter, setting out priorities for the next Quarter, taking into account any areas that the Authority may request are addressed in such report.</p> <p>Specifics could include the following:-</p> <ul style="list-style-type: none"> • Improved quality of service; 	<p>Lot, Region and Sub-Region (to be confirmed following agreement of processes).</p> <p>Quarterly</p>	<p>Narrative report on action Provider is taking to: (a) identify performance issues, what issues have been identified and the action being taken to improve these; and (b) any actions proposed in response to any other areas included in the report.</p>

	<ul style="list-style-type: none"> • Service levels, e.g. faster turnaround times for referrals, etc.; • More medical resources through use of Health Providers; • Better quality reports and quality of information to DMs; • Improved scheduling of appointments; • Effective communications through use of call centres, etc.; • Reduction in non-attendance at consultation; • Improved value for money; 		Requires supporting data from Provider.
4	Outstanding workload – to monitor actuals against expected head of work.	Lot, Region and Sub-Region. Weekly AND Monthly.	<p>The Provider must provide a count of the Provider's outstanding workload.</p> <p>DWP will fit the date into the agreed RAG ranges.</p>
5	% of claimants Unable to Attend (" UTA ") against the total number of outstanding appointments.	Lot, Region and Sub-Region. Monthly	<p>The Provider must calculate the total number and percentage of Unable To Attends ("UTA") recorded (cancelled appointments), against the number of appointments that are within the reporting period.</p> <p>Of total appointments booked in month, what percentage were UTA</p> <p>Total UTA Booked %</p> <p>Note: UTA MI must include Home Consultations.</p>

6	<p>Claimant Special Requirements e.g. interpreters, Same Sex HCP (x-ref SLA 13):-</p> <ul style="list-style-type: none"> a) number of requests; b) number and % of special requirements met. 	<p>a) Lot, Region and Sub-Region. Quarterly.</p> <p>b) Lot, Region and Sub-Region. Quarterly.</p>	<p>a). The Provider must provide a count of the number of Special Requirements requested</p> <p>b). The Provider must provide a count of the number of Special Requirements met and the percentage of Special Requirements that are met.</p>
7	Average Consultation time (including home consultations)	Lot, Region and Sub-Region. Monthly with weekly breakdown.	The Provider must provide the average time (in minutes) of all face-to-face consultations (the time where claimant is present with the HP).
8	% of Failure to Attend ("FTA") against the total number of appointments scheduled.	Lot, Region and Sub-Region. Monthly	<p>The Provider must calculate the total number and percentage of Failure To Attends ("FTA") recorded, against the number of outstanding appointments that are within the reporting period.</p> <p>Of total appointments booked in month, what percentage FTA</p> <p>Total FTA Booked x %</p> <p>This will include any home visits (where claimant is not at home at the time of their appointment)</p>
9	Time taken for an assessment report to be completed following consultation.	Lot, Region and Sub-Region. Monthly with a weekly breakdown.	<p>The Provider must provide:</p> <ul style="list-style-type: none"> 1) the average time (in minutes) that HPs take to complete their assessment reports following a consultation. This should not include

			<p>the time taken to rekey any information from one system to another or from a clerical form into an online system but the time the HP takes to complete their deliberations and write-up; and</p> <p>2)</p> <p>3) the number of assessment reports completed in a reporting period which were completed no later than one (1) Working Day following the relevant Consultation, expressed as a percentage of the total number of assessment reports (completed within the relevant reporting period).</p>
10	<p>Number and clearance times for DWP referrals for advice. (x-ref SLA SC6A and SC6B).</p> <p>a) Number of advice requests received</p> <p>b) Number of advice requests cleared</p> <p>c) Number of days taken to clear advice requests</p> <p>d) Number of outstanding advice requests</p> <p>e) Number of Working Days associated to all outstanding advice requests</p>	<p>Lot and Region.</p> <p>Weekly AND monthly</p>	<p>The Provider must provide a count of the number of DWP advice referrals completed and provide listings of the clearance times of all DWP advice referrals.</p> <p>Verbal advice is not required as part of the MI.</p>

	at the end of the Month		
11	<p>Claimant and DWP/Provider call waiting time (x-ref SLA SC8A and SC8B):-</p> <ul style="list-style-type: none"> a) number and % of calls answered within 30 seconds b) number and % of calls answered over 30 seconds c) number and % of calls lost. 	<ul style="list-style-type: none"> a) Lot, Region Weekly with a Daily breakdown AND Monthly b) Lot, Region Weekly with a Daily breakdown AND Monthly c) Lot, Region Weekly with a Daily breakdown AND Monthly 	<p>a). The Provider must provide a count of the number of calls answered and the percentage of calls answered within 30 seconds.</p> <p>b). The Provider must provide a count of the number of calls answered and the percentage of calls answered over 30 seconds</p> <p>c). The Provider must provide a count of the number and percentage of calls lost</p> <p>Note: 'answered' is when DWP/claimant begins speaking to an agent.</p> <p>Calls Lost. 'Lost' defined as calls abandoned before they are answered by an agent.</p> <p>a), b) and c) should be broken down by caller types:</p> <p>Claimant DWP</p>
12	<p>Claimant Satisfaction results relating to the quality of service provided (x-ref SLA SC9).</p>	<p>Lot, Region and Sub-Region. Quarterly/Annually</p> <p>(Supported by MI provided monthly)</p> <p>To be confirmed following agreement of claimant satisfaction processes.</p>	<p>The Provider must provide a report that lists the Claimant Satisfaction results that relate to the quality of service. This is a requirement within the specification see paragraph 23 P37. The sample size will be statistically validated and work is ongoing and will be shared once completed.</p>

13	<p>Number and clearance times of paper based review activity, to decide on whether further medical evidence is required or to arrange F2F.</p> <ul style="list-style-type: none"> a) Number of initial reviews received b) Number of initial reviews cleared c) Number of days taken to clear each review d) Number of initial reviews outstanding e) Number of days that outstanding initial reviews have been outstanding 	Lot, Region and Sub-Region. Monthly	The Provider must provide a count of the number of paper-based review 'Initial Review's' activities completed and listed clearance times of paper-based review 'Initial Review's' activities.
14	<p>Waiting Time (x-ref SLA SC11A and SC11B):-</p> <ul style="list-style-type: none"> a) Consultation Centre - % of claimants seen within 30 minutes of their appointment time ; b) Home Consultation - % of claimants examined within 60 minutes of their appointment time. 	<ul style="list-style-type: none"> a) Lot, Region and Sub-Region. Monthly, Rolling 12 Months. b) Lot, Region and Sub-Region. Monthly, Rolling 12 Months. 	<p>a). The Provider must calculate the percentage of claimants seen at a consultation centre (or mobile unit) within 30 minutes of their appointment time (Including mobile units).</p> <p>b). The Provider must calculate the percentage of claimants that are examined within 60 minutes of their Home Consultation appointment time</p> <p>Frequency - Required each month from day 1 for the first 12 months, then monthly and on a rolling 12 month basis. IE - 2 reports required – Monthly percentage and a Rolling 12 month percentage.</p>
15	Number and % of reasons why claimant is sent home unseen - where onus is on the claimant:-	Lot, Region and Sub-Region., Monthly, Rolling 12 Months.	The Provider must provide a count of the number of claimants that are sent home unseen where the onus is on the

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

	<p>did not attend for session;</p> <ul style="list-style-type: none"> • System performance problems; - Provider • Accommodation problem e.g. Flooding, bomb scare 		<p>months, then monthly and on a rolling 12 month basis. IE - 2 reports required – Monthly percentage and a Rolling 12 month percentage.</p>
17	<p>CPD for Medical Personnel Deliver an agreed Training Needs Analysis (TNA) by 31 May each year. (x-ref SLA 3)</p>	Lot. Annual	<p>CPD for Medical Personnel:</p> <p>Deliver an agreed Training Needs Analysis (“TNA”) by 31 May each year.</p> <p>Additional – Will not apply for year 1 (Due 31 May 2014) as all training will be initial training</p>
18	<p>CPD for Medical Personnel: Deliver Training Programme by 31 July each year. (x-ref SLA SC13)</p>	Lot. Annual	<p>CPD for Medical Personnel:</p> <p>Deliver Training Programme by 31 July each year.</p> <p>Additional – Will not apply for year 1 (Due 31 July 2014) as all training will be initial training</p>
19	<p>Training for Medical Personnel: Deliver Training Plan by 31 July each year. (x-ref SLA 4)</p>	Lot. Annual	<p>Training for Medical Personnel:</p> <p>Deliver Training Plan by 31 July each year.</p> <p>HWD will work with Providers separately on this.</p>
20	<p>Annual training evaluation report:</p> <p>Deliver a training evaluation report by 30</p>	Lot. Annual	<p>Annual training evaluation report:</p> <p>Deliver a training evaluation report by 30</p>

	November each year (x-ref SLA 5)		November each year Will not apply for year 1 (Due 30 November 2014) as all training will have been initial training
21	<p>Complaints</p> <p>a) Response Times (x-ref SLA 1):–</p> <p>i) number and clearance times of acknowledgements made;</p> <p>ii) number and clearance times of full responses made</p> <p>b) Quality of Responses - % of all responses that are 'fit for purpose' (x-ref SLA 2)</p> <p>c) Complaints against HP after a consultation - % of consultations conducted that result in a complaint against HP (x-ref SLA 6).</p> <p>d) Serious complaints against HP after consultation – Number of consultations conducted that result in a</p>	<p>a) Lot, Region and Sub-Region. Monthly with a weekly breakdown</p> <p>b) Lot, Region and Sub-Region. Monthly with a weekly breakdown. (subject to agreement of audit processes)</p> <p>c) Lot & Individual HP. Monthly for first 12 months, then Rolling 12 Months</p> <p>d) Lot & Individual HP. Monthly for first 12 months, then rolling 12 months.</p> <p>e) Lot & Individual HP. Monthly.</p> <p>f) Lot. Monthly.</p> <p>g) Lot. Monthly</p>	<p>a, i). The Provider must provide the number of complaint acknowledgements issued by the Provider and provide listings of clearance times of complaint acknowledgements made</p> <p>ii) The Provider must provide the number of full complaint responses issued and provide listings of clearance times of full responses issued.</p> <p>Total Acknowledgements Complaints received x %</p> <p>b). The Provider must calculate the percentage of full responses to complaints that are 'fit for purpose.</p> <p>c). Percentage of face to face consultations that result in a complaint against the assessing HP</p> <p>d). Number of face to face consultations that result in a serious complaint against the assessing HP.</p> <p>All MI around serious complaints must contain reasons for complaint and outcomes.</p>

	<p>serious complaint against the HP (x-ref SLA 7).</p> <p>e) Complaints and serious complaints, with reasons and outcomes – Number of HPs with more than 3 complaints in 3 months (x-ref SLA 8)</p> <p>f) Total number of outstanding complaints.(x-ref SLA 1)</p> <p>g) Total number of days associated to all outstanding complaints. (x-ref SLA1)</p>		<p>e). The number of serious complaints with reasons and outcomes and the number of HPs with more than 3 complaints in a rolling 3 monthly basis. Must be broken down by individual HP.</p> <p>f) The Provider must provide the total number of all complaints outstanding. IE - that have not had a response issued.</p> <p>g) The Provider must provide a count of the total number of days associated to all of the complaints that are outstanding in f).</p>
22	<p>Payment of claimant (companion) travelling expenses (x-ref SLA 14):-</p> <p>a) Number of claims received</p> <p>b) Number of claims cleared</p> <p>c) Number of claims paid</p> <p>d) Number of days taken to pay each claim that Provider has agreed to pay</p>	<p>a) Lot. Monthly</p> <p>b) Lot. Monthly</p> <p>c) Lot. Monthly</p> <p>d) Lot. Monthly</p>	<p>a). The Provider must provide a count of the number of travelling expenses requests received</p> <p>b) The Provider must provide listings of clearance times of processing payment of claimant travelling expenses</p> <p>c). The Provider must provide a count of the number of travelling expenses payments issued</p> <p>d) The Provider must provide the number of days taken to pay each claim</p>
23	No longer used		

24	% of TI referrals advised TI at paper based review	Lot, Region and Sub-Region. Also by individual HP if requested. Monthly	Calculate the percentage of TI referrals that are deemed TI
25	% of Paper Based Reviews where the advice is that claimant is subsequently called for face to face consultation (prior to DM decision)	Lot, Region and Sub-Region. Also by individual HP if requested. Monthly	Percentage of Initial Reviews (not paper based reviews) that result in a face to face consultation required.
26	No longer used		
27	% of Paper Based Reviews and Consultation Assessments where different reassessment periods are advised (prognosis) (prior to DM decision).	Lot, Region and Sub-Region. Also by individual HP if requested. Monthly	<p>Percentage of completed assessment reports where recommended case reviews are within each defined planned intervention period group.</p> <p>Defined intervention periods are as follows:</p> <p>Different reassessment periods are defined as:</p> <p><9 months (PT)</p> <p>>9 - 12 months</p> <p>>12 - 24 months</p> <p>>2 - 5 years</p> <p>> 5 years</p> <p>Change unlikely</p> <p>Functional restriction Daily Living activities present more than 3 months (QP)</p> <p>Functional restriction Mobility activities present more than 3 months (QP)</p> <p>Functional restriction not present at recommended point of review (fixed award)</p>

28	Provide a medical quality report; specifics to include information relating to MI items 1, 24, 25 and 27.	Lot, Region and Sub-Region. Also by individual HP if requested. Monthly	<p>Providers must provide report that will include information relating to MI requirement 1, 24, 25 and 27. It should include analysis and action taken against under-performance</p> <p>Granularity of the report should include any granularity relevant to that which is being reported.</p>
29	<p>Outputs by unique identifier:-</p> <p>a) Number of FME paid by name of General Practitioner (“GP”).</p> <p>b) Number of Paper Based Review assessments completed</p> <p>c) Number of Face to Face consultation assessments completed.</p>	<p>a) Lot, Region and Sub-Region. Monthly.</p> <p>b) Lot, Region and Sub-Region. Monthly.</p> <p>c) Lot, Region and Sub-Region. Monthly.</p>	<p>Unique identifier – working assumption provided – NINO</p> <p>a) A count of the number of payments for FME made, with a breakdown of GP name.</p> <p>b) A count the number of paper based review assessments completed by a HP.</p> <p>c) A count of the number of face-to-face consultation assessments completed by a HP</p>
30	<p>Quality of Assessment reports derived from the audit of reports: “Unacceptable Reports” (x-ref SC1).</p> <p>a) Number of reports completed.</p> <p>b) Number of reports audited.</p>	Lot, Region and Sub-Region. Monthly.	Providers to use the Lancaster Model for sample sizing.

	c) Number of reports classed as "Unacceptable Reports" d) Percentage of reports classed as "Unacceptable Reports"		
31	Quality of assessment reports derived from the audit of reports: grade "Acceptable" (x-ref Service Level 15) a) Number of reports completed. b) Number of reports audited. c) Number of reports classed as "Acceptable" d) Percentage of reports classed as "Acceptable"	Lot, Region and Sub-Region. Monthly.	Providers to use the Lancaster Model for sample sizing.
31 A	Quality of assessment reports derived from the audit of reports: "Acceptable HP Learning Required" (x-ref Service Level 15) a) Number of reports completed. b) Number of reports audited. c) Number of reports classed as "Acceptable HP Learning Required" d) Percentage of reports classed as "Acceptable HP Learning Required"	Lot, Region and Sub-Region. Monthly.	Providers to use the Lancaster Model for sample sizing.
31 B	Quality of assessment reports derived from the audit of reports: "Acceptable Report Amendment Required" a) Number of reports completed. b) Number of reports audited. c) Number of reports classed as "Acceptable Report Amendment Required"	Lot, Region and Sub-Region. Monthly.	Providers to use the Lancaster Model for sample sizing.

	d) Percentage of reports classed as "Acceptable Report Amendment Required"		
32	<p>PIP assessment End to End Process (x-ref SLA SC4(a) and SC4(b))</p> <p>a) The Provider must supply a count of the total number of Normal Rules assessment referrals Cleared, within the reporting period.</p> <p>b) The Provider must supply a count of the total number of Working Days it took for all Normal Rules assessment referrals which are Cleared within the reporting period, to be so Cleared.</p> <p>c) The Provider must supply the AACT for Chargeable Clearances which are Normal Rules Referrals during the Month.</p> <p>d) The Provider must supply a total count of all Normal Rules assessment referrals outstanding with the Provider.</p> <p>e) The Provider must supply the total number of Working Days associated to all Normal Rules assessment referrals that are outstanding with the Provider.</p> <p>f) The Provider must supply the total number of Normal Rules assessment referrals, which, as</p>	<p>a) Lot, Region and Sub-Region. Monthly with Weekly sub-report.</p> <p>b) Lot, Region and Sub-Region. Monthly with Weekly sub-report.</p> <p>c) Lot, Region and Sub-Region as at the end of the Month with Weekly sub-report.</p> <p>d) Lot, Region and Sub-Region. Monthly with Weekly sub-report.</p> <p>e) Lot, Region and Sub-Region as at the end of the Month with Weekly sub-report.</p> <p>f) Lot, Region and Sub-Region as at the end of the Month with Weekly sub-report.</p> <p>g) Lot, Region and Sub-Region as at the end of the Month for that Month and as at the end of</p>	<p>The Average Actual Clearing Time (AACT) is calculated in accordance with the formula set out in the definition of Average Actual Clearing Time.</p>

	<p>at the end of the Month are:</p> <ul style="list-style-type: none"> • fifty six (56) to sixty five (65) Working Days' old (inclusive); • sixty six (66) to seventy five (75) Working Days' old (inclusive); • seventy six (76) to eighty five (85) Working Days' old (inclusive); • eighty six (86) to ninety five (95) Working Days' old (inclusive); • ninety six (96) to one hundred and five (105) Working Days' old (inclusive); and • one hundred and six (106) Working Days' old or more. <p>g) The Provider must supply the number of Referrals within the reporting period, expressed as a percentage of the forecast number for the reporting period as set out in the Operative Forecast</p> <p>h) The Provider must supply the number of Referrals within the reporting period.</p>	<p>the last Month in any Over-referral Period.</p> <p>h) Lot, Region and Sub-Region at the end of each three-Month rolling period.</p>	
33	<p>TI Cases End to End Assessment Process (x-ref SLA SC5(a))</p> <p>a) The Provider must supply a count of the total number of</p>	<p>a) Lot, Region and Sub-Region.</p> <p>Monthly</p> <p>b) Lot, Region and Sub-Region.</p>	<p>SC5(a) is calculated in accordance with Appendix 14 (Annex 1)</p> <p>505(^100%' target is calculated as the number of c) divided by the number</p>

	<p>'T.I.' assessment referrals cleared within the Month.</p> <p>b) The Provider must confirm the total number of Working Days spent on each and every 'T.I.' assessments cleared within the Month.</p> <p>TI Cases End to End Assessment Process (x-ref SLA SC5 (b))</p> <p>c) The Provider must supply a count of the number of 'T.I.' assessment referrals cleared in 5 Working Days, within the Month.</p> <p>d) The Provider must supply a count of the number of 'T.I.' assessment referrals cleared in 6 Working Days or more, within the Month.</p>	<p>Monthly</p> <p>c) Lot, Region and Sub-Region.</p> <p>Monthly</p> <p>d) Lot, Region and Sub-Region.</p> <p>Monthly</p>	<p>of a) x 100</p>
34	<p>Re-work of assessment Reports Deemed Not Fit For Purpose (x-ref SLA SC3).</p> <p>a) The Provider must supply a count of the total number of assessment referrals cleared, within the reporting period.</p> <p>b) The Provider must supply a count of the number of re-work requests received,</p>	<p>a) Lot, Region and Sub-Region. Monthly</p> <p>b) Lot, Region and Sub-Region. Monthly</p>	<p>'%' target is calculated as the number of b) divided by the number of a) x 100</p>

	within the reporting period.		
35	<p>Re-Work (x-ref SLA SC7A and SC7B) Clearance Times</p> <p>a) The Provider must supply a count of the total number of re-work referrals cleared, within the reporting period.</p> <p>b) The Provider must supply a count of the number of re-work referrals cleared in 2 Working Days or less, within the reporting period.</p> <p>c) The Provider must supply a count of the number of re-work referrals cleared in 3 Working Days or more, within the reporting period.</p> <p>d) The Provider must supply a total count of all re-work referrals outstanding with the Provider.</p> <p>e) The Provider must supply the total number of Working Days associated to all re-work referrals that are outstanding with the Provider.</p>	<p>a) Lot, Region and Sub-Region. Monthly</p> <p>b) Lot, Region and Sub-Region. Monthly</p> <p>c) Lot, Region and Sub-Region. Monthly</p> <p>d) Lot, Region and Sub-Region. Monthly</p> <p>e) Lot, Region and Sub-Region, as at the end of the Month</p>	<p>% is calculated as the number of b) divided by the number of a) x 100</p>
36	<p>Re-work where face to face re-examination is required. (x-ref SLA SC14A and SC14B)</p> <p>a) The Provider must supply a count of the number of re-work cases that require face to face re-examinations</p>	<p>a) Lot, Region and Sub-Region. Monthly</p> <p>b) Lot, Region and Sub-Region. Monthly</p>	<p>99% cleared within twenty (20) Working Days (% is calculated as the number of c) divided by the number of a) x 100)</p> <p>No cases older than twenty five (25) Working Days as at the end of the Month.</p>

	<p>received, within the reporting period.</p> <p>b) The Provider must supply a count of the number of re-work cases that require face to face re-examinations cleared, within the reporting period.</p> <p>c) The Provider must supply a count of the number of re-work cases that require face to face re-examination cleared in 20 Working Days or less, within the reporting period.</p> <p>d) The Provider must supply a count of the number of re-work cases that require face to face re-examination cleared in 21 Working Days or more, within the reporting period.</p> <p>e) The Provider must supply a total count of all re-work cases that require face to face re-examination outstanding with the Provider, within the reporting period.</p>	<p>c) Lot, Region and Sub-Region. Monthly</p> <p>d) Lot, Region and Sub-Region. Monthly</p> <p>e) Lot, Region and Sub-Region. Monthly</p> <p>f) Lot, Region and Sub-Region. Monthly</p> <p>g) Lot, Region and Sub-Region, as at the end of the Month</p>	
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	<p>f) The Provider must supply the total number of Working Days associated to all re-work cases that require face to face re-examination that are outstanding with the Provider, within the reporting period</p> <p>g) The Provider must supply a total count of all re-work cases older than twenty five (25) Working Days as at the end of the Month</p>		
37 A	<p>a) Total number of Managed Reassessment case Clinic Consultations which are booked.</p> <p>b) Total number of Managed Reassessment case Clinic Consultations where there is a Failure To Attend.</p> <p>c) Total number of the type of cases referred to in (a) and (b) above where there is a Chargeable Output, expressed both as a number of such cases and as a percentage.</p>	Lot, Region and Sub-Region, as at the end of the Month	The Provider is expected to record Failures To Attend by reference to individual NINOs.
37 B	<p>a) Total number of Managed Reassessment case Home Consultations which are booked.</p> <p>b) Total number of Managed Reassessment case Home Consultations where there is a Failure To Attend.</p> <p>c) Total number of the type of cases referred to</p>	Lot, Region and Sub-Region, as at the end of the Month	The Provider is expected to record Failures To Attend by reference to individual NINOs.

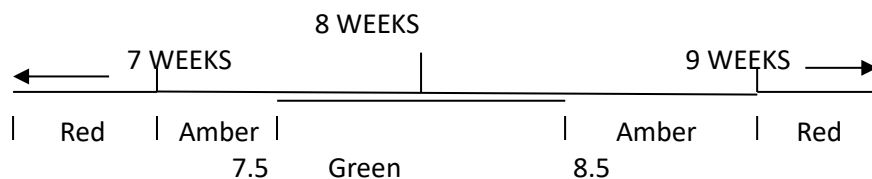
	in (a) and (b) above where there is a Chargeable Output, expressed both as a number of such cases and as a percentage.		
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* **Explanatory note for MI No. 4 above – EXAMPLE.** Note – Actual ranges will differ from example given below.

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

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

Example Timeline;



Annex H – Authority Obligations

1 INTRODUCTION

- 1.1 This Annex sets out the general responsibilities of the Authority under this Agreement. Specific obligations of the Authority which relate to the delivery by the Contractor of the Services are included in the relevant sections of the Specification and other Schedules/Annexes to this Agreement. The purpose of this Annex is to set out expectations of the Authority on which the Contractor relies where failure by the Authority would impact adversely on the Contractor's ability to perform its obligations, but breach of anything in this Annex shall not of itself enable the Contractor to bring any claim against the Authority.

2 GENERAL

- 2.1 The parties acknowledge and accept that the successful delivery of the Authority's business objectives and customer service obligations will require a high degree of co-operation and professionalism from both parties.
- 2.2 To the extent that a Service to be performed by the Contractor involves obtaining the Authority's prior approval, such approval shall not be unreasonably withheld and shall be given in a timely fashion.

3 PROVISION OF INFORMATION

- 3.1 The Authority shall notify the Contractor as soon as reasonably possible (whether verbally, in written form or otherwise as the situation reasonably demands) of all and any information which comes to its attention which affects or may affect the performance of the Services by the Contractor under this Agreement.
- 3.2 The Authority shall use reasonable endeavours to ensure that where any action or decision by the Contractor on any matter relating to the Services or this Agreement requires any prior action, approval and/or a decision from the Authority, such action, approval and/or decision shall be made and/or given to the Contractor by the Authority with all due care and skill and in a timely manner. The Authority shall use its reasonable endeavours to procure the same where any action, approval and/or decision on any matter is required from any third party.

4 APPROVAL OF HEALTHCARE PROFESSIONALS

- 4.1 The Authority shall use reasonable endeavours to consider all requests from the Contractor for approval of healthcare professionals to be appointed by the Contractor **(and/or their sub-contractor)** to undertake PIP Assessments and to notify the Contractor in writing of its decision in a timely and practical manner. In the event that the Authority decides not to approve an appointment, it will, where reasonably possible, provide the Contractor with reasons for such rejection in writing.

5 OPERATIONAL RESPONSIBILITIES

- 5.1 Where applicable, the Authority shall use reasonable endeavours to:
- (a) be responsible for the accurate registration of referrals (New Claims, Reassessments and Reconsiderations).

- (b) provide any known telephone numbers for all cases referred to the Contractor.
- (c) authorise the Contractor to search for and to use the telephone numbers of Claimants as the Contractor deems necessary for providing the Services. DWP will provide the Contractor with Claimants' preferred communication needs when available.
- (d) Notify the Contractor of the following change of circumstance details within 5 working days after receipt of such information:
 - (i) Change of address
 - (ii) New or amended external party
 - (iii) Change of medical evidence
 - (iv) Death
 - (v) Absence abroad
 - (vi) Admittance to hospital/ residential care
 - (vii) Detention in legal custody/ prison
 - (viii) provide workflow profiles at agreed intervals
 - (ix) make available, through DRS, FME which has been requested by the Contractor, within 48 hours after its arrival into DWP
 - (x) review and consider any submissions made by the Contractor where the Contractor identifies any circumstance relating to the processes or systems under the control of, or which are the responsibility of, the Authority which the Contractor reasonably considers to be Force Majeure affecting its performance of its obligations.

6 CLINICAL RESPONSIBILITIES

6.1 Where applicable, the Authority shall use reasonable endeavours to:

- (a) provide the Contractor with information on the initial and ongoing clinical training strategy
- (b) provide the PIP Assessment Guide and any future updates
- (c) provide details of the Quality Audit requirements and any future changes proposed by the Authority to the Contractor.
- (d) sign off any future clinical training products within a reasonable timescale

7 IT RESPONSIBILITIES

7.1 The Authority shall use reasonable endeavours to:

- (a) make available to the relevant AP users, PIP CS* and PIP AT* between the hours of 0700 – 2000 Monday to Sunday. This is

subject to planned outages, details of which will be made available to the AP.

*The other DWP internal dependent systems will be available but do not have the same level of enhanced support and may be subject to planned outages. Notification of these planned outages will be provided via the HPES OMC to the AP Helpdesk.

- (b) The HPES OMC Helpdesk will provide user support for PIP CS and PIP AT via the AP Helpdesk only between the hours of 0645 - 2100 Monday to Friday and Saturday to Sunday 0715 to 1715 (excluding English Bank Holidays). The AP will raise any DWP IT related incident to the AP Helpdesk.
- (c) Arrange for third parties to provide systems which are resilient to a level prescribed by industry best practice and provide Authority Disaster Recovery / Business Continuity Framework guidance and support to the Contractor in the event of system failure.

8 COMMUNICATION AND STAKEHOLDER MANAGEMENT RESPONSIBILITIES

8.1 Where applicable, the Authority shall use reasonable endeavours to:

- (a) provide Press Office support for media enquiries and both Authority and Contractor will work jointly in replying to media enquiries, and each of them will only issue any such reply if the terms of the reply are first agreed between the Authority and the Contractor.
- (b) seek input from the Contractor for relevant request for information to reply to official correspondence, PQs, FOI requests.
- (c) use opportunities to explain publicly the differences between the Authority and the Contractor.
- (d) use opportunities to explain publicly the value of different delivery models
- (e) provide feedback from the Appeals Service on any referrals which may identify potential improvements to the Contractor processes for PIP assessments.

9 DWP AND GOVERNMENT CHANGE PROGRAMME

9.1 The Authority shall use reasonable endeavours to keep the Contractor informed of progress and timetable for the PIP Programme.

APPENDIX 2 – ADMINISTRATION REQUIREMENTS

1 Authority's Authorisation

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

Name: [REDACTED]

Title: Authority's Representative

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

2 Provider's Authorisation

- 2.1 The following person is the Provider's Representative and is authorised to act on behalf of the Provider on all matters relating to the Contract, contact details are shown in Schedule 3 the (Order Form) of the Framework Agreement.

Name: [REDACTED]

Title: Provider's Representative

- 2.2 The following person is the Provider's contract manager and is authorised to act on behalf of the Provider on all matters relating to the Contract;

Name: [REDACTED]

Title: Contract Manager

3 Payment Information

- 3.1 The Authority shall issue a purchase order to the Provider prior to commencement of the Service.
- 3.2 The Provider shall use best endeavours to submit, as soon as possible and in any case within ten (10) Working Days after the end of each Month, all invoices and Supporting Documentation in such format as the Authority may specify from time to time, for the rates in respect of the Contract Price incurred during that Month. Invoices and Supporting Documentation shall be submitted as follows:

- 3.2.1 Invoice only: shall be posted, using methods that ensure the invoice and the data and information contained in it is secure, to the following address or such other address as the Authority may notify to the Provider in writing from time to time:

Department for Work and Pensions
SSCL Accounts Payable Team
Room 6124
Tomlinson House

Norcross
Blackpool
FY5 3TA

3.2.2 MI and a PDF copy invoice shall be forwarded using encryption to the following contacts or such other contact(s) as the Authority may notify to the Provider in writing from time to time:

(a) [REDACTED] and

(b) [REDACTED]

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

4 Disputed Claims

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

5 Final Claims

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

APPENDIX 3 – MONITORING REQUIREMENTS

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

1 Reviewing Contract Performance

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

- 1.11 The Provider will be expected to continuously improve the quality of the provision including that delivered by Sub-contractors. Where quality falls below acceptable levels the Provider will be expected to have suitable escalation procedures in place and, in respect of sub-contracted provision, take action where necessary to terminate the contract.

2 Access

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

3 Sustainable Development

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

4 Diversity and Equality

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

5 Apprenticeships and Skills

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

6 Security Requirements

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

7 HMG Baseline Personnel Security Standards

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

8 Health and Safety Responsibilities of the Authority Visiting Officers

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

Annex I – Not Used

Annex J – KPI/Contract Performance Targets

Not used. The Service Levels are set out in Annex 1 of Appendix 14 (Service Levels, Service Credits and Termination Thresholds) of the Call Off contract.

APPENDIX 4 – PRICES AND RATES

1 GENERAL

1.1 There are five parts to this appendix:

- A. PRICING METHODOLOGY
- B. INVOICING
- C. NOT USED
- D. FINANCIAL MODEL, REPORTING, RISK AND AUDIT
- E. PROFIT SHARE

PART A – PRICING METHODOLOGY

2 PURPOSE OF THIS PART OF THE APPENDIX

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

3 PRICES AND RATES APPLICABLE FOR SERVICES

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

3.1A The Parties agree that the Contract Price was constructed on an open book basis. The Provider confirms that the Financial Model had sufficient detail for the Authority to have visibility of all the costs to be incurred by the Provider, and of the Contract Price to be paid in respect of the provision of the Services. The Provider confirms that the Contract Price was constructed in accordance with the Financial Model.

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

3.2.1 the fixed unit price payments (as set out in Table B and Table C of Annex 1 (Rates Payable) for the delivery of:

- (a) Paper Based Review Outputs; and
- (b) Consultation Assessments Outputs; and

3.2.2 the fixed unit price payments (as set out in Table D of Annex 1 (Rates Payable) of this Appendix 4) made for the cost of Further Medical Evidence Reports, which will be paid by the Provider and subsequently invoiced to the Authority on a “pass through” basis,

less,

- 3.2.3 any No Pay Amount due during the SC1 Transition Total Period in accordance with paragraph 5A of this Part A of this Appendix 4, which shall be deducted in accordance with paragraph 5C of this Part A from the total amount invoiced pursuant to paragraph 3.2.1 above by the Provider; and
- 3.2.4 any No Pay Amount due after the SC1 Transition Total Period in accordance with paragraph 5B of this Part A of this Appendix 4, which shall be deducted in accordance with paragraph 5C of this Part A from the total amount invoiced pursuant to paragraph 3.2.1 above by the Provider; and
- 3.2.5 any Service Credits due in accordance with clause F5.2 (Service Credits) of the Contract and the arrangements set out in Appendix 14 (Service Credits) and which shall be deducted in accordance with clause F5.2A of the Contract from the total amount invoiced pursuant to paragraph 3.2.1 above by the Provider,

and without prejudice to the Authority's rights including the rights to No Pay Amounts under the Supplemental Agreement (as varied and extended), and those rights under clause C3.1 (Recovery of Sums Due) of the Contract and those referred to in paragraph 3.2C and paragraph 3.2D of this Part A of this Appendix 4, below.

- 3.2A The payment specified in this paragraph 3.2A shall be payable to the Provider in order to apply, retrospectively, the prices set out in Table A of Annex 1 (Rates Payable) of this Appendix 4 of the Contract for the Services provided by the Provider during the period from and including 16 November 2015 to and including 31 December 2015 (in this paragraph 3.2A, "**Table A Adjustment Period**"), and shall be payable by way of a single invoice payable in arrears, namely:

3.2A.1 the difference between [REDACTED] per Paper Based Review Output and the Table A price per Paper Based Review Output, for each Paper Based Review Output completed during the Table A Adjustment Period; and

3.2A.2 the difference between [REDACTED] per Consultation Assessment Output and the Table A price per Consultation Assessment Output, for each Consultation Assessment Output completed during the Table A Adjustment Period;

less, in each case, any Service Credits due in accordance with clause F5.2 of the Contract and the arrangements set out in Appendix 14 (Service Credits) in respect of the Table A Adjustment Period and for which a credit note has not been issued by the Provider and deducted by the Authority from the total price for Chargeable Outputs (before deductions) under invoices issued by the Provider before the Second Variation Effective Date.

- 3.2B The payment specified in this paragraph 3.2B shall be payable to the Provider in order to apply, retrospectively, the prices set out in Table B of Annex 1 (Rates Payable) of this Appendix 4 of the Contract for the Services provided by the Provider during the period from and including 1 January 2016 to and excluding the Second Variation Effective Date (in this paragraph 3.2B, "**Table B Adjustment Period**"), and shall be payable by way of a single invoice payable in arrears, namely:

3.2B.1 the difference between [REDACTED] per Paper Based Review Output and the Table B price per Paper Based Review Output, for each Paper Based Review Output completed during the Table B Adjustment Period; and

3.2B.2 the difference between [REDACTED] per Consultation Assessment Output and the Table B price per Consultation Assessment Output, for each Consultation Assessment Output completed during the Table B Adjustment Period;

less (1) any Service Credits due in accordance with clause F5.2 of the Contract and the arrangements set out in Appendix 14 (Service Credits), and (2) the No Pay Amounts payable under the Contract or the Supplemental Agreement (as varied and extended), in **each case** in respect of the Table B Adjustment Period, and for which a credit note has not been issued by the Provider and deducted by the Authority from the total price for Chargeable Outputs (before deductions) under invoices issued by the Provider before the Second Variation Effective Date.

3.2C The Home Adjustment Sums and the Clinic Adjustment Sums payable in accordance with paragraph 5D of this Part A of this Appendix 4 shall be due to the Authority in accordance with paragraph 5D.2 of such Part A.

3.2D The Authority's share of the Excess Profit shall be due to the Authority in accordance with paragraph 2 (Profit Share) of such Part E.

3.2E The Provider shall not be entitled to double-recovery on any Staff.

3.2F The Parties agree that:

3.2F.1 subject to the Authority's rights and the Provider's obligations under paragraph 3.2G, below, the Provider shall be entitled (for the purposes of the Variation procedure under clause F3 and paragraph 6 of Part A of Appendix 4 of the Contract) to propose charges, at rates not exceeding its Rate Card, for the time spent by a Variation Staff Member for the purposes of the Variation **provided always that** the Authority shall not approve any such proposal or the associated charges unless the Authority is satisfied (acting reasonably) that the Provider has demonstrated under the Variation procedure that the Provider shall not obtain any double-recovery as a result of or in connection with such back-filling or the Provider's charges for the Variation Staff Member under the Variation; and

3.2F.2 the Provider shall not charge for any FM Staff Roles under its Rate Card rates.

3.2G With reference to the information that the Provider shall provide in accordance with paragraph 6.2.2 of Part A of this Appendix 4 in relation to any proposal of the Provider to back-fill any FM Staff Role for the purposes of or in connection with any Variation, for the purposes of paragraph 3.2F:

3.2G.1 the Authority shall be entitled to refuse to approve any such proposed back-filling arrangement and the proposed charges for the Variation Staff Member under the Variation, where (a) the Variation Staff Member whose FM Staff Role is proposed to be backfilled is required to provide one Professional Day per week or less of time for the purposes of or in connection with the Variation, and (b) such Variation Staff Member is proposed to resource the Variation for a period of one Month or less; and

3.2G.2 (in each case where the Authority approves a Variation which includes any such back-filling arrangement) the Provider shall be obliged to appoint a

replacement member of Staff to perform the FM Staff Role so that such FM Staff Role is performed continuously without break and with no reduction in the quality of work or time spent in the performance of such FM Staff Role.

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

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

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

4 Not Used

5 SERVICE CREDITS

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

5A No Pay mechanism for Unacceptable Reports (during glide path)

- 5A.1 The Parties agree that with effect on and from the date on which SC1 Transition P1 commences, and for the duration of the SC1 Transition Total Period, the Authority will be entitled to a No Pay Amount in respect of Chargeable Outputs which are both Unacceptable Reports and are determined in accordance with this paragraph 5A and paragraph 5C as being in excess of the SC1 TP Tolerance for the relevant SC1 Transition Period.

- 5A.2 Subject to paragraph 5C, below, for the purposes of determining the number of Chargeable Outputs for which the Authority shall be entitled to a No Pay Amount in each SC1 Transition Period, the Parties agree the following:

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

5A.2.2 on a Monthly basis and using the Acceptable/Unacceptable Criteria, the Provider shall identify and audit a sample of Chargeable Outputs completed in the relevant Month under the Contract (the size of which sample will be determined in accordance with the Lancaster Model) and ascertain the number of Acceptable Reports and Unacceptable Reports in that Month within the sample (in this paragraph 5A, the total number of such reports within the sample being the "**Total Reports**" and the number of Unacceptable Reports within the sample being the "**5A Unacceptable Reports**");

5A.2.3 as soon as possible and in any case within five (5) Working Days of the end of each SC1 Transition Period (in this paragraph 5A, "**Latest SC1 Period**"), the Provider shall calculate and report to the Authority in writing on

performance against Service Level SC1 during the Latest SC1 Period (in this paragraph 5A, “**Assessment Period**”) as follows:

- (a) the sum of the Total Reports within the sample for the three (3) Months of the Assessment Period (in this paragraph 5A, “**AP Total Reports**”);
- (b) the sum of the 5A Unacceptable Reports within each sample for the three (3) Months of the Assessment Period (in this paragraph 5A, “**AP Unacceptable Reports**”); and
- (c) the overall performance during the Assessment Period (in this paragraph 5A, “**Aggregated Performance**”), determined using the following formula:

Formula:

$$\text{Aggregated Performance} = Y/Z$$

where:

‘Y’ means the AP Unacceptable Reports within each sample (5A Unacceptable Reports in the Assessment Period); and

‘Z’ means the AP Total Reports within each sample (Total Reports in the Assessment Period);

- 5A.2.4 if, in respect of any Assessment Period, the Aggregated Performance exceeds the SC1 TP Tolerance, a No Pay Amount shall be calculated by the Provider and notified to the Authority using the following formula:

Formula:

$$\text{No Pay Amount} = (\text{AP} - \text{TPT}) * \text{TPP}$$

where:

‘AP’ means the Aggregated Performance calculated under this paragraph 5A;

‘TPT’ means the SC1 TP Tolerance; and

‘TPP’ means the Total SC1 Period Price for Chargeable Outputs in the relevant Assessment Period;

- 5A.2.5 if, in respect of any Assessment Period, the Aggregated Performance is equal to or does not exceed the SC1 TP Tolerance, for the purposes of paragraph 5A.2.4, above, the No Pay Amount shall be deemed to be “0” (zero); and

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

Worked Examples

- (1) Worked example for SC1 Transition P1 assuming the Aggregated Performance does not exceed the SC1 TP Tolerance

	<u>Assessment Period</u>			<u>Credit note against invoice(s) issued during the Assessment Period</u> <u>Month 4 (Sept 16)</u>
	<u>Month 1</u> <i>(June 16)</i>	<u>Month 2</u> <i>(July 16)</i>	<u>Month 3</u> <i>(Aug 16)</i>	
<u>Total Reports (para 5A.2.2)</u>	<u>1,000</u>	<u>1,000</u>	<u>500</u>	
<u>AP Total Reports (para 5A.2.3)</u>	<u>1,000 + 1,000 + 500</u> <u>= 2,500 AP Total Reports</u>			
<u>5A Unacceptable Reports (para 5A.2.2)</u>	<u>50</u>	<u>25</u>	<u>25</u>	
<u>AP Unacceptable Reports (para 5A.2.3)</u>	<u>50 + 25 + 25</u> <u>= 100 AP Unacceptable Reports</u>			
<u>Aggregated Performance ("AP") (para 5A.2.3)</u>	<u>100 / 2500</u> <u>= 0.04</u>			
<u>SC1 TP Tolerance ("TPT")</u>	<u>0.095</u>			
<u>Underperformance ("AP-TPT") (para 5A.2.4)</u>	<u>0.04 – 0.095 = -0.055 and accordingly para 5A.2.5 applies)</u>			
<u>Total Monthly Price (£)</u>	<u>[REDACTED]</u>	<u>[REDACTED]</u>	<u>[REDACTED]</u>	
<u>Total SC1 Period Price (£) ("TPP") (para 5A.2.4)</u>				<u>[REDACTED]</u> <u>(Month 1 + Month 2 + Month 3)</u>
<u>No Pay Amount (£) (para 5A.2.4)</u>				<u>= £0 (deemed to be zero in accordance with para 5A.2.5)</u>

- (2) *Worked example for SC1 Transition P2 assuming the Aggregated Performance exceeds the SC1 TP Tolerance*

	<u>Assessment Period</u>			<u>Credit note against invoice(s) issued during the Assessment Period</u> Month 4 <i>(December 16)</i>
	<u>Month 1</u> <i>(Sept 16)</i>	<u>Month 2</u> <i>(Oct 16)</i>	<u>Month 3</u> <i>(Nov 16)</i>	
<u>Total Reports (para 5A.2.2)</u>	<u>1,000</u>	<u>1,000</u>	<u>500</u>	
<u>AP Total Reports (para 5A.2.3)</u>	<u>1,000 + 1,000 + 500</u> = 2,500 AP Total Reports			
<u>5A Unacceptable Reports (para 5A.2.2)</u>	<u>100</u>	<u>50</u>	<u>50</u>	
<u>AP Unacceptable Reports (para 5A.2.3)</u>	<u>100 + 50 + 50</u> = 200 AP Unacceptable Reports			
<u>Aggregated Performance ("AP") (para 5A.2.3)</u>	<u>200 / 2500</u> = 0.08			
<u>SC1 TP Tolerance ("TPT")</u>	0.035			
<u>Underperformance ("AP-TPT") (para 5A.2.4)</u>	<u>0.08 – 0.035 = 0.045 (and accordingly para 5A.2.5 does not apply)</u>			
<u>Total Monthly Price (£)</u>	[REDACTED]	[REDACTED]	[REDACTED]	
<u>Total SC1 Period Price (£) ("TPP") (para 5A.2.4)</u>				[REDACTED] <u>(Month 1 + Month 2 + Month 3)</u>
<u>No Pay Amount (para 5A.2.4)</u>				[REDACTED] <u>x 0.045</u> = [REDACTED]

(3) *Worked example for SC1 Transition P3*

	<u>Assessment Period</u>	<u>Credit note against invoice(s) issued during the Assessment Period</u>
	<u>Month 1</u> <i>(Dec 16)</i>	<u>Month 4 (Jan 17)</u>
<u>Total Reports (para 5A.2.2)</u>	<u>1,000</u>	
<u>AP Total Reports (para 5A.2.3)</u>	<u>1,000</u> <u>= 1,000 AP Total Reports</u>	
<u>5A Unacceptable Reports (para 5A.2.2)</u>	<u>50</u>	
<u>AP Unacceptable Reports (para 5A.2.3)</u>	<u>50</u> <u>= 50 AP Unacceptable Reports</u>	
<u>Aggregated Performance ("AP") (para 5A.2.3)</u>	<u>50 / 1,000</u> <u>= 0.05</u>	
<u>SC1 TP Tolerance ("TPT")</u>	<u>0.03</u>	
<u>Underperformance ("AP-TPT") (para 5A.2.4)</u>	<u>0.05 – 0.03 = 0.02 (and accordingly para 5A.2.5 does not apply)</u>	
<u>Total Monthly Price (£)</u>	<u>[REDACTED]</u>	
<u>Total SC1 Period Price (£) ("TPP") (para 5A.2.4)</u>		<u>[REDACTED]</u>
<u>No Pay Amount (para 5A.2.4)</u>		<u>[REDACTED]</u> <u>x 0.02</u> <u>= [REDACTED]</u>

5B No Pay mechanism for Unacceptable Reports (post-glide path)

5B.1 The Parties agree that with effect on and from the date next following the date on which SC1 Transition P3 expires, and for the remaining term of the Contract Period, the

Authority will be entitled to a No Pay Amount in respect of Chargeable Outputs which are both Unacceptable Reports and are determined in accordance with this paragraph 5B and paragraph 5C as being in excess of the Agreed Tolerance.

5B.2 Subject to paragraph 5C, below, for the purposes of determining the number of Chargeable Outputs for which the Authority shall be entitled to a No Pay Amount in each Month, the Parties agree the following:

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

5B.2.2 on a Monthly basis and using the Acceptable/Unacceptable Criteria, the Provider shall identify and audit a sample of Chargeable Outputs completed in the relevant Month under the Contract (the size of which sample will be determined in accordance with the Lancaster Model) and ascertain the number of Acceptable Reports and Unacceptable Reports in that Month within the sample (in this paragraph 5B, the total number of such reports within the sample being the "**Total Reports**" and the number of Unacceptable Reports within the sample being the "**5B Unacceptable Reports**");

5B.2.3 as soon as possible and in any case within five (5) Working Days of the end of each Month (in this paragraph 5B, "**Latest Month**"), the Provider shall calculate and report to the Authority in writing on performance against Service Level SC1 (i) during the Latest Month, and (ii) on an aggregated basis over the period of the three (3) Months ending with the Latest Month (in this paragraph 5B, "**Assessment Period**") as follows:

- (a) the sum of the Total Reports within the sample for three (3) Months of the Assessment Period (in this paragraph 5B, "**AP Total Reports**");
- (b) the sum of the 5B Unacceptable Reports within each sample for the three (3) Months of the Assessment Period (in this paragraph 5B, "**AP Unacceptable Reports**"); and
- (c) the overall performance during the Assessment Period (in this paragraph 5B, "**Aggregated Performance**"), determined using the following formula:

Formula:

$$\text{Aggregated Performance} = Y/Z$$

where:

'Y' means the AP Unacceptable Reports within each sample (5B Unacceptable Reports in the Assessment Period); and

'Z' means the AP Total Reports within each sample (Total Reports in the Assessment Period);

- 5B.2.4 In respect of each Assessment Period, a provisional No Pay Amount shall be calculated using the following formula. The provisional No Pay Amount shall be subject to a final adjustment in accordance with clause 5B.2.5 below to determine the No Pay Amount. The Provider shall provide any further information as the Authority may reasonably require in relation to the calculation:

Formula:

$$\text{provisional No Pay Amount} = (\text{AP} - \text{AT}) * \text{TMP}$$

where:

'AP' means the Aggregated Performance calculated under this paragraph 5B2;

'AT' means the Agreed Tolerance;

'TMP' means the Total Monthly Price for Chargeable Outputs in the final Month of the relevant Assessment Period;

- 5B.2.5 In respect of each Assessment Period, the provisional No Pay Amount shall be adjusted to determine the No Pay Amount based on the Aggregated Performance during the relevant Assessment Period. In order to calculate the No Pay Amount from the provisional No Pay Amount, the provisional No Pay Amount shall be split into up to four (4) tranches and adjusted using the following table (where, notwithstanding paragraph 5C.8, if the AP goes to three (3) or more decimal places, the AP of the calculation shall be rounded to the nearest two (2) decimal places and where the third or more decimal places is a value of five (5), the result shall be rounded up):

AP	Calculation	No Pay Amount (£)
Tranche 1: $0.00 < \text{AP} \leq 0.03$	Provisional No Pay Amount for Tranche 1 x 0%	0%
Tranche 2: $0.03 < \text{AP} \leq 0.04$	Provisional No Pay Amount for Tranche 2 x 25%	A
Tranche 3: $0.04 < \text{AP} \leq 0.05$	Provisional No Pay Amount for Tranche 3 x 50%	B
Tranche 4: $\text{AP} > 0.05$	Provisional No Pay Amount for Tranche 4 x 100%	C

Total No Pay Amount	A+B+C	
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5B.2.6 this paragraph 5B shall be interpreted and applied in accordance with the following worked examples:

Worked Examples:

(1) Worked example

	<u>Assessment Period</u>			<u>Credit note against the invoice issued during the final Month of the Assessment Period</u> <u>Month 4</u> <u>(April 2020)</u>
	<u>Month 1</u> <u>(Jan 20)</u>	<u>Month 2</u> <u>(Feb 20)</u>	<u>Month 3</u> <u>(Mar 20)</u>	
<u>Total Reports (para 5B.2.2)</u>	<u>1,000</u>	<u>1,000</u>	<u>500</u>	
<u>AP Total Reports (para 5B.2.3)</u>	<u>1,000 + 1,000 + 500</u> <u>= 2,500 AP Total Reports</u>			
<u>5B Unacceptable Reports (para 5B.2.2)</u>	<u>75</u>	<u>35</u>	<u>45</u>	
<u>AP Unacceptable Reports (para 5B.2.3)</u>	<u>75 + 35 + 45</u> <u>= 155 AP Unacceptable Reports</u>			
<u>Aggregated Performance ("AP") (para 5B.2.3)</u>	<u>155 / 2500</u> <u>= 0.062</u>			
<u>Agreed Tolerance ("AT")</u>	<u>0.03</u>			
<u>Total Monthly Price (£)</u>	<u>[REDACTED]</u>			<u>[REDACTED]</u>
<u>Tranche 1</u>				<u>NIL</u>

<u>calculation</u>		
<u>Tranche 2 calculation:</u>		
<u>provisional No Pay Amount for Tranche 2</u>	$0.04 - 0.03 = 0.01$	<u>[REDACTED]</u> (from Month 3) x 0.01 = £30,000
<u>No Pay Amount for Tranche 2</u>		<u>[REDACTED]</u> x 25% = <u>[REDACTED]</u>
<u>Tranche 3 calculation:</u>		
<u>Provisional No Pay Amount for Tranche 3</u>	$0.05 - 0.04 = 0.01$	<u>[REDACTED]</u> (from Month 3) x 0.01 = <u>[REDACTED]</u>
<u>No Pay Amount for Tranche 3</u>		£ <u>[REDACTED]</u> x 50% = <u>[REDACTED]</u>
<u>Tranche 4 calculation:</u>		
<u>Provisional No Pay Amount for Tranche 4</u>	$0.06 - 0.05 = 0.01$	<u>[REDACTED]</u> (from Month 3) x 0.01 = <u>[REDACTED]</u>
<u>No Pay Amount for Tranche 4</u>		<u>[REDACTED]</u> x 100% = <u>[REDACTED]</u>
	<u>TOTAL</u>	<u>[REDACTED]</u>

5C No Pay mechanism for Unacceptable Reports (administrative provisions)

5C.1 The Parties agree and acknowledge that:

- 5C.1.1 the mechanisms set out in paragraph 5A and paragraph 5B above, and any resultant No Pay Amounts, have been set in view of the Authority's legitimate interest (and the legitimate interest of Participants) in receiving Chargeable Outputs which are in accordance with this Contract (including in terms of quality), and are intended to represent a proportionate price adjustment to reflect the reduced quality of Chargeable Outputs under this Contract;
- 5C.1.2 in developing and agreeing the principles and mechanism provided under such paragraph 5A and paragraph 5B, the Parties have comparable bargaining power and have been advised fully by solicitors; and
- 5C.1.3 the provisions of such paragraph 5A and paragraph 5B are without prejudice to the Authority's other rights and remedies under the Contract or at law.

5C.2 Without prejudice to paragraph 5C.4 and paragraph 5C.6 below, the No Pay Amount calculated in accordance with paragraph 5A.2 and with paragraph 5B.2 (in this paragraph 5C, each "**NPA Due Amount**") shall be applied as follows:

- 5C.2.1 the Provider shall within ten (10) Working Days of the Approval by the Authority (such approval to be issued in writing or at the Contract Delivery Board) of the amount of the NPA Due Amount (plus VAT, where applicable) issue a credit note (in this paragraph 5C, "**Credit Note**") which credits the NPA Due Amount (plus VAT, where applicable); and
- 5C.2.2 the Authority shall set off the value of the Credit Note against the Provider's next invoice submitted to the Authority after the date of the Credit Note **provided that** in the event that the value of such next invoice (after other deductions, such as Service Credits) is insufficient to meet the amount of NPA Due Amount then the Authority shall carry forward the balance of the NPA Due Amount and apply it to the Provider's subsequent invoice(s) until the NPA Due Amount is met in full.

5C.3 The Authority shall have the right to validate and/or conduct its own audit and/or sampling of Chargeable Outputs during the relevant Assessment Period in respect of the Provider's determination of the total number of Chargeable Outputs, the number of Acceptable Reports and/or Unacceptable Reports and/or any amount identified or referred to in or relating to any invoice and/or credit note, including to check and verify that:

- 5C.3.1 the Provider has carried out its audit properly, including in respect of the sample size, the sample selected, application of the Lancaster Model, and the basis of the calculations under paragraph 5A or paragraph 5B;
- 5C.3.2 Chargeable Outputs have been duly and properly determined as being Acceptable Reports or Unacceptable Reports according to the Acceptable/Unacceptable Criteria; and
- 5C.3.3 the amounts being claimed and/or any adjustments being applied to any invoice and/or credit note, including the Total SC1 Period Price and the Total Monthly Price and the No Pay Amount are validly calculated,

and the Provider shall promptly and in any event within five (5) Working Days of written request provide the Authority with all reasonable cooperation and assistance in relation to any audit, including the provision of information and evidence.

- 5C.4 In the event that the Authority's audit determines that any amount or adjustment in any invoice or credit note is incorrect, the Authority will notify the Provider, and the Provider shall issue a credit note in the amount of such sums to the Authority within ten (10) Working Days of the Authority notifying the Provider of such determination. Without prejudice to the Authority's right to recover any such amounts as sums due from the Provider, or deduct such amounts from any sums due under clause C3.1 (Recovery of Sums Due) of the Contract, the Authority shall set off the value of the Credit Note against the Provider's next invoice submitted to the Authority.

5C.5 Not used.

- 5C.6 The foregoing provisions of this paragraph 5C shall be without prejudice to the Authority's right to:

- 5C.6.1 conduct or commission from a third party, both during the SC1 Transition Total Period and/or before and/or after such period, its own sample of Chargeable Outputs and/or to conduct its own audit of the sampling conducted by the Provider; and/or
- 5C.6.2 establish, in accordance with any rights of the Authority as part of establishing Independent Audit, an auditor and/or system of audit which is external to the Provider and the Affiliates of the Provider and which uses a methodology selected by such auditor and/or the Authority using the Lancaster Model, such that the audit of Chargeable Outputs for the purpose of determining whether they are Acceptable Reports or otherwise for the purposes of calculating No Pay Amounts shall be determined by Independent Audit and not by the Provider,

and when the Authority exercises its rights under paragraph 5C.6.2 the foregoing provisions of paragraph 5A and paragraph 5B and this paragraph 5C shall be deemed amended so that where they refer to measurement and reporting and No Pay Amount calculations by the Provider they shall be deemed to refer to measurement and reporting and No Pay Amount calculations provided as part of Independent Audit and provided by the auditor(s) carrying out the Independent Audit. The Authority's rights under this paragraph 5C shall be without prejudice to its other rights, including (1) the right to recover sums equivalent to any No Pay Amounts as sums due from the Provider, (2) the

right to deduct sums equivalent to No Pay Amounts pursuant to clause C3.1 (Recovery of Sums Due) of the Contract, and (3) rights to require any review or Variation or variation of the terms and conditions of the Contract to take account of Independent Audit.

- 5C.7 In the event of a dispute arising between the Authority and the Provider over any matter relating to No Pay Amounts under this Appendix, such dispute shall be dealt with in accordance with the Dispute Resolution Procedure.
- 5C.8 In any case where the result of the calculation made under paragraph 5A or paragraph 5B goes to four or more decimal places, the result shall be rounded to the nearest three decimal places, and for any result where the fourth decimal point is a value of five (5) the result shall be rounded up to three decimal places.

Worked example:

0.0464 – rounded down to 0.046

0.0465 – rounded up to 0.047

0.0466 – rounded up to 0.047.

5D Failure To Attend risk value sharing

- 5D.1 The Provider agrees that it shall have a duty to manage Consultation Assessments in accordance with existing guidance so as to minimise the incidence of Failure To Attend (for example by managing the process of appointment booking, ensuring that where possible the Participant's inability to attend shall be confirmed prior to the Consultation Assessment).

5D.1A The Parties acknowledge that:

- (a) if the rate of Failures To Attend for Managed Reassessment cases exceeds the rate anticipated by the Parties (and which is as stated in paragraph 5D.1A(c), below), there shall be an additional cost to the provision of the Services;
- (b) if the rate of Failures To Attend for Managed Reassessment cases is lower than the rate anticipated by the Parties (and which is as stated in paragraph 5D.1A(c), below), the cost of provision of the Services shall be lower for such cases;
- (c) the Parties have agreed that they anticipate a Failure To Attend rate of 15% for Clinic Consultations and 10% for Home Consultations, and a cost or saving (as applicable) per case of [REDACTED] for each Clinic Consultation and [REDACTED] for each Home Consultation; and
- (d) the Parties' intention under this paragraph 5D is that any such cost or saving shall be shared between them in equal portions of 50% each.

- 5D.2 Within ten (10) Working Days of the end of each FTA Period the Provider shall, in accordance with clause C2 of the Contract and Part B paragraphs 2.2 to 2.6 (inclusive) of Appendix 4 (Prices and Rates) of the Contract (in cases where this paragraph 5D requires the Provider to issue an invoice) and in accordance with paragraph 5D.3 to

paragraph 5D.6 (inclusive), below, draft and provide to the Authority for approval a draft invoice or credit note as determined in accordance with this paragraph 5D. Such invoice or credit note shall state, among other matters, in relation to the Managed Reassessment cases to which this paragraph 5D applies:

- (a) the FTA Clinic Rate (as that term is defined in paragraph 5D.3A, below) during the relevant FTA Period;
- (b) the FTA Home Rate (as that term is defined in paragraph 5D.4A, below) during the relevant FTA Period;
- (c) the Clinic Adjustment Sum for the relevant FTA Period; and
- (d) the Home Adjustment Sum for the relevant FTA Period,

each calculated in accordance with the following provisions of this paragraph 5D. The invoice or credit note shall be issued in final form by the Provider within ten (10) Working Days of the Approval of such invoice or credit note by the Authority at the Contract Delivery Board. Credit notes will be applied by the Authority by way of deduction against the Provider's next invoice after the date of the credit note. Invoices will be paid in accordance with clause C2 of the Contract.

5D.3 Clinic Adjustment Sum

5D.3A The Provider shall calculate an amount (in this paragraph 5D, the “**FTA Clinic Rate**”), in relation to Clinic Consultations, in accordance with the following formula:

Formula:

FTA Clinic Rate = Number of FTAs / Total Clinic Planned Appointments

where:

‘**Number of FTAs**’ means the total number of Consultation Assessment appointments for Managed Reassessment cases where there was a Failure To Attend the Clinic Consultation during the relevant FTA Period; and

‘**Total Clinic Planned Appointments**’ means the total number of Consultation Assessment appointments for Clinic Consultations for Managed Reassessment cases which are booked and are not cancelled (either by the Provider or by the Participant) prior to the appointment, and there shall be included in such total number all appointments which are booked with one Participant as a result of such a cancellation of another Participant's appointment during the relevant FTA Period.

5D.3B The Provider shall calculate an amount (in the Contract, the “**Clinic Adjustment Sum**”) in accordance with the following formula:

Formula:

Clinic Adjustment Sum = ((FTA Clinic Rate – 0.15) x Clinic Chargeable Outputs x **REDACTED**) / 2

where:

'Clinic Chargeable Outputs' means the total number of Chargeable Outputs for Managed Reassessment cases where the Consultation Assessment was conducted by way of Clinic Consultation during the relevant FTA Period,

and in the event that the Clinic Adjustment Sum is a negative sum, for the purposes of paragraph 5D.2 above the Provider shall convert the sum into a positive sum and shall prepare a credit note for such amount in favour of the Authority;

and in the event that the Clinic Adjustment Sum is a positive sum, for the purposes of paragraph 5D.2 above the Provider shall prepare an invoice for such amount for payment by the Authority.

5D.4 Home Adjustment Sum

5D.4A The Provider shall calculate an amount (in this paragraph 5D, the **"FTA Home Rate"**), in relation to Home Consultations, in accordance with the following formula:

Formula:

FTA Home Rate = Number of FTAs / Total Home Planned Appointments

where:

'Number of FTAs' means the total number of Consultation Assessment appointments for Managed Reassessment cases where there was a Failure To Attend the Home Consultation during the relevant FTA Period; and

'Total Home Planned Appointments' means the total number of Consultation Assessment appointments for Home Consultations for Managed Reassessment cases which are booked and are not cancelled (either by the Provider or by the Participant) prior to the appointment, **and** there shall be included in such total number all appointments which are booked with one Participant as a result of such a cancellation of another Participant's appointment during the relevant FTA Period.

5D.4B The Provider shall calculate an amount (in the Contract, the **"Home Adjustment Sum"**) in accordance with the following formula:

Formula:

Home Adjustment Sum = ((FTA Home Rate – 0.1) x Home Chargeable Outputs x **REDACTED**) / 2

where:

'Home Chargeable Outputs' means the total number of Chargeable Outputs for Managed Reassessment cases where the Consultation Assessment was conducted by way of Home Consultation during the relevant FTA Period,

and in the event that the Home Adjustment Sum is a negative sum, for the purposes of paragraph 5D.2 above the Provider shall convert the sum into a positive sum and shall prepare a credit note for such amount in favour of the Authority;

and in the event that the Home Adjustment Sum is a positive sum, for the purposes of paragraph 5D.2 above the Provider shall prepare an invoice for such amount for payment by the Authority.

- 5D.5 This paragraph 5D shall be interpreted and applied in accordance with the following worked example of the calculation of the Clinic Adjustment Sum, which shall be applied by analogy to calculations of the Home Adjustment Sum:

Worked Example:

<u>Step</u>	<u>Paragraph reference</u>	<u>Calculation</u>	<u>Example</u>
<u>1</u>	<u>5D.3A</u>	<p><u>The Provider shall use the formula:</u></p> <p><u>FTA Clinic Rate = Number of FTAs / Total Clinic Planned Appointments.</u></p>	<p><u>It is assumed for this example that, in relation to Clinic Consultations:</u></p> <p><u>Number of FTAs = 8,000; and</u></p> <p><u>Total Clinic Planned Appointments = 80,000.</u></p> <p><u>Accordingly:</u></p> <p><u>FTA Clinic Rate = 8,000 / 80,000</u></p> <p><u>In this example the FTA Clinic Rate = 0.1 (which is equivalent to 10%).</u></p>
<u>2</u>	<u>5D.3B</u>	<p><u>The Provider shall use the formula:</u></p> <p><u>Clinic Adjustment Sum = (FTA Clinic Rate – [REDACTED]) x Clinic Chargeable Outputs x [REDACTED] / 2.</u></p>	
<u>2.1</u>	<u>5D.3B</u>	<p><u>The Provider shall calculate:</u></p> <p><u>FTA Clinic Rate minus 0.15 (which is equivalent to 15%).</u></p>	<p><u>In this example FTA Clinic Rate = 0.1. Accordingly the calculation for Step 2.1 is:</u></p> <p><u>0.1 – 0.15</u></p> <p><u>In this example the calculation in Step 2.1 results in the number -</u></p>

			0.05 (which is equivalent to -5%) and shall be referred to in this paragraph 5D.5 as the <u>“Step 2.1 Number”</u> .
<u>2.2</u>	<u>5D.3B</u>	<p>The Provider shall use the formula:</p> <p><u>Step 2.1 Number x Clinic Chargeable Outputs</u></p>	<p>It is assumed for this example that Clinic Chargeable Outputs = 60,000.</p> <p>Accordingly:</p> <p><u>-0.05 x 60,000</u></p> <p>In this example Step 2.2 results in the number - 3,000 which shall be referred to in this paragraph 5D.5 as the <u>“Step 2.2 Number”</u>.</p>
<u>2.3</u>	<u>5D.3B</u>	<p>The Provider shall use the formula:</p> <p><u>(Step 2.2 Number x [REDACTED]) / 2</u></p>	<p>Accordingly:</p> <p><u>(-3,000 x [REDACTED]) / 2</u></p> <p>This gives:</p> <p><u>-[REDACTED] / 2</u> <u>= -[REDACTED]</u></p> <p>In this example the Clinic Adjustment Sum is - <u>[REDACTED]</u></p>
<u>2.4</u>	<u>5D.3B</u>	<p>In accordance with paragraph 5D.4 the Provider would be required to:</p> <p>(1) <u>convert the Clinic Adjustment Sum into a positive sum (in this paragraph 5D.5, “Final Amount”); and</u></p> <p>(2) <u>issue a credit note to the Authority in the amount of the</u></p>	<p>The Clinic Adjustment Sum converted into a positive sum is <u>[REDACTED]</u>.</p> <p>In accordance with paragraph 5D.4 the Provider would be required in this example to issue to the Authority a credit note for <u>[REDACTED]</u>.</p>

		<p style="text-align: center;"><u>Final Amount.</u></p> <p><u>If the Clinic Adjustment Sum was a positive amount the Provider would be required to issue an invoice in that amount to the Authority.</u></p>	
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- 5D.6 In any case where the result of the calculation made under this paragraph 5D goes to four or more decimal places, the result shall be rounded to the nearest three decimal places, and for any result where the fourth decimal point is a value of five (5) the result shall be rounded up to three decimal places.

Worked example:

0.0464 – rounded down to 0.046

0.0465 – rounded up to 0.047

0.0466 – rounded up to 0.047.

- 5E.1 The Provider warrants to the Authority, as a continuing warranty which shall be repeated on each occasion when the Provider presents any reporting or any invoice or credit note under the Contract, that the Provider's data used for the calculations is evidenced, accurate, reliable and not misleading in relation to its subject matter, and that the reporting and invoice and credit note (as applicable) is true, accurate and not misleading.

6 PRICES FOR CONTRACT VARIATIONS

- 6.1 The Provider shall use the previously submitted Quarterly Reports to demonstrate how any proposed Variation will impact on costs, revenues and margins.
- 6.2 Where a Variation is requested by the Authority then the Provider shall at no charge prepare a quotation for the cost which shall:
- 6.2.1 be based on and reflect any stated price affecting assumptions stated in the Financial Model;
 - 6.2.2 include an estimate of the resources required (including, in relation to human resources, numbers of full-time equivalent workers by role and the timing of when such resources will be required) **and** in the event that the Provider proposes that any Staff or their roles shall be back-filled for the purposes of providing human resources for the implementation of the Variation the Provider shall include in the quotation:
 - (a) comprehensive details of the proposed back-filling arrangement including the identity of the affected Staff, and details of their existing roles and their contracted and actual hours worked to date;

- (b) (for each member of Staff whose role is proposed to be back-filled) details of the number of days per week that the Provider proposes the member of Staff shall perform for the purposes of the Variation **and** the Provider agrees that the Authority's rights under paragraph 3.2E to paragraph 3.2G (inclusive) of this Part A of this Appendix 4 shall apply in relation to such proposal;
 - (c) confirmation of the number of hours that it is proposed the replacement resource will work to perform the Staff member's role;
 - (d) the proposed duration of the back-filling arrangement **and** the Provider agrees that the Authority's rights under paragraph 3.2E to paragraph 3.2G (inclusive) of this Part A of this Appendix 4 shall apply in relation to such proposal; and
 - (e) confirmation of the Staff who are not included in the Financial Model but are included in the list of Staff prepared by the Provider in accordance with paragraph 1.1.9 of Part D of Appendix 4 as a direct consequence of a Variation;
- 6.2.3 include an outline task plan for implementing the Variation (including for implementing dependencies where tasks are dependent on acts or omissions by a person other than the Provider);
- 6.2.4 propose appropriate new items of management information (for the purposes of Annex G (Management Information) of Appendix 1 (The Services) of the Contract) to assist the Authority in relation to the Services as varied by the Variation, in the event that the Variation is approved;
- 6.2.5 propose appropriate new Service Levels and (where appropriate) Service Credits and Service Termination Thresholds, to assist the Authority in relation to the Services as varied by the Variation, in the event that the Variation is approved;
- 6.2.6 propose appropriate new items for the Quarterly Report, to assist the Authority in relation to the Services as varied by the Variation;
- 6.2.7 include full disclosure of any assumptions underlying such quotation; and
- 6.2.8 include evidence of the cost of any assets required for the Variation.
- 6.3 For the purposes of considering the impact of the Variation on costs, revenues and margins, either Party may use and refer to the Financial Model and Quarterly Reports as reference sources to support such Party's case in relation to such matters.
- 6.4 Time and Material Prices for Variations
- 6.4.1 Where Time and Material Prices are agreed for a Variation in accordance with clause F3 (Variation), then the following provisions of this paragraph 6.4 shall apply.
 - 6.4.2 Time and Material Prices shall be calculated as the aggregate Rate Card Resource actually consumed and approved for payment in each Month by

the Authority based on the relevant rates as set out in (and not exceeding) the Rate Card (in the Contract, "**Time and Material Prices**").

- 6.4.3 The Provider shall provide a breakdown of any Time and Materials Price in such form and format and level of detail as the Authority may reasonably require, and cross-referenced to the proposals presented by the Provider in accordance with paragraph 6.2 of this Part A, above.
- 6.4.4 The Rate Card Resources are based upon the completion of a Professional Day for each day invoiced.
- 6.5 This paragraph 6 shall take precedence in the event of conflict between clause F3 of the Contract and this paragraph 6.

7 INDEXATION

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

8 PIPAT implementation

- 8.1 The Provider shall implement and introduce and adopt PIPAT in accordance with clause F3 (Variation) of the Contract which shall be applied in accordance with this paragraph 8. This paragraph 8 shall take precedence in the event of conflict between clause F3 and this paragraph 8. The Provider shall co-operate fully with the Authority in relation to such implementation and introduction and adoption of PIPAT.
- 8.2 Not later than 6 May 2016 the Provider will consider the Authority's requested changes described in Variation proposal IF17 and Variation proposal IF18 and will provide a response (in this paragraph 8, "**Response**") for approval by the Authority under the Variation procedure. The Provider's response shall be:
 - 8.2.1 in the form of a proposed technical specification for meeting the technical changes required by IF17 and IF18; and
 - 8.2.2 supported by a reasonable costing for developing and implementing the change, which the Provider agrees shall be subject to review by an expert if required by the Authority on the terms of this paragraph 8, below, **and** in this context "reasonable" means costs calculated in a manner comparable with that used by the Provider for Variation proposal IF7 (for example, in relation to the allocation of human and technological resource),and in this paragraph 8 the stage and associated tasks and deliverables described in this paragraph 8.2 shall be referred to in as "**Stage 1**".
- 8.3 The Response is required to propose only such technical changes as are strictly and demonstrably necessary to implement IF17 and IF18. The Authority will be entitled to reject any items of specification which it deems are not necessary. For the avoidance of doubt PIPAT will be interfaced and integrated with the Provider's other systems only to the extent and to the level required by the Authority, and in the event that the Authority considers that the Response proposes interfacing or integration additional to that required by the Authority and/or which is to the benefit of the Provider (such additional content in this paragraph 8.3, "**Provider Features**"), then:

- 8.3.1 the Authority may require the Provider to amend the Response so as to clearly identify the Provider Features and present them separately from the rest of the Response;
 - 8.3.2 if the form of Response which is approved by the Authority contains Provider Features, the cost and expense of the development and implementation and introduction of such Provider Features shall be borne exclusively by the Provider and not by the Authority; and
 - 8.3.3 in the event that the Authority incurs any cost or expense in relation to Provider Features, the Provider shall reimburse the Authority in respect of all such cost and expense within ten (10) Working Days of written request from the Authority.
- 8.4 Subject to paragraph 8.5, below, the Authority will consider and respond to the Response, under the Variation procedure, by 31 May 2016 and in this paragraph 8 the stage and associated tasks and deliverables described in this paragraph 8.4 and in paragraph 8.5 and in paragraph 8.6 shall be referred to in this paragraph 8 as “**Stage 2**”.
- 8.5 The Provider will promptly respond to and address all and any comments provided by the Authority and other Government functions or stakeholders in the course of Stage 2 as well as during Stage 1, and shall iteratively and promptly revise and adjust and finalise the Response to IF17 and IF18 to take account of such comments.
- 8.6 In the event that the Provider and the Authority cannot reach agreement in relation to the proposed costing in the Response, the Authority will have the option of referring the matter to a suitably qualified independent expert for determination. The expert shall be selected and appointed by the Authority and shall act as independent expert and not as arbitrator, and the expert’s decision will be final and binding on the Parties. If the expert confirms a cost lower than that proposed by the Provider in its Response, the Provider will bear the expert’s costs and shall reimburse the Authority in respect of them, and otherwise the cost of the expert will be borne by the Authority.
- 8.7 Immediately upon receiving written notification from the Authority’s duly authorised officer of the Authority’s approval of the Response in respect of IF17 and IF18 (such Response in its form as approved by the Authority being referred to in this paragraph 8 as the “**Approved Response**”, and the costing component of it being referred to as the “**Approved Costing**”, and the deliverables described by the specification in the approved Response being referred to as the “**Approved Solution**”), the Provider shall start development of the Approved Solution in accordance with the Approved Response and at a cost not exceeding the Approved Costing. Within the following six (6) Months (in this paragraph 8, the “**Development Period**”) the Provider shall:
- 8.7.1 complete the development and successful integration tests of the Approved Solution; and
 - 8.7.2 (from 1 September 2016) in parallel, develop and finalise an implementation plan, and final test and acceptance criteria, each in a form acceptable to the Authority, through consultation with the Authority (which implementation plan may provide for phased implementation subject to the full implementation being completed within three (3) Months from the successful completion of the development and testing of the solution) (and in this paragraph 8, the

implementation and test and acceptance resources in their form as approved by the Authority shall be referred to as the “**Implementation Plan**”).

- 8.7A The Parties acknowledge and agree that the Implementation Plan may be changed with the Authority’s approval in writing, and the term “Implementation Plan” in this paragraph 8 shall be construed and applied as meaning, on a given date, the Implementation Plan in its up-to-date and Authority-approved form as at such date.
- 8.8 The Provider will immediately upon the achievement of successful testing of the development version of the Approved Solution, start implementing the Approved Solution (and delivering supporting training for its Staff) in accordance with the Implementation Plan and the Approved Response, so that the implementation of the Approved Solution is completed within three (3) Months from achievement of successful testing of the Approved Solution.
- 8.9 The Provider shall provide its deliverables and discharge its obligations under this paragraph 8, at the latest, by the following dates which, for the avoidance of doubt, shall be changed with the Authority’s approval in writing (which may be by way of the Authority’s written approval of the Implementation Plan where such Implementation Plan explicitly refers to this paragraph 8.9 and specifies a different date for any of the following milestones):
- 8.9.1 6 May 2016 for completion of Stage 1 (the Response to IF17 and IF18);
 - 8.9.2 31 May 2016 for completion of Stage 2 (achievement of an Approved Response);
 - 8.9.3 30 November 2016 for achievement of successful tests of the developed Approved Solution and Authority approval of the Implementation Plan; and
 - 8.9.4 28 February 2017 for achievement of successful test of the completed implementation of the Approved Solution.
- 8.10 The Authority’s decisions made in relation to the Response and associated costing shall be final, except to the extent that there is a determination under paragraph 8.6, above, in which case the independent expert’s determination shall be final in relation to the costing only. Subject to that, the Authority will meet the reasonable and evidenced integration and implementation costs incurred by the Provider in line with the Approved Response and the Approved Costing.
- 8.11 At either Party’s request the impact on the Provider’s operational costs of implementing and operating PIPAT in line with the specification in the Approved Response will be assessed by the Parties. Where there is an evidenced and material impact on the Provider’s operational costs, such impact on cost shall be considered via the Variation procedure to evaluate whether the Contract Price may be adjusted so as to appropriately reflect this impact.
- 8.12 In the event that the Authority and the Provider are unable to agree upon the impact of introducing PIPAT on the Provider’s operational costs under paragraph 8.11, then the Authority shall refer the question of such costs to a suitably qualified independent expert, who shall be selected and appointed by the Authority and shall act as expert not as arbitrator, and the expert’s decision will be final and binding on the Parties. If the expert confirms an impact cost lower than that proposed by the Provider under the Variation

procedure prior to the referral of the matter to the expert, the Provider will bear the expert's costs and shall reimburse the Authority in respect of them, and otherwise the cost of the expert will be borne by the Authority.

PART -B – INVOICING

1 PURPOSE OF THIS PART OF THE APPENDIX

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

2 Provider Invoices

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

Invoice only: shall be posted, using methods that ensure the invoice and the data and information contained in it is secure, to the following address or such other address as the Authority may notify to the Provider in writing from time to time:

Department for Work and Pensions
SSCL Accounts Payable Team
Room 6124
Tomlinson House
Norcross
Blackpool
FY5 3TA

MI and a PDF copy invoice shall be forwarded using encryption to the following contacts or such other contact(s) as the Authority may notify to the Provider in writing from time to time:

- (a) [REDACTED]; and

[REDACTED]

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

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

3 PAYMENT TERMS

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

PART C NOT USED

PART D - FINANCIAL MODEL, REPORTING, RISK AND AUDIT

1 Quarterly Report

- 1.1 From 1 January 2016 until the expiry or termination of the Contract, within the ten (10) Working Days from the last day of each Quarter, the Provider shall produce a report and narrative, setting out actual costs incurred to date by the Provider in its performance of the Services, and financial forecasts for the remaining term of the Contract (in the Contract, "**Quarterly Report**"). The Quarterly Report shall:
- 1.1.1 be presented (in terms of scope, content and level of detail) and calculated in accordance with the Provider's internal financial management accounts;
 - 1.1.2 include a schedule of all costs incurred (including Allowable Costs and Disallowable Costs) and a forecast of costs for the Contract Period;
 - 1.1.3 include an inter-company expenditure statement and breakdown in a format approved by the Authority, setting out charges incurred by the Provider in relation to services provided to it by its Affiliates for the purposes of the Contract (being those **SERVICES STATED IN THE DEFINITION OF 'D' IN THE DEFINED TERM "PROFIT", AND THOSE** approved by the Authority (if any) pursuant to paragraph 1.2 of Part E (Profit Share) of Appendix 4 (Prices and Rates) of the Contract);
 - 1.1.4 include a corporate overhead expenditure statement and breakdown in a format approved by the Authority;
 - 1.1.5 include a revenue statement and breakdown in a format approved by the Authority;
 - 1.1.6 include a profit and loss statement and breakdown in a format approved by the Authority;
 - 1.1.7 include financial forecasts for the remaining term of the Contract along with information about the assumptions made by the Provider in calculating its forecasts (such as in relation to volumes of Referrals);
 - 1.1.8 include accrual and pre-payment statement and breakdown in a format approved by the Authority;
 - 1.1.9 include a statement of the following in relation to all Staff involved in the provision of the Services during the relevant Quarter, including Staff who are involved in direct performance of the Services to Participants and also all other Staff (such as management and back-office Staff):
 - (a) a list of Staff job titles;
 - (b) the total number of Staff, counted as at the final Working Day of the relevant Quarter and as at the final Working Day of the other two (2) Months in such relevant Quarter, and counted on a per-person basis;

- (c) the total number of Staff, counted as at the final Working Day of the relevant Quarter and as at the final Working Day of the other two (2) Months in such relevant Quarter, and counted on a full time equivalent basis; and
 - (d) for each job title, the number of Staff who hold such title (stated both on a per-person basis and on a full time equivalent basis), the average salary and the average bonus for the Staff who hold such title; and
- 1.1.10 include all other information reasonably requested by the Authority by written notice to the Provider given during the relevant Quarter.
- 1.2 For the purposes of this paragraph 1 the first Quarter shall be the period from and including 1 April 2016 to and including 30 June 2016, and the first Quarterly Report shall be provided in accordance with the Contract and shall be supplied in July 2016 within the timescale stated in paragraph 1.1, above.
- 1.3 The Provider shall ensure that within ten (10) Working Days of written request from the Authority the Finance Director of the Provider (or such other appropriate representative of the Provider as the Authority may request, such as the Financial Representative referred to in paragraph 2.4, below) shall attend a meeting in person with representatives of the Authority (who shall be chosen and appointed by the Authority), and:
 - 1.3.1 both in advance of such meeting and during such meeting the Authority shall be entitled to raise comments and questions about and/or relating to the Quarterly Report; and
 - 1.3.2 the Finance Director of the Provider shall be obliged to:
 - (a) give true, accurate and not misleading answers to such comments and questions;
 - (b) provide such answers within five (5) Working Days of such meeting (or such other amount of time as the Authority may specify by written notice within such five (5) Working Day period); and
 - (c) act on and address such comments and questions within ten (10) Working Days of such meeting (or such other amount of time as the Authority may specify by written notice within such ten (10) Working Day period).
- 1.4 The Provider shall submit the Quarterly Report within the timescales required by this paragraph 1 to: <https://dwp.bravosolution.co.uk/> and shall mark such Quarterly Report "FAO DWP Finance".

2 Additional provisions concerning the Quarterly Report

- 2.1 Each Quarterly Report shall:
 - (a) be completed using all reasonable skill and care and using the same approach and methodology;
 - (b) be completed on an accruals basis and in accordance with the Provider's internal financial reporting;

- (c) quote all monetary values in pounds Sterling;
- (d) quote all costs as exclusive of any VAT;
- (e) be the responsibility of and signed off by the Provider's Finance Director (or equivalent if the Authority has provided Approval in writing in advance), and certified by such person as being:
 - (i) accurate and not misleading;
 - (ii) prepared in conformity with generally accepted accounting principles within the UK; and
 - (iii) a true and fair reflection of:
 - (1) the information included within the Provider's own internal financial reports; and
 - (2) the costs and revenue incurred and forecast by the Provider.

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

- (a) answer any reasonable queries the Authority may have in respect of any version of the Quarterly Report and shall use best endeavours to do so within five (5) Working Days of receipt of the query; and
- (b) comply with each request by the Authority under clause H6 (Recovery Upon Expiry or Termination) of the Contract in relation to any Quarterly Report, including to enable the Authority to understand any Quarterly Report and/or otherwise achieve the Transparency Objectives, including further breakdowns or sub-categories of cost, and shall use best endeavours to do so within ten (10) Working Days of receipt of the request

and in the event the Authority is consistently raising the same or similar request(s) for any data and/or information and/or breakdown, the Authority may by written notice require the Provider to include such data and/or information and/or breakdown in each subsequent Quarterly Report and the Provider shall comply with any such notice from the date of receipt by the Provider of such notice.

- 2.3 For the purposes of paragraphs 2.2(a) and 2.2(b) above, the Provider and the Authority shall use reasonable endeavours to close off all queries and requests relating to any Quarterly Report within twenty (20) Working Days of such query or request being made, which may include attendance (at the Authority's request) of the Provider and the Authority at one or more meetings to resolve outstanding issues.
- 2.4 During the Contract Period and for a period of twelve (12) Months afterwards, the Provider shall nominate and make available an individual (in this Part D, the "**Financial Representative**") as its lead manager for the purpose of receiving and resolving queries or requests for additional information in respect of the Quarterly Report and requests under clause H6. The Financial Representative will be a suitably qualified, skilled and experienced member of the Staff who has specific responsibility and authorisation for preparing, maintaining, facilitating access to, and discussing and explaining the

Quarterly Report and providing supporting data and information, and seeking to resolve the Authority's requests.

3 Audit

- 3.1 Without prejudice to any other right of audit or access granted to the Authority under the Contract, the Authority (acting by itself or through its Audit Agents) has the right during the Contract Period and for a period of twelve (12) Months afterwards to carry out an audit in relation to the Contract and the Provider's related operations and activities, including to:
- (a) verify the accuracy, integrity and content of any Quarterly Report or other management information provided by the Provider to the Authority;
 - (b) verify the costs incurred by the Provider, for example by testing a sample of transactions from the Provider's financial ledger (including amounts paid to subcontractors) relating to the Contract and related operations;
 - (c) verify data and/or information (including management and/or performance information) produced by the Provider, and verify any calculations made using data and/or information including calculations made under Part E (Profit Share) of this Appendix 4, below, and including data and information and calculations made under paragraph 5A and 5B and 5C (No Pay Amounts) and 5D (FTA risk value sharing) of Part A of this Appendix 4; and
 - (d) understand the methodology, financial control process and systems which underpin the financial reporting processes of the Provider under the Contract, as reported in its financial ledger.
- 3.2 The Authority (including its Audit Agents) will provide at least two (2) Months' notice of its intention to conduct an audit under this paragraph 3.
- 3.3 When carrying out audits, the Authority will comply (and will instruct its appointed Audit Agents to comply) with the Provider's security, sites, systems and facilities operating procedures as reasonably directed by the Provider, and will use its reasonable endeavours to ensure that the conduct of each audit does not cause unreasonable disruption.
- 3.4 The Provider shall in a timely manner provide the Authority and/or the Audit Agents with all reasonable cooperation and assistance in relation to each audit, including providing:
- (a) all data and information and records reasonably requested by the Authority and/or Audit Agents within the permitted scope of the audit as set out in paragraph 3.1;
 - (b) reasonable access to sites and any equipment and records used (whether exclusively or non-exclusively) in the performance of the Services; and
 - (c) reasonable access to Staff, including the Financial Representative.
- 3.5 The Parties will bear their own costs and expenses of an audit.
- 3.6 Following any audit:

- (a) the Provider shall rectify any material errors, inaccuracies or other deficiencies (including costs incurred) identified, and do so to the Authority's reasonable satisfaction; and
- (b) the Parties will challenge and discuss with each other ideas for efficiencies and improvements.

PART E - PROFIT SHARE

1 PERMITTED PROFIT MARGIN

- 1.1 The provisions of this Part E of this Appendix 4 shall enter into effect from and including 1 January 2016 and shall remain in effect until the Provider has performed its obligation under paragraph 2 (Profit Share), below, or (if no sum is payable under such paragraph 2) until the date on which the determination is made under paragraph 2.2, below.
- 1.2 The Parties agree and acknowledge that in respect of Profit during each Profit Share Period:
- 1.2.1 the Provider shall be entitled to retain one hundred per cent (100%) of any Profit up to and including the Trigger Profit Margin;
 - 1.2.2 if the Profit Margin exceeds the Trigger Profit Margin, the Parties shall share the Excess Profit subject to and in accordance with paragraph 2 (Profit Share) below;
 - 1.2.3 in the event that the Provider proposes to utilise an intra-company service provided to it by any of its Affiliates in return for payment of charges, before utilising such service it shall submit details to the Authority, of:
 - (i) the proposed services;
 - (ii) the Affiliate that would provide the services;
 - (iii) the charges for the services; and
 - (iv) the profit margin of the Affiliate for the relevant services,and for the purposes of calculating Profit, the profit element of such charges shall be taken into account as part of the item 'D' (as 'D' is defined in the definition of Profit under the Contract) and the cost element of such charges shall be taken into account as part of the item 'C' (as 'C' is defined in the definition of Profit under the Contract);
 - 1.2.4 the Authority shall be entitled to conduct an audit in exercise of its rights under paragraph 3 of Part D (Financial Model, Reporting, Risk and Audit) of this Appendix 4 in relation to all costs including Disallowable Costs and Allowable Costs;
 - 1.2.5 the Authority may at any time ask the Provider for evidence as to whether its Allowable Costs meet the Allowable Costs Criteria;
 - 1.2.6 in the event that any Allowable Costs are determined by the Authority, pursuant to paragraph 1.2.4 or paragraph 1.2.5, above, as not meeting the Allowable Costs Criteria, such Allowable Costs shall be deemed to be Disallowable Costs; and
 - 1.2.7 in the event that any Allowable Costs are determined by the Authority, pursuant to paragraph 1.2.4 or paragraph 1.2.5, above, as meeting the

Allowable Costs Criteria such Allowable Costs shall be deemed to continue to be Allowable Costs.

2 PROFIT SHARE

- 2.1 If at the end of the relevant Profit Share Period there is any Excess Profit, the Parties shall share the Excess Profit [REDACTED].

Without prejudice to the Authority's rights under Part D of this Appendix 4, above, the Provider shall issue a credit note for [REDACTED]% of the amount of Excess Profit determined by Authority at the Contract Delivery Board as being due under this Part E, and the Authority shall deduct the amount of such credit note against the next invoice **provided that** if there is no such invoice or if the amount of the Provider's next invoice(s) is insufficient to meet the amount of Excess Profit so determined by the Contract Delivery Board the Provider shall pay to the Authority the Authority's share of the Excess Profit within thirty (30) Working Days of the Excess Profit amount being so approved by Contract Delivery Board. Without prejudice to the foregoing, the Authority shall be entitled to recover its share of Excess Profit under clause C3.1 (Recovery of Sums Due) of the Contract.

Annex 1– Rates Payable

The Unit Price set out in this Annex 1 shall apply during the periods stated below, and (where stated) shall apply with effect on and from 16 November 2015, which the Authority and the Provider acknowledge is a date prior to the **Second Variation** Effective Date.

- 1 *Table A – rates applicable from and including 16 November 2015 to and including 31 December 2015*

The Unit Price under the contract for the period from and including 16 November 2015 to and including 31 December 2015 shall be as follows:

Table A Unit Price (£)	
Price for each Paper Based Review Output	Price for each Consultation Assessment Output
[REDACTED]	[REDACTED]

- 2 *Table B – rates applicable from and including 1 January 2016 to and including 31 December 2016*

The Unit Price under the Contract for the period from and including 1 January 2016 to and including 31 December 2016 shall be as follows:

Table B Unit Price (£)	
Price for each Paper Based Review Output	Price for each Consultation Assessment Output
[REDACTED]	[REDACTED]

- 3 *Table C – rates applicable from and including 1 January 2017 to and including 31 July 2019*

The Unit Price under the Contract for the period from and including 1 January 2017 to and including 31 July 2019 shall be as follows:

Table C Unit Price (£)	
Price for each Paper Based Review Output	Price for each Consultation Assessment Output
[REDACTED]	[REDACTED]

- 3A *Table CA – rates applicable from and including 1 August 2019 to and including the end of the Contract Period*

The Unit Price under the Contract for the period from and including 1 August 2019 to and including the end of the Contract Period shall be as follows:

Table C Unit Price (£)	
Price for each Paper Based Review Output	Price for each Consultation Assessment Output
[REDACTED]	[REDACTED]

4 *Table D – Further Medical Evidence*

	Cost (£)
GP Factual Report	[REDACTED]

Annex 2 - Disallowable Costs

The following examples shall, in addition to any other Disallowable Costs determined by the Authority pursuant to paragraph 1 (Permitted Profit Margin) of Part E of Appendix 4 of the Contract, be Disallowable Costs under the Contract:

- 1 Consultancy costs not previously approved by the Authority (acting reasonably).
- 2 Corporate overheads above the levels stated in paragraph (b) of the defined term "Allowable Costs".
- 3 Cost of money above the levels stated in paragraph (a) of the defined term "Allowable Costs".
- 4 Profits of Affiliates of the Provider and/or costs of the Provider incurred for such Affiliates' services in connection with the Contract, where such profits arise or costs are incurred in relation to services other than (a) those stated in the definition of 'D' in the defined term "Profit", or (b) those approved by the Authority (if any) pursuant to paragraph 1.2 of Part E of Appendix 4 of the Contract.
- 5 profits of affiliates of the provider and/or costs of the provider incurred for such affiliates' services in connection with the contract, where such profits or costs are above (a) the levels stated in the definition of 'd' in the defined term "profit", or (b) the levels approved by the authority (if any) pursuant to paragraph 1.2 of part e of appendix 4 of the contract.
- 6 Corporate hospitality.
- 7 Conference costs, with the sole exception of costs specifically incurred for the purposes of the Contract.
- 8 Travel and/or subsistence payments incurred otherwise than in accordance with the Provider's applicable policy on such payments.
- 9 Premises provided for the personal use of any person, e.g. any personal or corporate flat or other dwelling.
- 10 any bonus payments made above levels provided for in the Provider's bonus scheme without the Authority's approval.
- 11 unreasonable gift and reward structures.

Annex 3 – Rate Card

- 1 In this Annex 3 of this Appendix 4, "Contract Year" and "Extension Year" mean:
- 1.1 in the period starting on the Commencement Date and ending on 31 July 2019, the period of twelve (12) Months starting on the Commencement Date stated in the Order Form (in the case of Contract Year 1) and each subsequent period of twelve (12) Months each starting on each anniversary of such Commencement Date and (in the case of Contract Year 7) ending on 31 July 2019; and
- 1.2 in the Extension Period, the period of twelve (12) Months starting on the first day of the Extension Period (Extension Year 1) and the subsequent period of twelve (12) Months starting on the anniversary of the first day of the Extension Period and ending on 31 July 2021 (Extension Year 2).

Table A – Rate Card applicable to Contract Years 1-7

<u>Staff Category</u>	<u>Applicable rate for a Professional Day (£) excluding VAT</u>						
	<u>Contract Year 1</u>	<u>Contract Year 2</u>	<u>Contract Year 3</u>	<u>Contract Year 4</u>	<u>Contract Year 5</u>	<u>Contract Year 6</u>	<u>Contract Year 7</u>
<u>Health Professional - GP</u>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<u>Health Professional – Nurse/ Occupational Therapist</u>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<u>Non Health Professional - Process SME</u>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<u>Contact Centre staff</u>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<u>Administrator</u>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<u>Senior Management Team Support</u>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<u>IT - Service Delivery Manager</u>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<u>IT - Security Consultant</u>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

<u>IT – CLAS Consultant</u>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<u>IT - Programme Manager</u>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<u>IT - Solutions Architect</u>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<u>IT – TDA</u>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<u>IT - Project Manager</u>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<u>IT - Business Analyst</u>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<u>IT - Project Office Co-ordinator</u>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<u>IT - Lead Developer</u>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<u>IT - Developer</u>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<u>IT - Test Manager</u>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<u>IT - Test Analyst</u>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Table B – Rate Card applicable to Extension Year 1 and Extension Year 2*.

<u>Staff Category</u>	<u>Applicable rate for a Professional Day (£) excluding VAT</u>	
	<u>Extension Year 1</u>	<u>Extension Year 2</u>
Health Professional – GP	[REDACTED]	[REDACTED]
Health Professional – Other	[REDACTED]	[REDACTED]
Non Health Professional - Process SME	[REDACTED]	[REDACTED]
Contact Centre staff	[REDACTED]	[REDACTED]
Administrator	[REDACTED]	[REDACTED]
Senior Management Team Support	[REDACTED]	[REDACTED]
Operational Project Manager	[REDACTED]	[REDACTED]

Operational Business Analyst	[REDACTED]	[REDACTED]
IT - Service Delivery Manager	[REDACTED]	[REDACTED]
IT - Security Consultant	[REDACTED]	[REDACTED]
IT – CLAS Consultant	[REDACTED]	[REDACTED]
IT - Programme Manager	[REDACTED]	[REDACTED]
IT - Solutions Architect	[REDACTED]	[REDACTED]
IT – TDA	[REDACTED]	[REDACTED]
IT - Project Manager	[REDACTED]	[REDACTED]
IT - Business Analyst	[REDACTED]	[REDACTED]
IT - Project Office Co-ordinator	[REDACTED]	[REDACTED]
IT - Lead Developer	[REDACTED]	[REDACTED]
IT - Developer	[REDACTED]	[REDACTED]
IT - Test Manager	[REDACTED]	[REDACTED]
IT - Test Analyst	[REDACTED]	[REDACTED]

*the rates set out in the Rate Card above include any profit margin of the Provider. No additional margin may be added to the rates above.

1.3 Rate Card for Health Professional (Other)

Where, in Extension Year 1 or Extension Year 2, the Provider is asked to provide Health Professional (Other) resource (an "**HPO Professional**") in connection with any Variation or other purpose where such resource is required, and the cost of such HPO Professional is to be calculated on the basis of the Rate Card set out at Table B above, the day rate for such resource shall be calculated as follows:

- 1.3.1 Where the Variation or other purpose requires up to and including 8 HPO Professionals the day rate shall be [REDACTED] per day (excluding VAT);
- 1.3.2 Where the Variation or other purpose requires from 9 up to and including 30 HPO Professionals the day rate shall be [REDACTED] per day (excluding VAT);
- 1.3.3 Where the Variation or other purpose requires and where Capita has agreed to provide more than 30 HPO Professionals or in any case more than 10 HPO Professionals in any Region, the day rate for the excess HPO Professionals shall be a rate to be agreed between the Parties acting reasonably.

APPENDIX 5 – COMMERCIALLY SENSITIVE INFORMATION

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

Page Number (in your tender)	Clause/paragraph numbered (or other identification)	Explanation of harm which may result from disclosure and time period applicable to any sensitivity
Page 14	Section 2.1 Risk	The information is likely to prejudice the commercial interests of Capita as it details Capita's risk appetite and profile in relation to the Services. Time period: For a period of two years after the termination or expiry of the Contract.
Page 17 and separate documents as listed	Section 2.2 Risk Capita - Financial Risk - Lot 2	The information is likely to prejudice the commercial interests of Capita as the documents detail Capita's risk appetite and profile in relation to the Services. Time period: For a period of two years after the termination or expiry of the Contract.
Page 128	Section 6.1 Contract Management, Performance and Continuous Improvement	The information is likely to prejudice the commercial interests of Capita as the documents detail Capita's risk appetite and profile in relation to the Services. Time period: For a period of two years after the termination or expiry of the Contract.
Page 130	Section 6.2 Contract Management, Performance and Continuous Improvement	The information is likely to prejudice the commercial interests of Capita as the documents detail Capita's risk appetite and profile in relation to the Services. Time period: For a period of two years after the termination or expiry of the Contract.
Document as listed	Capita_Finance Pricing Proposal_Lot 2	The Financial Model contains information of a financial nature including the costs and profit provided by Capita to the Authority pursuant to the Contract which is commercially sensitive and the release of the information is likely to prejudice the commercial interests of Capita. Time period: Without limit of time.

- 2 The Authority will consult with the Provider on any request for information, identified as Commercially Sensitive, under the FOIA.

- 3 The Authority reserves the right to disclose any Commercially Sensitive Information held within this Contract in response to a request under the FOIA as set out at clause E5 of this Contract.
- 4 The Authority will automatically publish all information provided by the Provider **not** identified in this Appendix as constituting Commercially Sensitive Information provided that it satisfies the requirements of the FOIA.
- 5 The Authority reserves the right to determine whether any information provided in this Appendix does constitute Commercially Sensitive Information prior to publication.

APPENDIX 6 – SECURITY REQUIREMENTS AND PLAN

1 Introduction

1.1 This appendix covers;

- (a) Principles of security for the Provider System, derived from the Security Policy, including without limitation principles of physical and information security;
- (b) The creation of the Security Plan;
- (c) Audit and testing of the Security Plan;
- (d) Conformance to ISO/IEC: 27002 (Information Security Code of Practice) and ISO/IEC 27001 (Information Security Requirements Specification) (Standard Specification); and
- (e) Breaches of Security.

2 Principles of Security

2.1 The Provider acknowledges that the Authority places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Provider System. The Provider also acknowledges the confidentiality of the Authority's Data.

2.2 The Provider shall be responsible for the security of the Provider System and shall at all times provide a level of security which;

- (a) is in accordance with Good Industry Practice and Law;
- (b) complies with the Security Policy;
- (c) meets any specific security threats to the Provider System; and
- (d) complies with ISO/IEC27002 and ISO/IEC27001 in accordance with paragraph 5 of this Appendix.

2.3 Without limiting paragraph 2.2, the Provider shall at all times ensure that the level of security employed in the provision of the Services is appropriate to minimise the following risks:

- (a) loss of integrity of Authority Data;
- (b) loss of confidentiality of Authority Data;
- (c) unauthorised access to, use of, or interference with Authority Data by any person or organisation;
- (d) unauthorised access to network elements and buildings;

- (e) use of the Provider System or Services by any third party in order to gain unauthorised access to any computer resource or Authority Data; and
- (f) loss of availability of Authority Data due to any failure or compromise of the Services.

3 Security Plan

Introduction

- 3.1 The Provider shall develop, implement and maintain a Security Plan to apply during the Contract Period which will be approved by the Authority, tested, periodically updated and audited in accordance with this Appendix.
- 3.2 A draft Security Plan will have been provided by the Provider as part of its bid for the Contract and will be set out in the Order Form.

Development

- 3.3 Within twenty (20) Working Days after the Commencement Date (unless some other date is agreed in writing by the parties) and in accordance with paragraphs 3.10 to 3.12 (Amendment and Revision), the Provider will prepare and deliver to the Authority for approval the full and final Security Plan
- 3.4 If the Security Plan is approved by the Authority it will be adopted immediately. If the Security Plan is not approved by the Authority the Provider shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit to the Authority for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with clause 12 Dispute Resolution. No approval to be given by the Authority pursuant to this paragraph 3.4 of this appendix may be unreasonably withheld or delayed. However any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 3.1 to 3.9 shall be deemed to be reasonable.

Content

- 3.5 The Security Plan will set out the security measures to be implemented and maintained by the Provider in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with:
 - (a) the provisions of this contract; this appendix (including the principles set out in paragraph 2);
 - (b) the provisions of the Appendix (The Services) relating to security;
 - (c) ISO/IEC27002 and ISO/IEC27001;
 - (d) the data protection compliance guidance produced by the Authority;

- 3.6 The references to standards, guidance and policies set out in paragraph 3.5 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.
- 3.7 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Provider should notify the Authority's Representative of such inconsistency immediately upon becoming aware of the same, and the Authority's Representative shall, as soon as practicable, advise the Provider which provision the Provider shall be required to comply with.
- 3.8 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001.
- 3.9 Where the Security Plan references any document which is not in the possession of the Authority, a copy of the document will be made available to the Authority upon request. The Security Plan shall be written in plain English in language which is readily comprehensible to the staff of the Provider and the Authority engaged in the Services and shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this appendix.

Amendment and Revision

- 3.10 The Security Plan will be fully reviewed and updated by the Provider annually, or from time to time to reflect:
- (a) emerging changes in Good Industry Practice;
 - (b) any change or proposed change to the Provider System, the Services and/or associated processes; and
 - (c) any new perceived or changed threats to the Provider System.
 - (d) a reasonable request by the Authority
- 3.11 The Provider will provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Authority.
- 3.12 Any change or amendment which the Provider proposes to make to the Security Plan as a result of an Authority request or change to the Appendix (The Services) or otherwise shall be subject to the Change Control Procedure and shall not be implemented until approved in writing by the Authority.

4 Audit and Testing

- 4.1 The Provider shall conduct tests of the processes and countermeasures contained in the Security Plan ("Security Tests") on an annual basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority.
- 4.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Provider shall provide the Authority with the results of such tests (in

a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.

- 4.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to this Contract, the Authority shall be entitled at any time and without giving notice to the Provider to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Provider's compliance with and implementation of the Security Plan. The Authority may notify the Provider of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery Services. If such tests impact adversely on its ability to deliver the Services to the agreed Service Levels, the Provider shall be granted relief against any resultant under-performance for the period of the tests.
- 4.4 Where any Security Test carried out pursuant to paragraphs 4.2 or 4.3 above reveals any actual or potential security failure or weaknesses, the Provider shall promptly notify the Authority of any changes to the Security Plan (and the implementation thereof) which the Provider proposes to make in order to correct such failure or weakness. Subject to the Authority's approval in accordance with paragraph 3.12, the Provider shall implement such changes to the Security Plan in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan to address a non-compliance with the Security Policy or security requirements, the change to the Security Plan shall be at no additional cost to the Authority. For the purposes of this paragraph 4, a weakness means vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

5 Compliance With ISO/IEC 27001

- 5.1 The Provider shall obtain independent certification of the Security Plan to ISO27001 as soon as reasonably practicable and will maintain such certification for the duration of the Contract
- 5.2 If certain parts of the Security Policy do not conform to good industry practice as described in ISO27002 and, as a result, the Provider reasonably believes that its certification to ISO 27001 would fail in regard to these parts, the Provider shall promptly notify the Authority of this and the Authority in its absolute discretion may waive the requirement to certification in respect of the relevant parts
- 5.3 The Provider shall carry out such regular security audits as may be required by the British Standards Institute in order to maintain delivery of the Services in compliance with security aspects of ISO 27001 and shall promptly provide to the Authority any associated security audit reports and shall otherwise notify the Authority of the results of such security audits.
- 5.4 If it is the Authority's reasonable opinion that compliance with the principles and practices of ISO 27001 is not being achieved by the Provider, then the Authority shall notify the Provider of the same and give the Provider a reasonable time (having regard to the extent of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO 27001. If the Provider does not

become compliant within the required time then the Authority has the right to obtain an independent audit against these standards in whole or in part.

- 5.5 If, as a result of any such independent audit as described in paragraph 5.4 the Provider is found to be non-compliant with the principles and practices of ISO 27001 then the Provider shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.

6 Breach of Security

- 6.1 Either party shall notify the other immediately upon becoming aware of any Breach of Security including, but not limited to an actual, potential or attempted breach, or threat to, the Security Plan.

- 6.2 Upon becoming aware of any of the circumstances referred to in paragraph 6.1, the Provider shall;

- (a) immediately take all reasonable steps necessary to;
 - (i) remedy such breach or protect the Provider System against any such potential or attempted breach or threat; and
 - (ii) prevent an equivalent breach in the future.

Such steps shall include any action or changes reasonably required by the Authority. In the event that such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Provider under this Contract, then the Provider shall be entitled to refer the matter to the change control procedure in clause F3 Variation.

- (b) as soon as reasonably practicable provide to the Authority full details (using such reporting mechanism as may be specified by the Authority from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

Annex K – Security Policy for Providers

- 1 The Department for Work and Pensions treats its information as a valuable asset and considers that it is essential that information must be protected, together with the systems, equipment and processes which support its use. These information assets may include data, text, drawings, diagrams, images or sounds in electronic, magnetic, optical or tangible media, together with any Personal Data for which the Department for Work and Pensions is the Data Controller.
- 2 In order to protect Departmental information appropriately, our Providers must provide the security measures and safeguards appropriate to the nature and use of the information. All Providers of services to the Department for Work and Pensions must comply, and be able to demonstrate compliance, with the Department's relevant policies and standards.
- 3 The Chief Executive or other suitable senior official of each Provider must agree in writing to comply with these policies and standards. Each Provider must also appoint a named officer who will act as a first point of contact with the Department for security issues. In addition all staff working for the Provider and where relevant Sub-contractors, with access to Departmental IT Systems, Services or Departmental information must be made aware of these requirements and must comply with them.
- 4 All Providers must comply with the relevant Standards from the DWP Information Systems Security Standards. The Standards are based on and follow the same format as International Standard 27001, but with specific reference to the Department's use.
- 5 The following are key requirements and all Providers must comply with relevant DWP policies concerning:
 - 6 **Personnel Security**
 - 6.1 Staff recruitment in accordance with government requirements for pre-employment checks;
 - 6.2 Staff training and awareness of Departmental security and any specific contract requirements.
 - 7 **Secure Information Handling and Transfers**
 - 7.1 Physical and electronic handling, processing and transferring of DWP Data, including secure access to systems and the use of encryption where appropriate.
 - 8 **Portable Media**
 - 8.1 The use of encrypted laptops and encrypted storage devices and other removable media when handling Departmental information.
 - 9 **Offshoring**
 - 9.1 The Department's Data must not be processed outside the United Kingdom without the prior written consent of DWP and must at all times comply with the Data Protection Act 1998.
 - 10 **Premises Security**

10.1 Security of premises and control of access.

11 Security Incidents

11.1 Includes identification, managing and agreed reporting procedures for actual or suspected security breaches.

12 All Providers must implement appropriate arrangements which ensure that the Department's information and any other Departmental assets are protected in accordance with prevailing statutory and central government requirements. These arrangements will clearly vary according to the size of the organisation.

13 It is the Provider's responsibility to monitor compliance of any Sub-contractors and provide assurance to DWP.

14 Failure to comply with any of these Policies or Standards could result in termination of current contract.

APPENDIX 7 – SUSTAINABLE DEVELOPMENT REQUIREMENTS

This appendix sets out the Sustainable Development Requirements which are applicable to the provision of the Services.

1 General

- 1.1 The Provider acknowledges that the Authority must at all times be seen to be actively promoting Sustainable Development.
- 1.2 In delivering the Services, the Provider shall and shall procure that its Sub-contractors assist and cooperate with the Authority, by fully complying with the requirements of this Appendix.

2 Compliance

- 2.1 The Provider shall produce a Sustainable Development Policy Statement and Sustainable Development Plan in accordance with paragraphs 2.2 and 2.3 of this Appendix, by 01.07.13 and annually thereafter. The Sustainable Development Policy Statement and Sustainable Development Plan must be specific to the Contract and include all Sub-contractors involved in delivery of the Contract. The Provider must obtain the required information from Sub-contractors and then collate and submit as stated above.
- 2.2 In delivering the Services, the Provider shall prepare a Sustainable Development Policy Statement giving, for each organisation involved in delivery of the contract:
 - (a) full assurance of waste disposal by a registered waste collector in accordance with current government regulations; and
 - (b) full assurance of the observation of Waste Electrical and Electronic Equipment (WEEE) regulations.
- 2.3 In delivering the Services, the Provider shall prepare a Sustainable Development Plan which as a minimum, detail how each organisation involved in delivery of the contract will:
 - (a) minimise waste produced and promote recycling:
 - (b) minimise energy consumption:
 - (c) minimise use of transport and promote use of public transport where transport is unavoidable;

Also required for each organisation are:

- (d) baseline assessment of current position in terms of waste minimisation, recycling and energy consumption (energy consumption only required if current energy usage is available to organisations)
- (e) annual estimates of the progress of Sustainable Development actions;

- (f) details of how Staff awareness of Sustainability will be increased in line with the Sustainable Development Plan.

APPENDIX 8 – DIVERSITY AND EQUALITY REQUIREMENTS

1 General

- 1.1 The Provider acknowledges that the Authority has a 'duty to promote' equality and must at all times be seen to be actively promoting equality of opportunity for, and good relations between, all persons, irrespective of their race, gender, gender reassignment, disability, age, sexual orientation or religion/belief or in terms of pregnancy and maternity or marriage and civil partnership. The Provider must ensure that each of its Sub-contractors involved in delivery of the contract are aware of, and acknowledge, that the Authority has a 'duty to promote' equality.
- 1.2 In delivering the Services, the Provider shall, and shall procure that its Sub-contractors, assist and cooperate with the Authority in satisfying Equality duties by fully complying with the requirements of this Appendix.

2 Compliance

- 2.1 The Provider acknowledges the provisions of the Equality Legislation set out in clause D2 (Discrimination).
- 2.2 The Provider shall produce a Diversity and Equality Delivery Plan in accordance with paragraph 2.5 (and sub paragraphs) and paragraph 2.6 (and sub paragraphs) of this Appendix, by 10.05.13, and annually thereafter. The Diversity and Equality Delivery Plan must be specific to the Contract and include details for all Sub-contractors involved in delivery of the Contract.
- 2.3 The Provider will provide workforce monitoring data in accordance with paragraph 3 (and sub paragraphs) of this Appendix, within six (6) Months of the Commencement Date and annually thereafter.
- 2.4 The Authority will consider and agree the submissions made by the Provider when complying with paragraph 2 (and sub paragraphs of paragraph 2) and paragraph 3 (and sub paragraphs of paragraph 3) of this Appendix. Any issues will be raised with the Provider by the Contract Manager acting on behalf of the Authority. If an issue relates to a Sub-contractor, the Provider must raise and resolve the issue with the Sub-contractor. Once submissions are agreed by the Authority the Provider will formally review, revise and resubmit all information required in paragraph 2.2 and paragraph 2.3 on an annual basis. Diversity and Equality aspects will also be discussed jointly by the Authority and the Provider as an ongoing item at the Contract review meetings.
- 2.5 In delivering the Services, the Provider shall prepare the Diversity and Equality Delivery Plan which as a minimum includes:
 - (a) an overview of Provider and any Sub-contractor's policy/policies and procedures for preventing unlawful discrimination and promoting equality of opportunity in respect of:
 - (i) Race
 - (ii) Gender

- (iii) Gender reassignment
- (iv) Disability
- (v) Age
- (vi) Sexual orientation
- (vii) Religion/Belief
- (viii) Pregnancy and Maternity
- (ix) Marriage and Civil Partnerships;
- (b) An overview of Provider and any Sub-contractor's policy/policies and procedures covering:
 - (i) Harassment
 - (ii) Bullying
 - (iii) Victimisation
 - (iv) Recruitment procedures
 - (v) Staff training and development

Full policy documents must be made available to the Authority on request;
- (c) Details of the way in which the above policy/policies and procedures are, or will be (and by when), communicated to the Staff;
- (d) Details of what general diversity and equality related training has been, or will be delivered (and by when), to Staff;
- (e) Details of what structure is already in place, or will be in place (and by when) and what resources are, or will be (and by when), directed towards diversity and equality within the Provider and any Sub-contractor's organisation; and
- (f) Details of any diversity and equality cases and tribunals (including volumes and outcomes) relating to the Provider and any Sub-contractors.

2.6 In delivering the Services, the Provider shall provide evidence, as required below, within the Diversity and Equality Delivery Plan as detailed at paragraph 2.2 of this Appendix:

- (a) Where a Provider is delivering Services to customers on behalf of the Authority or Services to the Authority's staff, the Provider must provide written evidence that:
 - (i) Equality Impact Assessments have been carried out in conjunction with the Authority prior to the Services being delivered and will be carried out in the event of any changes to the Services, in accordance with Equality Legislation;

- (ii) reasonable adjustments are made, as required by Equality Legislation to make those Services accessible to disabled people and that in the case of Information Technology services, those services are in accordance with the Authority's standards;
- (iii) all Staff have had appropriate training so that they understand the duties required by Equality Legislation, and where Services are being delivered on behalf of the Authority, the Provider shall provide evidence that Staff understand the duties not to discriminate and to promote equality, in accordance with Equality Legislation.

2.7 The Authority may request further information and assurance relating to Diversity & Equality at any point during the duration of the Contract.

3 Monitoring and Reporting

3.1 The Provider shall provide workforce monitoring data as detailed in paragraph 3.2 of this Appendix. A template for data collected in paragraphs 3.2, 3.3 and 3.4 will be provided by the Authority. Completed templates for the Provider and each Sub-contractor will be submitted by the Provider by 01.08.13 and annually thereafter. Providers are required to provide workforce monitoring data for the workforce involved in delivery of the Contract. Data relating to the wider Provider workforce and wider Sub-contractors workforce would however be well received by the Authority. Providers and any Sub-contractors are required to submit percentage figures only in response to paragraphs 3.2(a), 3.2(b) and 3.2(c).

3.2 The Provider and Sub-contractors will each provide separate information detailing:

- (a) the proportion of employees who are:
 - (i) female; and/or
 - (ii) disabled
 - (iii) those who prefer not to state gender and/or disability
- (b) the proportion of Staff who in terms of ethnicity are:

White

- (i) white British;
- (ii) white Irish;
- (iii) of any other white background

Mixed

- (iv) white and black Caribbean;
- (v) white and black African;
- (vi) white and Asian;

(vii) of any other mixed background

Asian or Asian British

(viii) Indian;

(ix) Pakistani;

(x) Bangladeshi;

(xi) of any other Asian background

Black or Black British

(xii) Caribbean;

(xiii) African;

(xiv) of any other Black background

Chinese or other ethnic group

(xv) Chinese;

(xvi) of any other ethnic group

Prefer not to state

(xvii) Prefer not to state ethnicity

For the avoidance of doubt, the seventeen (17) percentage figures submitted under categories i) to xvii) of this paragraph 3.2(b) (in each template in respect of the Provider's employees and each Sub-contractors employees) should total one hundred percent (100%).

(c) The Provider will provide details of the proportion of its Sub-contractors that are:

- (i) small to medium sized enterprises (meaning enterprises with less than two hundred and fifty (250) employees and a maximum annual turnover of forty (40) million pounds);
- (ii) ethnic minority enterprises (in each case meaning an enterprise fifty one percent (51%) or more of which is owned by members of one (1) or more ethnic minority groups, or, if there are few owners, where at least fifty percent (50%) of the owners are members of one (1) or more ethnic minority groups). For this purpose, ethnic minority groups means ethnic groups other than White as referred to at paragraph 3.2(b) of this Appendix: and
- (iii) black ethnic minority enterprises (in each case meaning an enterprise fifty one percent (51%) or more of which is owned by members of the Black or Black British ethnic group, or, if there are few owners, where at least fifty percent (50%) of the owners are members of the Black or Black British ethnic group). For this purpose, the Black or Black British

ethnic group has the meaning referred to at categories xii) to xiv) in paragraph 3.2(b) of this Appendix.

For the avoidance of doubt, any given Sub-contractor may fall into one (1), two (2) or all of the categories i) to iii) listed in paragraph 3.2(c) of this Appendix, depending on its composition.

- 3.3 The Provider and any Sub-contractors will compare their figures, in all categories listed in paragraphs 3.2(a), 3.2(b) and 3.2(c) of this Appendix, and provide (where possible) comparisons against any official national/regional statistics that are publicly available.
- 3.4 The Provider and any Sub-contractors will provide evidence of activities undertaken, or planned, in order to try and improve their current position in the categories detailed in paragraphs 3.2(a), 3.2(b) and 3.2(c) of this Appendix.
- 3.5 The Provider shall, and shall procure that its Sub-contractors will ensure at all times that they comply with the requirements of the DPA in the collection and reporting of the information to the Authority.

APPENDIX 9 – WELSH LANGUAGE SCHEME

This Appendix sets out the Provider's obligations which are applicable to the provision of the Services in Wales.

1 General

- 1.1 The Provider acknowledges that in relation to the operation of its Services which are delivered in Wales, the Authority must at all times be seen to be actively promoting the equality of the English and Welsh languages, in accordance with the Welsh Language Act 1993.
- 1.2 In the performance of the Contract, the Provider shall ensure that it cooperates with The Authority wherever possible in satisfying this duty, by fully complying with the requirements of this Appendix.

2 The Department For Work and Pensions Welsh Language Scheme

- 2.1 The DWP Welsh Language Scheme can be found at:
<http://www.dwp.gov.uk/publications/corporate-publications/welsh-language-scheme/>
- 2.2 The Provider shall, in the delivery of the Services, ensure that it complies with the Department for Work and Pensions Welsh Language Scheme and such instructions as The Authority may issue from time to time in respect of promoting the equality of the English and Welsh languages.

3 Delivery of Services Through the Medium of Welsh

- 3.1 The Provider undertakes that those who have dealings with them are able to do so in English or Welsh.
- 3.2 The Provider will ensure that:
 - (a) Those who want, or are required, to correspond with the Provider will be able to do so in English or Welsh;
 - (b) Those who are known to prefer corresponding through the medium of Welsh will have correspondence initiated in Welsh;
 - (c) Any correspondence received in Welsh will be answered in Welsh within the same timescales and standards as those written in English;
 - (d) Staff who are in Wales will greet any telephone callers in English and Welsh until the caller's preferred language can be ascertained;
 - (e) Any answer phones in the Provider's offices in Wales will have a pre-recorded bilingual message;
 - (f) All people who participate in the Services are able to contribute through the medium of English or Welsh;

- (g) All material published and printed in Wales shall be available in English and Welsh. The standard of bilingual or Welsh material shall be of equal quality to those produced solely in English;
- (h) All forms and explanatory material be available in both English and Welsh;
and
- (i) Any complaints or grievance procedure should be provided in both English and Welsh.

APPENDIX 10 – APPRENTICESHIPS AND SKILLS REQUIREMENTS

This Appendix sets out the Apprenticeships and Skills Requirements which are applicable to the provision of the Contract.

1 General

- 1.1 Government is committed to addressing skills issues and promoting training opportunities through procurement, to maximise the potential for improvements provided by its considerable spend.
- 1.2 In order to support and drive economic growth, the Government announced that it has prioritised the key policy agendas to be promoted through public procurement. Supporting apprenticeships, skills and the fight against youth unemployment is one of these 'Policy through Procurement' priorities on which Departments must now focus.
- 1.3 The Provider acknowledges that the Authority is required to support the above apprenticeships and skills aims and targets.
- 1.4 In delivering the Services, the Provider shall, and shall procure that its Sub-contractors assist and cooperate with the Authority by fully complying with the requirements of this Appendix.

2 Compliance

- 2.1 The Provider shall and shall procure that its Sub-contractors take all reasonable steps to employ apprentices, and report to the Authority the numbers of apprentices employed and wider skills training provided, during delivery of the Services.
- 2.2 The Provider shall and shall procure that its Sub-contractors shall take all reasonable steps to ensure that 5% of their employees are on a formal apprenticeship programme. This can include administration and support staff.
- 2.3 The Provider shall and shall procure that its Sub-contractors make available to employees information about the Government's Apprenticeship Programme and wider skills opportunities.
- 2.4 The Provider shall and shall procure that its Sub-contractors provide any appropriate further skills training opportunities for employees involved in delivery of the Contract.
- 2.5 The Provider will produce an Apprenticeships and Skills Report in accordance with paragraph 3 (and sub-paragraphs) of this Appendix.

3 Monitoring and reporting

- 3.1 The Provider shall provide an Apprenticeships and Skills Report by 10/05/13 and annually thereafter. The Apprenticeships and Skills Report must be specific to the Contract and include details for all Sub-contractors involved in delivery of the Contract. The Provider must obtain the required information from Sub-contractors and collate and submit an Apprenticeships and Skills Report that relates specifically to the Contract.

The Apprenticeships and Skills Report will include:

- (a) the number of Staff during the reporting period involved in delivery of the Contract, including administration and support staff;
- (b) the number of existing apprentices involved in the delivery of the Contract;
- (c) the number of new starts on apprenticeships initiated as a result of delivery of the Contract;
- (d) if applicable, a robust explanation as to why it is not possible to meet the 5% target. (It may be that use of apprentices is not possible or appropriate in delivery of the Services);
- (e) action being taken to improve the take up of apprenticeships. These could include issuing leaflets on apprenticeships to eligible existing staff, advertising apprenticeship vacancies with local Jobcentre Plus, schools and colleges, offering apprenticeships in administration/support roles or seeking advice from the National Apprenticeship Service; and
- (f) other training/skills development being undertaken by staff involved in delivery of the Contract including:
 - (i) Work experience placements for 14 to 16 year olds
 - (ii) Work experience/work trial placements for other ages
 - (iii) Student sandwich/gap year placements
 - (iv) Graduate placements
 - (v) Vocational training
 - (vi) Basic skills training
 - (vii) On site training provision/facilities.

- 3.2 The Provider shall, and shall procure that its Sub-contractors will ensure at all times that they comply with the requirements of the DPA in the collection and reporting of the information to the Authority.

APPENDIX 11 – PARENT COMPANY GUARANTEE

DATED

PARENT COMPANY GUARANTEE

between

THE SECRETARY OF STATE FOR WORK AND PENSIONS

and

CAPITA PLC

THIS DEED is dated [DATE]

PARTIES

- (1) **THE SECRETARY OF STATE FOR WORK AND PENSIONS** whose address is Caxton House, Tothill Street, Greater London, SW1H 9NA ("the **Authority**"); and
- (2) **CAPITA PLC** incorporated and registered in England and Wales with company number 2081330 whose registered office is at 30 Berners Street, London, United Kingdom, W1T 3LR ("the **Guarantor**").

BACKGROUND

- (A) By an agreement dated on [INSERT DATE] ("the **Contract**"), which term includes all amendments to, variations of, or supplements to such agreement, from time to time in force including without limitation those referenced in Appendix 1 of this Deed of Guarantee which are applicable to Lot 2), the Authority engaged Capita Business Services Limited incorporated and registered in England and Wales with company number 02299747 whose registered office is at 30 Berners Street, London, United Kingdom, W1T 3LR, ("the **Provider**") to deliver Personal Independent Payment Assessment Service (Lot 2)

Lot 2: Central England and Wales

- (B) Pursuant to the Contract variation [REFERENCE], the Provider is under a contractual obligation to procure the execution and delivery to the Authority of a parent company guarantee substantially in the form of this guarantee from the Guarantor.
- (C) The Guarantor has agreed to guarantee the Provider's due performance of its duties and obligations under the Contract.
- (D) It is the intention of the Parties that this guarantee be executed as a deed.

1 Interpretation

The following definitions and rules of interpretation apply in this Deed of guarantee.

1.1 Definitions

Insolvency Event

a party suffers an insolvency event if:

- (a) it suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- (b) it commences negotiations with all or any class of its creditors with a view to

rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;

- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with its winding up;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over it;
- (e) the holder of a qualifying floating charge over its assets has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over all or any of its assets or a receiver is appointed over all or any of its assets;
- (g) a creditor or encumbrancer of it attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (h) any event occurs, or proceeding is taken, with respect to it in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive); or
- (i) it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

1.2 Unless the context requires otherwise, the definitions and rules of interpretation in the Contract shall apply in this guarantee.

1.3 A reference in this Deed to this guarantee shall be construed as a reference to this Deed of guarantee.

2 Extent of guarantee

- 2.1 Clause 2.2 shall take effect from the date of this guarantee. The remaining terms of this guarantee shall take effect in accordance with clause 2.2.
- 2.2 The Parties agree that:
- 2.2.1 the parent company guarantee previously entered into between the Parties, and signed in July 2012 ("the **2012 Guarantee**") is hereby extinguished and replaced *ab initio* with this guarantee, the remaining terms of which shall take effect from the Commencement Date of the Contract; and
- 2.2.2 nothing in this clause 2 shall affect or prejudice any claim or demand (regardless of when the cause of action for the claim or demand arose) that the Authority may have against the Guarantor, whether under or in connection with the 2012 Guarantee or this guarantee and whether known or unknown to either or both Parties as at the date of this guarantee, provided that any such claim or demand has a valid cause of action under the terms of this guarantee.

3 Obligations Of The Guarantor

- 3.1 The Guarantor agrees:
- 3.1.1 as primary obligor, to guarantee to the Authority the due and punctual performance by the Provider of each and all of the obligations, representations, warranties, duties and undertakings of the Provider under and pursuant to the Contract when and if such obligations, representations, warranties, duties and undertakings shall become due and performable according to the terms of the Contract;
- 3.1.2 in addition to its obligations set out in clause 3.1.1:
- (a) to indemnify the Authority against all losses, sums, debts, damages, interest, payments, charges, costs and expenses ("the **Losses**") which may be awarded against the Authority or which the Authority may otherwise incur arising out of, under or otherwise in connection with the Contract whether arising under statute, contract or at common law including without limitation by reason of any breach by the Provider of its obligations, representations, warranties, duties and undertakings under and/or in connection with the Contract save that, subject to the other provisions of this guarantee (including without limitation the remainder of this clause 3.1), this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are imposed on the Provider under the Contract;
- (b) to indemnify the Authority against all losses whether arising under statute, contract or at common law which may be awarded against the Authority or which the Authority may otherwise incur if any obligation guaranteed by the Guarantor is or becomes totally or partially unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Provider's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal;

- (c) that if the Provider suffers an Insolvency Event, the Guarantor shall indemnify the Authority against all Losses incurred by the Authority by reason of such Insolvency Event; and
- (d) shall, on first written demand, pay to the Authority, without any deduction or set-off, the amount of any Loss incurred and referred to in this clause 3.1.2.

4 Liability

- 4.1 The Guarantor agrees that its liability under this guarantee shall not in any way be released, reduced or adversely affected by any act, omission, matter or other thing whereby (in absence of this provision) the Guarantor would or might be released in whole or in part from liability under this guarantee including, without limitation and whether or not known to the Guarantor:
 - 4.1.1 any arrangement made between the Provider and the Authority;
 - 4.1.2 any alteration in the obligations undertaken by the Provider whether by way of any addendum or variation referred to in clause 5 or otherwise;
 - 4.1.3 any waiver or forbearance (in part or otherwise) by the Authority whether as to payment, time, performance or otherwise;
 - 4.1.4 the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Provider or any other person;
 - 4.1.5 any unenforceability, illegality, invalidity, avoidance or termination of any of the provisions of the Contract or any of the Provider's obligations under the Contract, so that this guarantee shall be construed as if there were no such unenforceability, illegality, invalidity, avoidance or termination;
 - 4.1.6 any legal limitation, disability, incapacity or other circumstances relating to the Provider, or any other person; or
 - 4.1.7 (without prejudice to clause 3.1.2(c) above) the dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation or the appointment of an administrator or receiver of the Provider or any other person.

5 Addendum Or Variation

- 5.1 The Guarantor by this guarantee authorises the Provider and the Authority to make any addendum or variation to the Contract without the Guarantor's consent, the due and punctual performance of which addendum and variation shall be likewise guaranteed by the Guarantor in accordance with and on the same terms of this guarantee as set out herein.

6 Guarantee

- 6.1 This guarantee shall be a primary obligation of the Guarantor and accordingly the Authority shall, not be obliged before enforcing this guarantee to take any action in any court or arbitral proceedings against the Provider, to make any claim against or any demand of the Provider, to enforce any other security held by it in respect of the obligations of the Provider under the Contract or to exercise, levy or enforce any distress, diligence or other process of execution against the Provider. In the event that the Authority brings proceedings against the Provider, the Guarantor shall be bound by any findings of fact, interim or final award or judgment made by an arbitrator or the court in such proceedings.
- 6.2 This guarantee is a continuing guarantee and accordingly shall remain in full force and effect (notwithstanding any intermediate satisfaction by the Provider, the Guarantor or any other person) until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Provider under the Contract have been satisfied or performed in full and is not revocable and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Authority may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security.

7 Outstanding Payments

- 7.1 Until all amounts which may be or become payable under the Contract and/or this guarantee have been irrevocably paid in full, the Guarantor shall not as a result of this guarantee or any payment or performance under this guarantee be subrogated to any right or security of the Authority or claim or prove in competition with the Authority against the Provider or any other person or demand or accept repayment of any monies or claim any right of contribution, set-off or indemnity and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in breach of this provision shall be held by the Guarantor in trust for and shall be promptly paid to the Authority.
- 7.2 The Guarantor shall not hold any security from the Provider in respect of this guarantee and any such security which is held in breach of this provision shall be held by the Guarantor in trust for and shall promptly be transferred to the Authority.
- 7.3 Until all amounts which may be or become payable under the Contract and/or this guarantee have been irrevocably paid in full, if (notwithstanding the provisions of clause 7.1 and clause 7.2) the Guarantor has any rights of subrogation against the Provider or any rights to prove in a liquidation of the Provider, the Guarantor agrees to exercise such rights in accordance with the directions of the Authority.

8 Change Of Control

- 8.1 The Guarantor shall not be discharged of its obligations under this guarantee in the event there is a change of control of the Provider within the meaning of section 1124 of the Corporation Tax Act 2010, save unless the Authority gives its prior written consent to an assignment of the guarantee by the Guarantor to another entity of comparable financial standing.

9 Payment And Expenses

- 9.1 Each payment to be made by the Guarantor under this guarantee shall be made in pounds sterling, free and clear of all deductions or withholdings of any kind, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor shall pay that additional amount which is necessary to ensure that the Authority receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 9.2 The Guarantor shall pay interest on any amount due under this guarantee from the day after the date on which payment was due up to and including the date of payment in full (whether before or after judgment) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 9.3 The Guarantor shall reimburse the Authority for all legal and other costs (including VAT) incurred by the Authority in connection with the enforcement of this guarantee.

10 Settlement

- 10.1 Any settlement or discharge between the Authority and the Provider and/or the Guarantor shall be conditional upon no settlement with security or payment to the Authority by the Provider or the Guarantor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force and accordingly (but without limiting the Authority's other rights hereunder) the Authority shall be entitled to recover from the Guarantor, as if such settlement or discharge had not occurred, the value which the Authority has placed upon such settlement or security or the amount of any such payment.

11 Warranties

- 11.1 The Guarantor warrants and confirms to the Authority that:
- 11.1.1 it is duly incorporated with limited liability and validly existing under the laws of England;
 - 11.1.2 it has full power under its memorandum and articles of association or equivalent constitutional documents in the jurisdiction in which it is established to enter into this guarantee;
 - 11.1.3 it has full power to perform the obligations expressed to be assumed by it or contemplated by this guarantee;
 - 11.1.4 it has been duly authorised to enter into this guarantee;
 - 11.1.5 it has taken all necessary corporate action to authorise the execution, delivery and performance of this guarantee;
 - 11.1.6 this guarantee when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;
 - 11.1.7 all necessary consents and authorisations for the giving and implementation of this guarantee have been obtained; and

- 11.1.8 it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which may affect its ability to perform under this guarantee.
- 11.2 The Guarantor warrants and undertakes to the Authority that it will take all necessary action directly or indirectly to perform the obligations expressed to be assumed by it or contemplated by this guarantee and to implement the provisions of this guarantee.
- 11.3 The Guarantor warrants and confirms to the Authority that it has not entered into this guarantee in reliance upon, nor has it been induced to enter into this guarantee by any representation, warranty or undertaking made by or on behalf of the Authority (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this guarantee.

12 Assignment

- 12.1 The Authority shall be entitled by notice in writing to the Guarantor to assign the benefit of this guarantee at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this guarantee, nor shall the Guarantor contend that any person to whom the benefit of this guarantee is assigned may not recover any sum under this guarantee because that person is an assignee and not a named party to this guarantee.

13 Notices

- 13.1 Any notice to or demand on the Guarantor to be served under this guarantee may be by letter (sent by hand, post, registered post or by the recorded delivery service) or by electronic mail (confirmed in either case by letter) to the Guarantor at its address appearing in this guarantee or at such other address as it may have notified to the Authority in accordance with this clause 13.
- 13.2 Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

14 Waiver

- 14.1 No delay or omission of the Authority in exercising any right, power or privilege under this guarantee shall impair or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of such right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies of the Authority provided for in this guarantee are cumulative and not exclusive of any rights or remedies provided by law.
- 14.2 A waiver given or consent granted by the Authority under this guarantee will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

- 14.3 A waiver by the Authority shall not constitute a continuing waiver and shall not prevent the Authority from subsequently enforcing any of the provisions of this guarantee.

15 Severability

- 15.1 The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this guarantee.

16 Counterparts

- 16.1 This guarantee may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one guarantee.

17 Contracts (Rights Of Third Parties) Act 1999

- 17.1 It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this guarantee is not intended to, and does not, give to any person who is not a party to this guarantee any rights to enforce any provisions contained in this guarantee except for any person to whom the benefit of this guarantee is assigned or transferred in accordance with clause 12.
- 17.2 The rights of the Parties to rescind or vary this guarantee are not subject to the consent of any other person.

18 Governing Law

- 18.1 This guarantee and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) is governed by and shall be construed in accordance with English law.
- 18.2 The Guarantor submits to the exclusive jurisdiction of the English courts for all purposes relating to this guarantee and any disputes or claims arising out of, or in connection with, its subject matter or formation (including non-contractual disputes or claims).

19 Entire Agreement

- 19.1 This guarantee contains the whole agreement between the Parties relating to the transactions contemplated by this guarantee and supersedes all previous agreements between the Parties relating to the subject matter of this deed.
- 19.2 Each party acknowledges that in entering into this guarantee it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this guarantee and the documents referred to in it) made by or on behalf of any other party before the date of this guarantee. Each party waives all rights and remedies which, but for this clause 19.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.
- 19.3 Nothing in clause 19.2 limits or excludes any liability for fraud.

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

Executed as a deed by the

The Secretary of State for Work and Pensions, for and on behalf of the Authority.	
Signed by:- Name: Signature: Position in Organisation:	Secretary of State seal

Executed as a deed by **Capita Plc**, acting by)

Signature:

Name:

Position:

)

in the presence of)

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

Appendix 1

CV Number	Title of Change	Effective Date
CV CL2 01	Baselining Variation (including payment of DS1500s)	24.03.2014
CV CL2 02	PIPAT HP Resource	09.02.13
CV CL2 03	Rate for Reimbursement of Claimant Travel Expenses	10.06.2013
CV CL2 04	Removal of PA1	01.06.13
CV CL2 05	Re-work	10.06.2013
CV CL2 06	Audio Recording by Claimants	10.06.13
CV CL2 07	Unacceptable Claimant Behaviour	18.07.2014
CV CL2 08	PIP - Suspension of SLA 10	01.02.2014 to 31.07.2014
CV CL2 09	Claimant Enquiry Telephone Number	01.03.2014
CV CL2 10	Capita Room Size	11.02.2014
CV CL2 11	PIP Flyer	31.12.2014
CV CL2 12	Capita Heads of Terms Incentivisation on clearance of backlogs	10.04.2014 - 14.12.2104
CV CL2 13	Appendix 2 update	26.06.2014
CV CL2 14	Annex E Updates	31.07.2014
CV CL2 15	Claimants Living Abroad	07.08.2012
CV CL2 16	Change of Contract address	15.02.15
CV CL2 17	Call-Off Terms and Conditions (removal of requirement for monthly backup data)	08.10.2014
CV CL2 18	Changes to the HOT agreement	10.04.2014 - 14.12.2104

CV Number	Title of Change	Effective Date
CV CL2 19	Changes to HP Criteria	02.06.2014
CV CL2 20	HP Approval Process	18.01.2018
NA	Supplementary Agreement	15.06.2015 to 14.10.2015
N/A	Second Extension to Supplementary agreement	01.12.2015 to 31.01.2016
N/A	Third Extension to Supplementary agreement	01.02.2016 to 29.02.2016
N/A	Second Variation and Agreement relating to Personal Independence Payments Assessment Service	02.06.2016
CVCL2 21	Change to SRTI Service Level	01.05.18
CVCL2 21	GDPR	25.05.2018
CV CL23	PAT Clauses	13.05.2019

APPENDIX 12 - EXIT AND SERVICE TRANSFER ARRANGEMENTS

1 INTRODUCTION

- 1.1 1.1 This Appendix 12 describes the duties and responsibilities of the Provider to the Authority leading up to and covering the expiry or termination (howsoever arising) (including partial termination) of the Contract and the transfer of service provision upon expiry or termination to one or more Replacement Providers or to the Authority. Appendix 12A described the duties and responsibilities of the Provider to the Authority on any Transition of Services to one or more Replacement Providers or to the Authority.
- 1.2 For the avoidance of doubt, the requirements set out in this Appendix 12 do not exclude or override any other requirements, potential or otherwise, relating to the Provider's duties and responsibilities to the Authority leading up to and covering the expiry or termination (howsoever arising) (including partial termination) of the Contract as set out elsewhere in the Contract.
- 1.3 1.3 The objectives of the Exit and Service Transfer Arrangements are to ensure a smooth transition of the availability of the Services from the Provider to one or more Replacement Providers and/or the Authority at the termination (howsoever arising) (including partial termination) or expiry of the Contract.

2 EXIT AND SERVICE TRANSFER ARRANGEMENTS

The Provider agrees to indemnify and keep the Authority fully indemnified for itself and on behalf of any Replacement Provider(s) in respect of any claims, costs (including reasonable legal costs), demands, and liabilities arising from the provision of incorrect Exit Information (as defined at paragraph 2A.2 below) provided to the Authority by the Provider, to the extent that any such claim, cost, demand or liability directly and unavoidably arises from the use of the incorrect Exit Information in a manner that can reasonably be assumed to be proper in bidding for or providing services similar to the Services.

2A. DURING THE CONTRACT PERIOD

2A.1 During the Contract Period the Provider shall:

- 2A.1.1 create and maintain a register (in such format to be agreed between the Parties from time to time) (the "**Register**") of all:
- (a) Equipment detailing make and model number, ownership, net book value, condition and physical location, and use (including detailing if such Equipment is used exclusively in the provision of the Services);
 - (b) Property provided by the Authority detailing condition and physical location;
 - (c) agreements with Sub-contractors and other licences, maintenance agreements and support agreements utilised by the Provider in connection with the provision of the Services ("Third Party Contracts") detailing contractor names, payment terms, expiry dates and any relevant novation and early termination provisions;

- (d) Estate Leases in accordance with paragraph 2B below; and
 - (e) Provider Intellectual Property Rights necessary for use by the Authority in connection with the Services including details of any licences in accordance with (c) above;
- 2A.1.2 provide access to a database detailing the technical infrastructure and operating procedures, standards documentation and forms; complaint and incident reports; and service history records connected with the provision of the Services, which shall contain sufficient detail to permit the Authority and/or any Replacement Provider(s) to understand how the Provider processes the Services and to enable smooth transition of the Services with the minimum of disruption.
- 2A.2 Upon reasonable notice during the Contract Period the Provider shall provide to the Authority and/or any Replacement Provider(s) (where disclosure is to any Replacement Provider(s) subject to (i) a reasonable consultation between the Authority and the Provider prior to any such disclosure; and (ii) the Replacement Provider(s) entering into reasonable confidentiality undertakings), the following material and information (the "**Exit Information**"):
 - 2A.2.1 details of the Services which shall contain sufficient detail to permit the Authority and/or any Replacement Provider(s) to understand how the Provider processes the Services and to enable smooth transition of the Services with the minimum of disruption;
 - 2A.2.2 copy of the Register (updated at the request of the Authority);
 - 2A.2.3 inventory of Authority Data in the Provider's possession or control;
 - 2A.2.4 to the extent permitted by the Provider's existing obligations, details of any key terms in any Third Party Contracts (including without limitation charges, termination, assignment, novation, but not extending for the avoidance of doubt to any commercially sensitive information of the Sub-contractor);
 - 2A.2.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
 - 2A.2.6 to the extent permitted by Law any Employee Information in accordance with clause B11.1; and
 - 2A.2.7 such other information and material as the Authority may reasonably require.
- 2A.3 The Provider acknowledges that, subject to a reasonable consultation with the Provider prior to any disclosure, the Authority may disclose the Provider's Confidential Information (subject to exclusion of any commercially sensitive information including without limitation relating to the prices, costs or revenue of the Provider or its Sub-contractors or otherwise reasonably designated as commercially sensitive by the Provider ("**Provider Commercially Sensitive Information**") and upon receipt of satisfactory confidentiality undertakings) to an actual or prospective Replacement Provider or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this Paragraph 2A.3 disclose any Provider Commercially Sensitive Information).

2A.4 The Provider shall:

- 2A.4.1 notify the Authority within ten (10) Working Days of any material change to the Exit Information which may adversely impact upon any potential Transition or continuance of the Services, and shall consult with the Authority regarding such proposed material changes unless bona fide in the ordinary course of business;
- 2A.4.2 provide complete updates of the Exit Information on an as-required basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Authority;

2A.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Provider shall be such as would be reasonably necessary to enable the Authority to prepare procurement documents.

2A.6 In the six (6) Months' immediately preceding the expiry of the Contract Period, the Provider shall not without the Authority's prior written consent (such consent not to be unreasonably withheld or delayed (and the Authority shall not withhold consent where such activity is bona fide in the ordinary course of business)):

- 2A.6.1 terminate, enter into or vary any contract with a Sub-contractor;
- 2A.6.2 terminate, enter into or vary any licence for software in connection with the Services;

except to the extent that such change does not or will not affect the provision of the Services.

2B Estate Leases

2B.1 Where in connection with the Exit and Service Transfer Arrangements (and in the case of a Transition in relation to premises which are no longer required for the continued provision of the Services), the Authority requires the use of any premises sourced by the Provider either for itself, a Replacement Provider or other nominated party, the Provider shall use reasonable (or where requested by the Authority best) endeavours as soon as reasonably practicable to:

- 2B.1.1 assign, novate or otherwise transfer (and/or procure the assignment, novation or transfer of) the relevant lease or licence; and
- 2B.1.2 execute (and/or procure the execution of) all such documents and provide such other assistance required in order to effect such assignment, novation or transfer;

and the Parties shall agree in the Service Transfer Plan (or where applicable the Transition Plan) the proposed date of any such assignment or novation.

2B.2 The Provider shall create and maintain a list of all leases and licences in respect of premises that it uses for the purposes of delivering the Services, together with any renewal or extension dates arising in respect of such leases or licenses ("**Estate Leases**"), and shall in a timely manner provide an up to date copy of such list to the Authority upon request, together with such information as the Authority may reasonably request. In particular, the Provider shall ensure that it maintains up-to-date quickly and easily accessible information regarding the term (together with any break and extension options, and early termination consequences) and assignability of the Estate Leases, and a copy of any schedule of condition that the Provider holds for those premises.

- 2B.3 Should the term of any Estate Lease require renewal or extension during the period from the Third Variation Date to the end of the Contract Period, the Provider shall notify the Authority not less than six (6) Months prior to such renewal or extension date, and shall on request by the Authority use reasonable or best endeavours (as the Authority may request) to procure in the Estate Lease terms the right to novate or assign the Estate Lease to the Authority or a Replacement Provider. In the event that having used its best endeavours the Provider cannot agree such terms in connection with any Estate Lease, it shall notify the Authority not less than ninety (90) days prior to the expiry of any right the Provider has to renew or extend the relevant Estate Lease and shall use its best endeavours to facilitate direct discussions between the Authority and the relevant agent or landlord.
- 2B.4 Without prejudice to paragraph 2B.3 above, the Provider shall use reasonable endeavours to facilitate direct discussions between the Authority and the relevant agent or landlord of each Estate Lease by no later than thirty (30) days following the issue by the Authority of a Detailed Transition Requirement.

3 SERVICE TRANSFER PLAN

- 3.1 Where required by the Authority, by 18.07.13, and thereafter as specified in paragraph 3.3 of this Appendix 12, the Provider shall prepare a Service Transfer Plan (“**STP**”) for review by the Authority. The Authority shall review the STP within twenty (20) Working Days of receipt from the Provider and shall notify the Provider of any suggested revisions to the STP. In this respect, the Authority will act neither unreasonably, capriciously nor vexatiously. Such suggested revisions shall be discussed and, resolved within ten (10) Working Days. In the event that the STP cannot be agreed between the Parties within the periods outlined above the matter shall be referred to the Dispute Resolution Procedure in clause I2 of the Contract. The agreed STP shall be signed as approved by each Party.
- 3.2 The STP shall provide comprehensive proposals for the activities and the associated liaison and assistance that will be required for the successful transfer of the Services, including where applicable (but not limited to) the following details:
- 3.2.1 proposals for the transfer of documentation providing details of the Services, including (but not limited to): all operational procedures, standards documentation and forms used in the provision of the Services; complaint and incident reports; and service history records;
 - 3.2.2 NOT USED;
 - 3.2.3 proposals for the transfer of the database referred to in paragraph 2A.1.2 above;
 - 3.2.4 NOT USED;
 - 3.2.5 proposals for the return of all Property in the possession of the Provider;
 - 3.2.6 proposals to enable the Authority or the Replacement Provider(s) to recruit suitably skilled personnel;
 - 3.2.7 proposals for knowledge transfer and, if requested by the Authority, the training of key members of the Replacement Provider’s personnel in

connection with the continuation of the provision of the Services following the expiry or termination (howsoever arising) of the Contract charged at rates agreed between the Parties at that time;

- (a) where licenses have not already been granted pursuant to the Side Deed entered into between the Parties dated 19th April 2018, proposals for the granting of licences to use all software (including the Provider Software and Third Party Software) necessary for the Authority's receipt of the Services and the provision of copies of all related documentation;
 - (b) proposals for the transfer of all Authority Data then in the Provider's possession to either the Authority or any Replacement Provider(s), including:
 - (i) an inventory of all Authority Data;
 - (ii) details of the data structures in which the Authority Data is stored, in the form of an agreed data model together with information on other data structures in which the Authority Data could be stored;
 - (iii) proposed transfer methods, both physical and electronic; and
 - (iv) proposed methods for ensuring the integrity of the Authority Data on transfer;
- 3.2.8 proposals for providing the Authority or any Replacement Provider with copies of all documentation:
- (a) used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Provider; and
 - (b) relating to the use and operation of the Equipment and Property;
- 3.2.9 proposals for the methods of transfer of the Property and, where the Authority exercises its option to purchase Equipment in accordance with clause B2.7, Equipment to the Authority or any Replacement Provider(s);
- 3.2.10 proposals for the assignment or novation of all leases, maintenance agreements and support agreements utilised by the Provider in connection with the performance of the Services;
- 3.2.11 proposals for the disposal of any redundant Equipment and materials;
- 3.2.12 a detailed summary of all exit activities;
- 3.2.13 a detailed exit management timetable;
- 3.2.14 details of any nominated individuals of the Provider who will be involved in the Service Transfer;
- 3.2.15 proposals for the supply of any other information or assistance reasonably required by the Authority or any Replacement Provider(s) in order to effect an orderly hand over of the provision of the Services; and

- 3.2.16 proposals for the delivery and charging of in-flight work.
- 3.3 The STP shall include an estimate of costs and cost cap for the Provider providing exit assistance pursuant to clause H6.2, including to deliver the STP.
- 3.4 The STP shall be reviewed and updated by the Provider. In this regard, the Provider shall provide a revised version of the STP to the Authority annually (or more frequently as the Authority may reasonably require, for example in response to a Variation or Future Operating Model). The revised STP shall be reviewed and agreed in accordance with the provisions of paragraph 3.1 of this Appendix 12.
- 3.5 Once the STP (or any revised version of the STP) has been reviewed and agreed in accordance with the provisions of paragraphs 3.1 and 3.4 of this Appendix 12, it shall be binding on the Parties unless it is expressly varied or updated in accordance with the provisions of paragraphs 3.1 and 3.3 of this Appendix 12.
- 3.6 **Costs**
- The Authority shall reimburse the Provider's reasonable costs associated with its compliance with paragraphs 2A and 2B of this Appendix 12 and in updating and agreeing an STP more frequently than once in any year, provided that (a) such costs may only include the costs of people directly involved in such activities who would not otherwise be engaged in the provision of the Services; and (b) such costs shall be calculated on the basis of the applicable Rate Card. For the avoidance of doubt, the Provider shall be entitled to charge for the time spent by a Variation Staff Member provided that it is able to evidence to the Authority that that Variation Staff Member's role has been backfilled in accordance with paragraph 6.2.2 of Part A of Appendix 4.
- 3.6.1 Each Party shall bear its own costs in relation to updating and agreeing the STP (up to once in any year) and its compliance with all remaining paragraphs of this Appendix 12 (save where expressly stated otherwise).

4 COLLABORATION AND ASSISTANCE ON EXPIRY OR TERMINATION

- 4.1.1 In the event that the Contract expires or is terminated the Provider shall, where so requested by the Authority, use all reasonable endeavours to assist the Authority to migrate the provision of the Services to the Authority or to any Replacement Provider including as set out in the STP and in accordance with the Collaboration Principles. Any costs incurred by the Provider in providing such assistance shall be dealt with in accordance with clause H6.2 of the Contract.
- 4.1.2 The Provider shall comply with the Collaboration Principles and where requested to do so, the Provider shall enter into a tri-partite agreement with the Authority and any Replacement Provider (on terms to be agreed between the Parties in good faith acting reasonably) which shall include without limitation the Collaboration Principles.
- 4.1.3 The STP will operate alongside the provision of the Services, which will continue to be provided on a business as usual basis until the appropriate termination or expiry dates.

5 EXIT MANAGEMENT ORGANISATION AND GOVERNANCE

- 5.1.1 The Authority, the Provider and any Replacement Provider(s) shall each appoint an exit transition manager to manage implementation of the STP. The Parties' respective exit transition managers shall be the primary points of contact for all disengagement and exit-related matters.
- 5.1.2 Any Replacement Provider's exit transition manager shall report to the Authority's exit transition manager and liaise with the Provider's exit transition manager in respect of the Service Transfer.
- 5.1.3 The Provider and the Authority shall hold regular Service Transfer progress meetings, with the attendees, locations, times and dates to be stipulated by the Authority.
- 5.1.4 A risk, issue and action log shall be maintained by the Authority to record the outputs arising from the Service Transfer progress meetings and shall be shared with the Provider and any Replacement Provider as determined necessary in the Authority's sole discretion.
- 5.1.5 The Provider shall work with the Authority and any Replacement Provider to facilitate knowledge transfer activities, as set out in the STP. All agreed knowledge transfer activities are to be completed by the date of expiry or termination of the Contract. Such activities shall not affect the provision of the Services. For the avoidance of doubt, any costs incurred by the Provider associated with complying with this paragraph shall be dealt with in accordance with clause H6.2 of the Contract.

6 FIXED COST TRUE UP

- 6.1 The Authority acknowledges that some of the costs incurred by the Provider in the delivery of the Services will be fixed during the Extension Period and are expected to be recovered under the Unit Price anticipated under the Baseline Cost Model.
- 6.2 The Parties shall undertake a Fixed Cost True Up on either:
 - 6.2.1 the expiry of the Contract Period; or
 - 6.2.2 termination of the Contract as a result of the Authority exercising its right to terminate under clause H3 (Break).

For the avoidance of doubt, a Fixed Cost True Up shall not apply in any other circumstances of termination of the Contract. Any Fixed Cost True Up shall be undertaken in accordance with the process set out below:

- 6.3 Where a Fixed Cost True Up applies in accordance with paragraph 6.2 above, the Provider shall, within 20 Working Days (of the relevant expiry of the Contract Period or termination), provide to the Authority a report showing the following:
 - 6.3.1 the total number of Chargeable Outputs during the Extension Period, compared to:

- (a) (where paragraph 6.2.1 applies, expiry of the Contract Period) the number of Chargeable Outputs forecast during the Extension Period as set out in the Baseline Clearance Profile in respect of the period from the start of the Extension Period up to the date of a Transition, and the relevant Transition Clearance Profile in respect of a Transition Period (for a First Transition or Subsequent Transition) (the "**Expiry Forecast Chargeable Outputs**"); or
- (b) (where paragraph 6.2.2 applies, termination under clause H3 (Break)) the number of Chargeable Outputs forecast during the Extension Period as set out the Baseline Clearance Profile in respect of the period from the start of the Extension Period up to the date of a Transition, and the relevant Transition Clearance Profile in respect of a Transition Period (for a First Transition or Subsequent Transition) but adjusted on a pro-rata basis to reference the actual date of termination, in order to reflect termination earlier than 31 July 2021 (the "**Break Forecast Chargeable Outputs**"); and

6.3.2 proposals for any Fixed Cost True Up Payment calculated in accordance with paragraphs 6.4 and 6.5 below;

(such report being the "**Fixed Cost True Up Report**").

6.4 If the total number of Chargeable Outputs during the Extension Period is less than:

6.4.1 where paragraph 6.2.1 applies, (expiry of the Contract Period) the Expiry Forecast Chargeable Outputs; or

6.4.2 where paragraph 6.2.2 applies, (termination under clause H3 (Break)) the Break Forecast Chargeable Outputs;

then the Provider may propose a Fixed Cost True Up Payment calculated in accordance with the following formula:

Fixed Cost True Up Payment = the amount resulting from application of the following formula:

$$(\text{Forecast Chargeable Outputs} - \text{Actual Chargeable Outputs}) \times \text{Fixed Cost Recovery Rate}$$

Where:

Forecast Chargeable Outputs means either the Expiry Forecast Chargeable Outputs or Break Forecast Chargeable Outputs (as applicable), for the period in question

Actual Chargeable Outputs = the total number of actual Chargeable Outputs during the period in question

6.5 Fixed Cost Recovery Rate

6.5.1 The Fixed Cost Recovery Rate at the beginning of the Extension Period shall be [REDACTED] (such sum has been determined by the total of [REDACTED] of agreed fixed costs of clinic accommodation, accommodation, fixed IT and senior management from Baseline Cost Model divided by 391,772 anticipated Chargeable Clearances from the Baseline Cost Model).

- 6.5.2 As part of each Transition Pricing Review, the Provider shall propose and the Parties shall seek to agree (in accordance with Appendix 12A) a new Fixed Cost Recovery Rate reflecting changes to both (i) the total fixed costs and (ii) the expected levels of Chargeable Outputs, over the Extension Period as a whole which will be impacted as a result of Transition (as illustrated in the worked example below).
- 6.6 Upon receipt of a Fixed Cost True Up Report, the Authority may either agree the sum of the Fixed Cost True Up Payment or may dispute the sum of the Fixed Cost True Up Payment, in which case the Parties shall seek in good faith to agree the sum of any Fixed Cost True Up Payment. In the event that the Parties cannot agree they shall refer the matter to the Dispute Resolution Procedure.
- 6.7 Upon agreement (or other final determination) of any Fixed Cost True Up Payment, the Provider may invoice, and the Authority shall pay (in accordance with clause C2 of this Contract) the Fixed Cost True Up Payment.
- 6.8 A worked example for Paragraph 6.5.2 is set out at Annex 4 to Appendix 14.

7 PROFIT TRUE UP

- 7.1 The Authority recognises that as part of a Transition, a Transition Pricing Review will seek to ensure that the Provider's Overall Profit is achieved notwithstanding the removal of volume of Referrals and/or Services under Transition. The Profit True Up described in this paragraph 7 operates to ensure that in certain circumstances the Provider's Overall Profit will be achieved notwithstanding that the Services actually delivered following one or more Transitions to the end of the Contract Period may be less than that forecast.
- 7.2 At the expiry of the Contract Period or termination of the Contract as a result of the Authority exercising its right to terminate under clause H3 (Break) (but not termination of the Contract in any other circumstances), the Provider shall calculate its Profit in respect of each Transition Period from the date on which the relevant Transition Period commenced until either the end of the Contract Period, or in the event of more than one Transition the beginning of any Subsequent Transition (the **"Provider Transition Period Profit"**) in accordance with the following formula:

Provider Transition Period Profit = Provider Actual Transition Period Revenue * Agreed Transition Period Margin Percentage

Where:

the **"Provider Actual Transition Period Revenue"** means the aggregate amounts invoiced by the Provider in respect of the period from the date on which relevant Transition Period commenced until either the end of the Contract Period, or in the event of more than one Transition the beginning of any Subsequent Transition, including (and so taking into account) any increases to Unit Price as a result of clause C1A or C1C or any Transition Pricing Review, but excluding any Fixed Cost True Up Payment and before any Service Credits or No Pay Amounts have been deducted, or any Profit has been shared between the Parties in accordance with Part E (Profit Share) of Appendix 4 (Prices and Rates) (such that any Fixed Cost True Up Payments, Service Credits, No Pay Amounts or Profit sharing payments are disregarded and not taken into account for these purposes); and

the “**Agreed Transition Period Margin Percentage**” means the sum of the profit amounts set out in the agreed Transition Cost Model(s) divided by the sum of the revenue amounts set out in the agreed Transition Cost Model(s) for the period(s) from the date on which relevant Transition Period commenced until either the end of the Contract Period, or in the event of more than one Transition the beginning of a Subsequent Transition.

If the sum of the Provider Transition Period Profits for each Transition Period is less than the Overall Profit then the Provider may propose a Profit True Up Payment calculated in accordance with the following formula:

Profit True Up Payment = Overall Profit – the sum of the Provider Transition Period Profit for each Transition Period

For the avoidance of doubt, this is not a guarantee of any actual margin amount. The formula above applies.

- 7.3 Upon receipt of a proposal for a Profit True Up Payment, the Authority may either agree the sum of a Profit True Up Payment or, having regard to the matters referred to paragraph 7.5, may dispute the sum of the Profit True Up Payment. In the event that the Parties cannot agree, they shall refer to the matter to the Dispute Resolution Procedure.
- 7.4 Upon agreement (or other final determination) of any Profit True Up Payment, the Provider may invoice for, and the Authority shall pay (in accordance with clause C2 of this Contract), the Profit True Up Payment.
- 7.5 The Authority shall not be obliged to make a Profit True-Up Payment if:-
 - 7.5.1 the Authority delivers during each Month of any Transition Period at least the number of Referrals forecast to be made in that Month as set out in the applicable Transition Referral Forecast and Chargeable Clearances during the aggregate Transition Periods are less than the cumulative Chargeable Clearances forecast across the Transition Periods, as set out in the applicable Transition Clearance Profile.
- 7.6 A worked example for this paragraph 7 is set out at Annex 4 to Appendix 14.

Appendix 12A

APPENDIX 12A – TRANSITION ARRANGEMENTS

1 Introduction

- 1.1 This Appendix 12A describes the duties and responsibilities of the Provider to the Authority leading up to and covering the Transition of Services on a phased basis to one or more Replacement Providers or to the Authority. For the avoidance of doubt, the requirements set out in this Appendix 12A do not exclude or override any other requirements, potential or otherwise, relating to the Provider's duties and responsibilities to the Authority leading up to and covering exit or Transition as set out elsewhere in the Contract.
- 1.2 The objectives of the Transition arrangements are to ensure a smooth transition of the availability of the Services from the Provider to one or more Replacement Providers and/or the Authority and as at the Third Variation Date, it is acknowledged and agreed by both Parties that:
 - 1.2.1 the transition of Services up to expiry of the Contract is likely to be via one or more Transitions during the remainder of the Contract Period where Services are stepped down or reduced under this Contract and transferred to the Authority and/or one or more Replacement Providers; and
 - 1.2.2 the profile of the Transitions and the structure of the Detailed Transition Requirement is yet to be determined by the Authority; and
 - 1.2.3 the Parties will each individually and collectively commit to deliver exit and Transition under this Contract on this basis and in accordance with the structure, process and parameters set out in this Appendix 12A.

2 Detailed Transition Requirements

- 2.1 The Authority shall provide to the Provider at any time following 1 January 2020, a Detailed Transition Requirement (and where it considers it reasonably necessary, an updated Detailed Transition Requirement in accordance with paragraph 2.2 below) which may include (without limitation):
 - 2.1.1 a Future Operating Model;
 - 2.1.2 details of the Services to be provided by Replacement Provider(s) or by the Authority following any Transition including any breakdown by geographical area or other contract breakdown;
 - 2.1.3 whether single or multiple Transitions will be requested;
 - 2.1.4 specific requirements for collaboration between the Provider, Replacement Provider(s) and the Authority;
 - 2.1.5 the timetable for Transition(s);
 - 2.1.6 the Authority's expectation for TUPE transfers;

- 2.1.7 the Transition Referral Forecast; and
 - 2.1.8 those other elements which are relevant to the Provider being able to make proposals in a Transition Plan.
- 2.2 The Provider shall promptly upon receipt of any Detailed Transition Requirement notify the Authority if it reasonably considers that the Detailed Transition Requirement is either missing material information or contains inaccurate information which is reasonably necessary for the preparation of a Transition Plan and Transition Pricing Review in accordance with paragraph 4 and Annex 1 below. The Authority shall upon receipt of such notice update the Detailed Transition Requirement where it reasonably considers it necessary to do so.
- 2.3 The Provider shall within two (2) Months from the date of the issue by the Authority of any Detailed Transition Requirement or any materially updated Detailed Transition Requirement provide to the Authority:
- 2.3.1 a high level Transition Plan (or where appropriate an updated Transition Plan) setting out in sufficient detail for the purposes of preparing the impact assessment at 2.3.2 below, the variations at 2.3.3 below and conducting a Transition Price Review the timetable and methodology for Transition(s) in order to meet any requirements of the Authority notified to it under paragraph 2.1 or 2.2 above in accordance with paragraph 4 below;
 - 2.3.2 an impact assessment detailing the effect of Transition on the Services;
 - 2.3.3 any proposed Variations to this Contract required in respect of any Detailed Transition Requirements; and
 - 2.3.4 the requisite proposals and supporting documentation to be provided by the Provider as part of a Transition Pricing Review including any Transition Cost Model.
- 2.4 The Parties shall work together in good faith to:
- 2.4.1 agree any Transition Plan or updated Transition Plan;
 - 2.4.2 agree the terms of any Variation submitted by the Provider; and
 - 2.4.3 agree any Transition Pricing Review applying the process set out in Annex 1;
- each within thirty (30) Working Days of the date of receipt of the submissions by the Provider under paragraph 2.3 or paragraph 3.3 (or such other period as agreed between the Parties) in accordance with the process described for Variations in clause F3 of the Contract. In the event that the Parties are unable to agree any such Variation or the contents of the Transition Plan, the matter shall be referred to the Dispute Resolution Procedure in clause I2 of the Contract. For the avoidance of doubt the Parties agree that any Transition Plan or Variation discussed and agreed in accordance with this paragraph 2.4 or a Transition Pricing Review shall not take effect until following the issue of a Transition Notice under paragraph 3 below.

3 Transition

- 3.1 The Authority may require the Provider to commence Transition Activities by issuing a Transition Notice for each agreed Transition Plan by providing not less than 6 Months' notice of the intended date of Transition provided that Transition (under one or more Transition Notices) shall not apply prior to 1 January 2021.
- 3.2 Each Transition Notice may include (without limitation) the following information:
- 3.2.1 any updated or further detail to any of the Detailed Transition Requirements (provided that where such update or detail would require a material change to any Transition Plan, then the Authority shall submit such a replacement Detailed Transition Requirement in accordance with paragraph 2 above); and
 - 3.2.2 the Replacement Provider(s) (or the Authority) to whom the Services/Referrals are to be Transitioned.
- 3.3 Within forty two (42) days (or such other shorter period as the Parties may agree) of receipt of a Transition Notice the Provider shall provide to the Authority:
- 3.3.1 a Transition Plan setting out in detail the timetable and methodology for Transition(s) in order to meet any updated requirements of the Authority notified to it under paragraph 3.2 above in accordance with paragraph 4 below;
 - 3.3.2 an updated impact assessment detailing the effect of Transition on the Services;
 - 3.3.3 any update to the proposed Variations to this Contract required in respect of any Detailed Transition Requirements; and
 - 3.3.4 any update to the requisite proposals and supporting documentation to be provided by the Provider as part of a Transition Pricing Review including any Transition Cost Model.
- 3.4 The Parties shall work together in good faith to agree any updated submissions or renewed Transition Pricing Review in accordance with the process set out at paragraph 2.4 above.
- 3.5 Any changes required to this Contract as a result of the Transition Notice, Transition Plan or Transition Pricing Review shall be documented as a Variation in accordance with clause F3 of the Contract.
- 3.6 From the date of any Transition Notice issued by the Authority in accordance with this Appendix 12A, the Provider shall grant access to any Premises that it uses for the purposes of delivering the Services to the Authority and/or to any Replacement Provider, upon the provision of reasonable notice by the Authority and the compliance of the Authority or the relevant Replacement Provider with reasonable security requirements of the Provider.

4 Transition Plan

- 4.1 The Transition Plan shall provide comprehensive proposals for the activities and the associated liaison and assistance that will be required for the successful Transition of the Services, including where applicable (but not limited to) the following details:

- 4.1.1 proposals for the transfer of documentation providing details of the Services to be Transitioned, including (but not limited to): all operational procedures, standards documentation and forms used in the provision of the Services to be Transitioned; complaint and incident reports; and service history records;
- 4.1.2 proposals for the transfer of the database (or part thereof) referred to in paragraph 2A.1.2 of Appendix 12.
- 4.1.3 proposals for the return of all Property in the possession of the Provider exclusively used in the provision of any Services to be Transitioned;
- 4.1.4 proposals to enable the Authority or the Replacement Provider(s) to recruit suitably skilled personnel;
- 4.1.5 proposals for knowledge transfer and, if requested by the Authority, the training of key members of the Replacement Provider's personnel in connection with the continuation of the provision of any Services to be Transitioned following the expiry or termination (howsoever arising) of the Contract charged at rates agreed between the Parties at that time;
- 4.1.6 proposals for the granting of licences to use all software (including the Provider Software and Third Party Software) necessary for the Authority's receipt of the Services to be Transitioned and the provision of copies of all related documentation;
- 4.1.7 proposals for the transfer of all Authority Data connected with the Services to be Transitioned then in the Provider's possession to the Authority and/or any Replacement Provider(s), including:
 - (a) an inventory of all relevant Authority Data;
 - (b) details of the data structures in which the relevant Authority Data is stored, in the form of an agreed data model together with information on other data structures in which the relevant Authority Data could be stored;
 - (c) proposed transfer methods, both physical and electronic; and
 - (d) proposed methods for ensuring the integrity of the relevant Authority Data on transfer;
- 4.1.8 proposals for providing the Authority or any Replacement Provider with copies of all documentation:
 - (a) used in the provision of the Services to be Transitioned and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Provider; and
 - (b) relating to the use and operation of any Equipment and Property to be transferred to the Authority or a Replacement Provider on Transition;
- 4.1.9 proposals for the methods of transfer of the Property exclusively used in the provision of Services to be Transitioned and, where the Authority exercises its option to purchase Equipment in accordance with clause B2.7 in respect

- of Equipment used exclusively in the provision of Services to be Transitioned, the transfer of Equipment to the Authority or any Replacement Provider(s);
- 4.1.10 proposals for the assignment or novation of all, leases, maintenance agreements and support agreements utilised by the Provider in connection with the performance of the Services to be Transitioned;
 - 4.1.11 proposals for the disposal of any redundant Equipment and materials;
 - 4.1.12 a detailed summary of all Transition Activities;
 - 4.1.13 a detailed Transition management timetable;
 - 4.1.14 details of any nominated individuals of the Provider who will be involved in the Transition;
 - 4.1.15 proposals for the supply of any other information or assistance reasonably required by the Authority or any Replacement Provider(s) in order to effect an orderly Transition of the Services; and
 - 4.1.16 proposals for the delivery and charging of in-flight work.
- 4.2 Once the Transition Plan has been reviewed and agreed in accordance with the provisions this Appendix 12A following the issue of a Transition Notice, it shall be binding on the Parties unless it is expressly varied or updated by agreement between the Parties.
- 4.3 Each Party shall bear its own costs in relation to updating and agreeing the Transition Plan, any Transition Cost Model or for any Transition Pricing Review provided that the Authority shall pay the Provider's reasonable and properly incurred costs (mitigated to the fullest extent possible) of people directly involved in such activities who would not otherwise be engaged in the provision of the Services (such costs to be calculated on the basis of the applicable Rate Card). For the avoidance of doubt, the Provider shall be entitled (for the purposes of the Variation procedure under this paragraph 4) to charge for the time spent by a Variation Staff Member for the purposes of the Variation provided that it is able to evidence to the Authority that that Variation Staff Member's role has been backfilled in accordance with paragraph 6.2.2 of Part A of Appendix 4.

5 Collaboration On Transition

- 5.1 On Transition, the Provider shall, where so requested by the Authority, use all reasonable endeavours to assist the Authority to migrate the provision of the Services to be Transitioned to the Authority and/or to any Replacement Provider including as set out in the Transition Plan and in accordance with the Collaboration Principles. The Authority shall pay any costs incurred by the Provider save for those costs which are reflected in the Transition Cost Model (such costs to be calculated on the basis of the applicable Rate Card).
- 5.2 The Transition Plan will operate alongside the provision of the Services, which will continue to be provided on a business as usual basis until the appropriate date of Transition.

6 Exit Management Organisation And Governance

- 6.1 The Authority, the Provider and any Replacement Provider(s) shall each appoint a transition manager to manage implementation of the Transition Plan. The Parties' respective transition managers shall be the primary points of contact for all disengagement and Transition-related matters.
- 6.2 Any Replacement Provider(s)' transition manager shall report to the Authority's transition manager and liaise with the Provider's transition manager in respect of the Transition.
- 6.3 The Provider and the Authority shall hold regular Transition progress meetings, with the attendees, locations, times and dates to be agreed between the Parties.
- 6.4 A risk, issue and action log shall be maintained by the Authority to record the outputs arising from the Transition progress meetings and shall be shared with the Provider and any Replacement Provider as determined necessary in the Authority's sole discretion.
- 6.5 The Provider shall work with the Authority and any Replacement Provider to facilitate knowledge transfer activities, as set out in the Transition Plan. All agreed knowledge transfer activities are to be completed by the date of Transition. Such activities shall not affect the provision of the Services.
- 6.6 For the avoidance of doubt, the Authority shall pay the Provider's reasonable and properly incurred costs (mitigated to the fullest extent possible) of people directly involved in complying with this paragraph and/or undertaking any Transition Activities (such costs to be calculated on the basis of the applicable Rate Card) who would not otherwise be engaged in the provision of the Services. For the avoidance of doubt, the Provider shall be entitled to charge for the time spent by a Variation Staff Member provided that it is able to evidence to the Authority that that Variation Staff Member's role has been backfilled in accordance with paragraph 6.2.2 of Part A of Appendix 4.

7 Test And Learn And Function First

- 7.1 The Provider acknowledges that the Authority may require support in certain test and learn activities over the course of the Extension Period. Such activities may include, without limitation: the testing of changes to personal independence payment policy or operational procedures; or a trial to recruit Healthcare Professionals with 1 years' clinical experience rather than 2, and a trial of initial reviews being undertaken by staff without clinical background; or the testing and roll-out of new IT platforms including a new Authority IT solution replacing the current ICT Environment (in whole or in part), (provided that in the case of a full implementation of a new IT solution, the Authority shall provide not less than 6 Months' written notice (such notice to take effect no sooner than August 2020) of such implementation); the testing and/or roll out of video recording; and the testing and/or roll out of improved access to audio recording, and the Provider agrees that will support the Authority in any such activities subject to the remainder of this paragraph 7.
- 7.2 The Provider shall work with the Authority in good faith and acting reasonably in connection with any request issued by the Authority in accordance with clause F3 of the Contract and the remainder of this Appendix 12A. For the avoidance of doubt, the Parties agree that the price of any Variation associated with any such test and learn activities, may include the cost of people engaged in the delivery of the test and learn

activities provided that such costs shall only be in relation to people engaged in addition to Provider Staff to support on any test and learn activities (and who would not be otherwise engaged in the provision of the Services), such costs to be calculated on the basis of the applicable Rate Card. Any such costs shall be excluded from the calculation for Profit Share as set out in Appendix 4, Part E. For the avoidance of doubt, the Provider shall be entitled (for the purposes of the Variation procedure under this paragraph 7) to charge for the time spent by a Variation Staff Member for the purposes of the Variation, provided that it is able to evidence to the Authority that Variation Staff Member's role has been backfilled in accordance with paragraph 6.2.2 of Part A of Appendix 4.

- 7.3 The Provider shall work in good faith with the Authority to implement a function first approach to Consultation Assessments (including agreeing and implementing a Variation in accordance with clause F3 related to the same). The Provider agrees that any such activities shall be provided at its own cost.

Annex 1 - Transition Pricing Review

1 Introduction

- 1.1 This Annex sets out the process for undertaking a Transition Pricing Review following issue by the Authority of its Detailed Transition Requirement.
- 1.2 The purpose of the Transition Pricing Review is to ensure that following a Transition, the Provider is able to submit a Transition Cost Model that ensures the Provider maintains as per the Baseline Cost Model:
 - 1.2.1 its corporate overhead in percentage terms; and
 - 1.2.2 the Overall Profit for the Services that remain to be delivered in the period from Transition to the end of the Contract Period,
calculated in accordance with the process set out below.

2 Process

- 2.1 When instituting a Transition Pricing Review, the Provider shall submit to the Authority:
 - 2.1.1 a Transition Cost Model showing the anticipated effect of the Transition for the period from Transition to the end of the Contract Period, including, without limitation any:
 - (a) revenue and cost increases/decreases as a result of Transition; and
 - (b) other revenue and cost increases/decreases, including cost of stranded assets
 - 2.1.2 a calculation of the differences between, in the case of the First Transition Period, the revenue and costs identified in the Baseline Cost Model compared to those in the Transition Cost Model or, in the case of any Subsequent Transition, the revenue and costs identified in the agreed Transition Cost Model applicable to the immediately preceding Transition compared to those in the latest Transition Cost Model submitted under paragraph 2.1.1 above, to be calculated using the template illustrated in the worked example set out at paragraph 2.10 below;
 - 2.1.3 a proposal for any reasonable variation to any sums allocated in the updated Transition Cost Model to risk factors affected as a direct result of Transition;
 - 2.1.4 full details of (and explanations for) the difference between the revenue and costs identified;
 - 2.1.5 relevant evidence to support and justify the effects described in the Transition Cost Model;
 - 2.1.6 a proposal for any variation to the Unit Prices to reflect any increase or decrease in the "Blended Cost Per Unit" identified in the Transition Cost Model (see worked example(s) below). As per the worked example(s), the Provider shall propose an increase or decrease in the Blended Cost Per Unit as follows:

$$\text{Blended Cost Per Unit} = \text{Total Revenue divided by the Chargeable Clearances from the Transition Cost Model}$$

Where Total Revenue is calculated as the costs identified in the Transition Cost Model divided by one (1) minus the Agreed Margin articulated as a

- decimal;
- 2.1.7 proposals for any other Variations or other items required by the remainder of this Annex 1.
- 2.2 The Authority shall review the information and documentation submitted under paragraph 2.1 and may ask the Provider to further explain and/or provide further evidence in support of its analysis and proposals (including any data from the Provider's Quarterly Report).
- 2.3 When compiling the Transition Cost Model and preparing the proposal for any variation to the Unit Prices, the Provider shall:
- 2.3.1 only reference the anticipated effect of the Transition for the remainder of the Contract Period;
- 2.3.2 not include effects arising out of factors not related to Transition, or to factors pre-dating the Transition Notice;
- 2.3.3 ensure that any additional costs included within the Transition Cost Model are mitigated to the fullest extent possible;
- 2.3.4 not include any costs relating to any or test and learn activity or other activity further to paragraphs 6 and 7 of Appendix 12A; and
- 2.3.5 if as a result of Transition, any Estate Lease exclusively used in the provision of the Services to be Transitioned which is no longer required but is not novated or assigned to the Authority or a Replacement Provider, the Transition Pricing Review may include costs equal to the lesser of (i) the costs negotiated with the relevant landlord, lessor or licensor for early termination of the Estate Lease; or (ii) the cost of running the Estate Lease until their next contractual break point, provided that the Provider shall use best endeavours to mitigate its costs connected with any such Estate Lease.
- 2.4 If, having compiled the Transition Cost Model and proposed a variation to the Unit Price in accordance with paragraph 2.1 and 2.3 above, the expected absolute (rather than percentage) margin in the Transition Cost Model (and applying the proposed increased Unit Prices) is lower than the Overall Profit, the Provider shall propose a further variation to the Unit Prices to maintain an expected absolute margin which is equal to the Overall Profit. This paragraph 2.4 shall be interpreted and applied in accordance with the following worked examples.
- 2.5 Transition Activities outside of the scope of the Transition Cost Model:
- The Authority shall pay the Provider's reasonable and properly incurred costs (such costs to be capped and mitigated to the fullest extent possible) for the people engaged in addition to Provider Staff to support on any such Transition Activities (and who would not be otherwise engaged in the provision of the Services) provided that in respect of each of the above, such costs have not been included in the Transition Cost Model prepared in accordance with paragraph 2.1 and 2.3 above. Any costs connected with this paragraph 2.5 shall be calculated on the basis of the applicable Rate Card. Any payment to be made by the Authority in accordance with this paragraph shall be excluded from the calculation for Profit Share as set out in Appendix 4, Part E. For the avoidance of doubt, the Provider shall be entitled to charge for the time spent by a Variation Staff Member, provided that it is able to evidence to the Authority that that Variation Staff Member's role has been backfilled in accordance with paragraph 6.2.2 of Part A of Appendix 4.

2.6 Variations to Trigger Profit Margin

If, solely due to the application of paragraph 2.4 above, the margin to be achieved by the Provider in the provision of the Services post Transition until the end of the Contract Period exceeds the Agreed Margin, then the Provider may propose a variation to the Trigger Profit Margin as at the Third Variation Date (being eight per cent (8%)) by an amount equal to the amount by which the margin applied in accordance with paragraph 2.4 above exceeds the Agreed Margin. A worked example of the application of this paragraph 2.6 is set out at Annex 4 of Appendix 14

2.7 Variations to clause C1A (Under Referrals)

The Provider shall propose any Variations required to reflect the outcomes of a Transition and Transition Pricing Review, such proposals shall include a reduction in the Head of Work Threshold applicable to clause C1A and F5.2E1 to reflect any reduction in forecast volume of Referrals arising out of a Transition.

2.8 Variations to Fixed Cost Recovery Rate

The Provider shall propose any updated Fixed Cost Recovery Rate in accordance with paragraph 6.5.2 of Appendix 12.

2.9 As per paragraph 2.4 of Appendix 12A, within thirty (30) Working Days of the date of receipt of the information and documentation submitted under paragraph 2.1, the Parties, acting in good faith, shall work together in order to agree any Variation resulting from the Transition Pricing Review. In the event that the Parties are unable to agree any such Variation, the matter shall be referred to the Dispute Resolution Procedure in clause I2 of the Contract.

2.10 Worked example(s) in relation to the Transition Pricing Review is set out at Annex 4 of Appendix 14.

Annex 2 - Collaboration Principles

1 Introduction

In order to deliver a smooth transition from the Provider to Replacement Provider(s) and/or the Authority, the Provider will be required to work closely with the Authority and any Replacement Provider(s). These Collaboration Principles set out how the Authority expects all suppliers to behave during any Transition or exit arising out of expiry or termination of this Contract.

2 General Collaboration Principles

- 2.1 The Provider shall be open and inclusive at all levels with the Authority and the Replacement Provider(s);
- 2.2 The Provider shall participate fully in any governance and transition or exit management activities anticipated or required by the Authority or Crown body as part of Transition or exit;
- 2.3 The Provider shall give due consideration to the strategic goals of the Authority in delivering a smooth Transition or exit as the Authority may define from time to time;
- 2.4 Subject to any other relevant provisions in this Contract, the Provider shall provide access to information, personnel and premises to the Authority and any Replacement Provider(s) in order to facilitate a smooth Transition or exit (subject to the entry into appropriate non-disclosure agreements); and
- 2.5 The Provider shall take all reasonable steps during Transition or during any period of exit arising out of the expiry or termination of this Contract to ensure that the quality of Services is not adversely impacted by Transition or exit. This may include working collaboratively with the Authority and/or the Replacement Provider(s) to solve problems quickly and with minimal disruption to Participants even where the problem is not directly caused by the Provider.

Annex 3 – Baseline Cost Model

1a Contract Price Summary

REDACTED IN FULL

1b Provider innovation ideas

[illegible]

2. Contents & Instructions

Instructions			
Worksheets coloured Blue require Supplier input			
Worksheets coloured Red will be populated automatically			
Cells coloured Yellow on worksheets require Supplier input			
Suppliers should adhere to the following Worksheet Instructions			
Each cost category worksheet has an annual amount that requires profiling by month. It is recognised that some cost lines are flat profiled i.e. estates and certain IT costs.			
Where there are items of fixed costs and one off costs please highlight and list these separately.			
Worksheet Number	Worksheet Name	Purpose of Worksheet	Instructions
1a	Contract Price Summary	Presents financial summary information based on the inputs made in the cost input sheets by the suppliers.	Largely self populates but please fill in the profit % - line 23.
1b	Supplier innovation ideas	To identify opportunities which enable savings, but require a change from DWP	Innovation ideas which don't require a change by DWP should be built into the baseline cost model. This section is to capture process improvements or contractual changes or other changes which may require a change by DWP. The quantum of savings is a Rough Order of Magnitude (RoM) in terms of unit price (specify Face to face or Paper based or both) in order to determine whether the proposal
3	Assumptions	Please state your assumptions used that underpin your forecasts	Please include: attrition rates, productive staff time (utilisation) and the links to volumes, F2F:PBR ratios, sickness rates, training time i.e. time staff before being effective and staffing ratio to volume forecasts. This is not exhaustive please include other key ratios used.
4	Volumes	Presents a Cash flow analysis of the suppliers cash inflows from chargeable volumes	This is the clearance volume forecast. Please complete 1. The F2F and PBR clearances based on the referral volumes. 2: Unit prices for each assessment type. Please explain the drop out rates between numbers of referrals and chargeable volumes. The volumes in the template are intended to help inform your costings. For the avoidance of doubt, the provision of these figures does not represent any commitment to particular referral levels for the remainder of the course of the current contract or any extension period.
5	People	People Costs input sheet	Split people by delivery category. Use one line per Job role for ease of completion. i.e. HP's, enter total number planned and use an average salary. Please identify Contractor costs separately. Split staffing into PBR and F2F where possible. You may add additional lines as necessary. Please note: Internal IT contractor recharges should be included on the systems IT worksheet.
6	Systems IT	Systems Costs input sheet	Suppliers should populate the tables as presented. Prices are calculated atomically based on supplier costs and margin %'s. If you charge different margins to different types of expenditure please insert additional lines within the variables worksheet. Please note we are not assuming any new capital costs or amortised costs for the duration of the extension.
7	Supply Chain Providers	BAU Contracted Services Costs input sheet	Suppliers should input any bought in services they utilise for the delivery of assessments. All others e.g. recruitment consultants should be included on Other worksheet
8	Overheads	Overheads	Suppliers should populate the tables as presented. Please add in any additional lines as required.
9	Property	Property	Suppliers should populate the tables as presented. Please add in any additional lines as required.
10	Investment	Investment	Suppliers should populate the tables as presented. Please add in any additional lines as required.
11	Depreciation Charges	Depreciation	Suppliers should populate the tables as presented. You should include depreciation charges for new capital investment and any cost relating to pre-existing capital expenditure. You should include in the rational the depreciation methodology. Please add in any additional lines as required.
12	Finance Charges	Cost of capital	Suppliers should populate the tables as presented. Please include any charges relating to new capital expenditure. Please add in any additional lines as required.
13	Other	Other Costs input sheet	Suppliers should populate the tables as presented. Please add in any additional lines as required.
14	Exit	Exit Costs	Suppliers should populate all costs and prices associated with the cost of Exit. No costs expected in Year 1.
15	Claimant Expenses	Claimant travel costs	Suppliers should populate the tables as presented. This is a pass-through cost and no profit is expected on these costs
16	Risk	Risk input sheet	Suppliers to state and cost with rationale any Risks costs / prices. No profit is expected to applied to this area.
17	Removed Costs	Costs not carried into extension period	Suppliers to state costs previously incurred but not now part of the extension period. Please supply detail.

Assumptions
The pricing provided in this template is indicative only, does not constitute an offer capable of acceptance and is not legally binding. Subject to the outcome of the negotiations that follow, Capita will prepare a formal offer. Capita has made the key assumptions listed below in preparing this submission. Should any assumption need to be amended during the course of the forthcoming negotiations, Capita reserves the right to adjust its indicative pricing.
The term of the extension expires on 31 July 2021 and is coterminous with Capita's Lot 4
Referrals volumes are as per DWP 15 Jun 18 forecast
The head of work reduces by 13k during the extension term
Headcount based on receipt of 100% of forecast referral volumes
Referral Channel Mix - 11% PBR, 58% F2F Clinic, 31% F2F Home
80% of F2F assessments are completed by employed Disability Assessors, 20% of are completed by self-employed contractors
Contractors are paid [REDACTED]
Disability Assessors (Auditors) based on current ratio of FTE to report closures
FTA Rates - 14.5% Centre, 4.2% Home
Cost of money as per the original bid and 2016 DoV, [REDACTED]%
Corporate overhead as per the original bid and 2016 DoV, [REDACTED]%
Profit Margin as per the original bid and 2016 DoV, [REDACTED]%. This includes the profit of all Affiliates on inter-company charges levied during the extension period
Assets depreciated over 2 years.
Depreciation includes £[REDACTED] for the 4 yr rolling refresh of laptops and £[REDACTED] for a server refresh
Pricing based on 2018 costs. Prices indexed by [REDACTED]% in August 2019 and [REDACTED]% in August 2020. 2% is Bank of England's CPI forecast from Inflation Report May 2018
No salary increases assumed other than inflation
Disability Assessor attrition - 8% per month during training, 6% per month outside training
Recruitment fees of £[REDACTED] per new Disability Assessor, based on actuals
Current permanent clinic estate continues throughout the contract. Dilapidation costs have not been included
TUPE will apply at expiry of the extension period

4. Volumes

REDACTED IN FULL

5. People

REDACTED IN FULL

6. Systems IT

REDACTED IN FULL

7. Supply Chain Providers

[illegible]

8. Overheads

[illegible]

9. Property

REDACTED IN FULL

10. Investment

REDACTED IN FULL

11. Depreciation

REDACTED IN FULL

Figure 1

12. Finance Charges

REDACTED IN FULL

13. Other

REDACTED IN FULL

14. Exit

REDACTED IN FULL

15. Claimant Exp

REDACTED IN FULL

REDACTED IN FULL

17. Removed Costs

Capita				
Removed Costs	Costs previously incurred but not included in extension			
Category	Detail			
[REDACTED]	[REDACTED]			

APPENDIX 13 – FINANCIAL DISTRESS

1 Introduction

- 1.1 This Appendix 13 provides (amongst other matters) for the assessment of the financial standing of the Guarantor and the establishment of trigger events relating to changes in such financial standing which, if they occur, will have specified consequences.
- 1.2 For the purposes of this Appendix 13, the following terms and phrases shall bear the following meanings:

Financial Ratio Level	means, in respect of the Guarantor, the levels set out Table 1 below (and Financial Ratio shall be construed accordingly);
Financial Ratios Calculation Period	means the Guarantor's standard annual accounting period from time to time, such period being as at the Third Variation Date the period running from 1 January to 31 December;
Key Sub-contractor	means a Sub-contractor who (in the reasonable opinion of the Authority) delivers or supports a material or critical part of the Services;
Net Debt to EBITDA Ratio	the Guarantor's ratio of adjusted net debt to adjusted EBITDA (prior to the adoption of IFRS 16) as stated in the Guarantor's audited "Annual Report" (as published annually) and set out in the "Alternative performance measures" note in that Annual Report. For these purposes: (i) the relevant ratio shall, for the avoidance of doubt, be that set out at note 10 on page 198 of the relevant Annual Report published in 2018 in respect of the Guarantor; and (ii) in respect of any subsequent accounting period or other point in time at which the Guarantor's financial standing falls to be assessed, the relevant ratio shall be the direct equivalent of (and so shall be calculated on the same basis as) that set out at note 10 on page 198 of such 2018 Annual Report;
Net Interest Payable	[shall be the total of all interest payable less all interest receivable];
Profit Warning Event	shall mean the issue by Provider and/or the Guarantor of a profit warning to a stock exchange (or making any other public announcement about a material deterioration in the Guarantor's financial position or prospects);

2 Financial Ratios

- 2.1 The Provider shall monitor the Financial Ratios on an ongoing basis and calculate the following Financial Ratios (on the basis of published accounts) as at the end of each Financial Ratios Calculation Period. The Provider shall confirm to the Authority in writing on the earlier of:

- (a) one (1) month following publication in the public domain of the financial accounts for the Financial Ratios Calculation Period; or
- (b) one hundred and eighty (180) days after the end of each such Financial Ratios Calculation Period,

that the Financial Ratios for the Guarantor fall within the 'Acceptable' Financial Ratio Level as set out in the following tables. In the event that the Provider is unable to confirm that the Financial Ratios for the Guarantor fall within the 'Acceptable' Financial Ratio Level, for any reason(s) other than solely due to a change in GAAP ("Generally Accepted Accounting Principles"), the provisions of paragraphs 3 or 4 of this Appendix 13 shall apply (as applicable).

Table 1

Test	Acceptable	Risk Level 1	Risk Level 2
Financial Ratios	<p>The Net Debt to EBITDA Ratio is less than or equal to 3.0 to 1</p> <p>AND</p> <p>The ratio of EBIT to Net Interest Payable is greater than or equal to 4.0 to 1</p>	<p>The ratio of Net Debt to EBITDA Ratio is greater than 3.0 to 1 but less than or equal to 5.0 to 1 and the ratio of EBIT to Net Interest Payable is greater than or equal to 2.0 to 1</p> <p>AND/OR</p> <p>The ratio of EBIT to Net Interest Payable is less than 4.0 to 1 but greater than or equal to 2.0 to 1 and the Net Debt to EBITDA Ratio is less than or equal to 5.0 to 1.</p>	<p>The Net Debt to EBITDA Ratio is greater than 5.0 to 1;</p> <p>AND/OR</p> <p>The ratio of EBIT to Net Interest Payable is less than 2.0 to 1</p>

- 2.2 The Provider warrants and represents to the Authority for the benefit of the Authority that as at the Third Variation Date the Financial Ratios for the Guarantor fall within the "Acceptable" Financial Ratio Level.
- 2.3 The Provider shall regularly monitor relevant indicators of risk, including without limitation the Financial Ratios relating to the Guarantor, in accordance with this Appendix 13 throughout the Contract Period and shall promptly notify, or shall procure that its auditors promptly notify, the Authority in writing following the occurrence of a Financial Distress Event, any such notification to be made in any event within no more than ten (10) Working Days from the date on which the Provider first becomes aware of any fact, circumstance or matter which has caused or constitutes a Financial Distress Event. For the avoidance of doubt, whilst the methodology for calculating the Net Debt to EBITDA Ratio shall be determined by reference to a methodology used in preparing a particular set of published accounts in respect of the Guarantor, nothing in this Appendix 13 shall be treated as requiring the Provider only to monitor and calculate Financial Ratios after the end of a particular Financial Ratios Calculation Period and/or by reference to particular published accounts, and instead the Provider shall be required in accordance with this paragraph 2.3 to monitor and calculate Financial Ratios for the Guarantor on a regular basis throughout the Contract Period (based on then current management accounts or other relevant financial information in respect of the Guarantor) and to

notify the Authority if at any point in time during the Contract Period any Financial Ratios for the Guarantor cease to fall within the "Acceptable" level (as set out in Table 1 of paragraph 2.1 above).

3 Risk Level 1 Financial Distress Event

3.1 Any of the following events shall constitute a Financial Distress Event which is categorised for the purposes of this Appendix as a "Risk Level 1" Financial Distress Event:

- (a) the Guarantor having an adverse decline in one or more of the Financial Ratios specified in table 1 of paragraph 2.1 of this Appendix 13 such that the Financial Ratios fall within Financial Ratio "Risk Level 1";
- (b) a Key Sub-contractor providing primie-facie evidence to the Authority that the Provider has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
- (c) the Provider and/or the Guarantor failing (or being unable) within 10 Working Days of a Profit Warning Event) to demonstrate to the Authority's reasonable satisfaction, that (notwithstanding such Profit Warning Event),
(i) the Financial Ratios for the Guarantor remain within the 'Acceptable' Financial Ratio Level (as set out in Table 1 of paragraph 2.1 above); and
(ii) there are no other implications of such Profit Warning Event that would impact on the Financial Ratio Level of the Guarantor in the future, or would otherwise impact on the ability of the Provider to provide the Services, or ability of the Guarantor to meet its obligations under the New PCG;
- (d) there being a public investigation into improper financial accounting and reporting, suspected Fraud or any other impropriety of the Provider or the Guarantor; and/or
- (e) the Provider or the Guarantor committing a material breach of covenants to its lenders,

and if any such Financial Distress Event or any Profit Warning Event occurs then, immediately upon notification of the Financial Distress Event or Profit Warning Event (or if the Authority becomes aware of the Financial Distress Event or Profit Warning Event without notification and brings the Financial Distress Event or Profit Warning Event to the attention of the Provider), the Authority shall, have the rights set out in paragraph 3.2 of this Appendix 13.

3.2 At the request of the Authority, the Provider shall:

- (a) meet with the Authority (and, if the Financial Distress Event relates to the Guarantor, use all reasonable endeavours to procure that the Guarantor shall meet with the Authority) as soon as is reasonably practicable and in any event within three (3) Working Days to review the effect of the Financial Distress Event upon the continued performance of the Services or of the Guarantee (as the case may be);
- (b) provide such information as the Authority may reasonably require relating to the Financial Distress Event in advance of, at, or within five (5) Working Days of the meeting referred to at paragraph 3.2(a) above; and/or
- (c) submit to the Authority for its approval, a draft Financial Distress Event Service Continuity Plan as soon as possible and in any event not later than ten (10) Working Days (or such other period as the Authority may permit and notify to the Provider in writing) after the initial notification under paragraph 2.3 of this Appendix 13 (or if the Authority becomes aware of the Financial Distress Event without notification and brings the

Financial Distress Event to the attention of the Provider, as soon as possible and in any event not later than ten (10) Working Days after the Financial Distress Event has been brought to the attention of the Provider).

- 3.3 The Authority shall not withhold its approval of a draft Financial Distress Event Service Continuity Plan unreasonably. If the Authority does not approve the draft Financial Distress Event Service Continuity Plan it shall inform the Provider of its reasons and the Provider shall take those reasons into account in the preparation of a further Financial Distress Event Service Continuity Plan, which shall be resubmitted to the Authority within five (5) Working Days of the rejection of the first draft.
- 3.4 If the Authority reasonably considers that the draft Financial Distress Event Service Continuity Plan is insufficiently detailed to be properly evaluated, or will take too long to complete or will not remedy the Financial Distress Event complained of, then it may either agree a further time period for the development and agreement of the Financial Distress Event Service Continuity Plan or rely on clause 3.6 (b). .
- 3.5 The Provider shall comply with any Financial Distress Event Service Continuity Plan following its approval by the Authority.
- 3.6 If:
- (a) the Provider does not provide the information required in accordance with paragraph 3.2(b) above; and/or
 - (b) the Parties fail to reach agreement on the Financial Distress Event Service Continuity Plan prepared in accordance with paragraph 3.2(c) above; and/or
 - (c) the Provider fails to fully and promptly implement any Financial Distress Event Service Continuity Plan in accordance with its terms,
- then the Authority shall be entitled to treat such event as being a Risk Level 2 Financial Distress Event and paragraph 4 shall apply.
- 3.7 If and to the extent that:
- (a) a Risk Level 1 Financial Distress Event arises due to one more of the Financial Ratios of the Guarantor and the Guarantor's Financial Ratios then improve to an Acceptable level; or
 - (b) a Risk Level 1 Financial Distress Event arises due to factors other than the Financial Ratios of the Guarantor and the Authority reasonably determines that the factors no longer constitute any type of financial, performance or reputation risk to the Authority or to the provision of any Services (such decision being revocable where it considers new or varied information gives rise to such risk to the Authority and/or the provision of the any Services);
- and in each case, no new factors have arisen which would give rise to a Risk Level 1 Financial Distress Event, then the Authority shall notify the Provider that the Risk Level 1 Financial Distress Event no longer applies, but the Provider shall nonetheless complete delivery of any Financial Distress Event Service Continuity Plan (unless otherwise agreed between the parties).
- 3.8 Where the Financial Distress Event relates to the non-payment of Key Sub-contractors pursuant to paragraph 3.1(b), the Authority shall, prior to exercising its rights under paragraph 3.2 of this Appendix 13, give the Provider a period of not more than ten (10) Working Days in which to rectify that non-payment or to demonstrate to the Authority's reasonable satisfaction that there is a valid reason for non-payment.

4 Risk Level 2 Financial Distress Event

4.1 Any of the following events shall constitute a Financial Distress Event which is categorised for the purposes of this Appendix as a "Risk Level 2" Financial Distress Event:-

- (a) the Guarantor having an adverse decline in one or more of the Financial Ratios specified in table 1 of paragraph 2.1 of this Appendix 13 such that the Financial Ratios fall within Financial Ratio Risk Level 2;
- (b) any of the circumstances outlined in paragraph 3.6 of this Appendix 13 arise;
- (c) commencement of any litigation against the Provider or the Guarantor with respect to financial indebtedness or any obligation under a service contract, non-payment of any financial indebtedness, any financial indebtedness becoming due as a result of an event of default, the cancellation or suspension of any financial indebtedness, which will directly impact upon the Provider's ability to deliver the Services; and/or
- (d) an Insolvency Event,

and if any such Financial Distress Event occurs then, immediately upon notification of the Financial Distress Event (or if the Authority becomes aware of the Financial Distress Event without notification and brings the Financial Distress Event to the attention of the Provider), the provisions of paragraphs 3.2 to 3.4 of this Appendix 13 shall apply to the extent applicable and the Authority shall also have the rights set out in paragraph 4.2 of this Appendix 13.

4.2 The Authority may:

- (a) require the Provider's chief financial officer to update the Authority as to its and/or the Guarantor's financial standing on a monthly basis and, if applicable, require the Provider to use all reasonable endeavours to procure that the Guarantor directly provides monthly updates to the Authority; and/or
- (b) require the Provider to provide the Authority with a draft Financial Distress Event Service Continuity Plan setting out how the Provider will ensure the continuity of provision of the Services in the event that the Provider or the Guarantor becomes subject to the occurrence of an Insolvency Event, in which case: (i) the provisions of paragraph 3.2 (c) and 3.3 shall apply mutatis mutandis as regards the process (including timescales) for the relevant Financial Distress Event Service Continuity Plan to be submitted to, and approved by, the Authority; and (ii) the Provider shall comply with the relevant Financial Distress Event Service Continuity Plan following its approval by the Authority.

4.3 If and to the extent that:

- (a) a Risk Level 2 Financial Distress Event arises due to one or more of the Financial Ratios of the Guarantor and the Guarantor's Financial Ratios then improves to an Acceptable level; or
- (b) a Risk Level 2 Financial Distress Event arises due to factors other than the Financial Ratios of the Guarantor and the Authority reasonably determines that the factors no longer constitute any type of financial, performance or reputation risk to the Authority or to the provision of any Services (such decision being revocable where it considers new or varied information gives risk to such risk to the Authority and/or the provision of the any Services);

and in each case, no new factors have arisen which would give rise to a Risk Level 2 Financial Distress Event, then the Authority shall notify the Provider that the Risk Level 2 Financial Distress Event no longer applies, but the Provider shall nonetheless complete delivery of any Financial Distress Event Service Continuity Plan (unless otherwise agreed between the parties).

5 Termination Rights

- 5.1 The Authority shall be entitled to terminate this Contract (Termination by the Authority) if:
- (a) the Provider fails to notify the Authority in accordance with paragraph 2.3 of a Financial Distress Event;
 - (b) the Provider fails, in any material respect, to comply with paragraphs 3.2 (c), 3.3 and/or 4.2 (b) and does not remedy that failure to the reasonable satisfaction of the Authority within five (5) Working days of the Authority notifying the Provider of the failure and requiring that it be remedied; and/or
 - (c) the Provider materially fails to comply with the terms of any Financial Distress Event Service Continuity Plan in accordance with paragraphs 3.5 or 4.2 (b) of this Appendix 13.

6 Sub-contractor Payment

- 6.1 The Provider shall ensure that all Key Sub-contractor agreements include an obligation on the Key Sub-contractor to report to the Authority, within ten (10) Working Days of the due date for payment, any material non-payment or late payment of any sums due to it from the Provider under the provision of the Key Sub-contractor agreement.

APPENDIX 14 – SERVICE CREDITS

1 OBJECTIVES

- 1.1 The objectives of the Service Levels and Service Credits are to:
- Ensure that the Services are of a consistently high quality and meet the requirements of the Authority;
 - Provide a mechanism whereby the Authority can attain meaningful recognition of inconvenience and/or loss resulting from the Provider's failure to deliver the level of Service for which it has contracted to deliver; and
 - Incentivise the Provider to meet the Service Levels and to remedy any failure to meet Service Levels expeditiously

2 GENERAL PROVISIONS

- 2.1 In the event of a failure by the Provider to achieve any Service Level, the Service Credits shall be applied to the Provider as prescribed in Clause F5.2 of the Contract and in this Appendix 14.
- 2.2 The Provider shall monitor the performance of its obligations under this Contract, and shall provide the Authority with Management Information required in accordance with Annex G of the contract in order for the Authority to determine the Service Credits applicable.
- 2.3 In the event of a dispute arising between the Authority and the Provider over any matter relating to Service Credits under this Appendix, such dispute shall be dealt with in accordance with the Dispute Resolution procedure set out in Clause I2 of the Contract.
- 2.4 In the event that new service levels are introduced, the Authority and the Provider shall agree the Service Credits which will apply for failures to meet such service levels. In the event of a dispute arising in matters relating to the introduction of new Service Credits such dispute shall be dealt with in accordance with the Dispute Resolution procedure set out in Clause I2 of the Contract.

3 SERVICE LEVEL DEFAULT

- 3.1 The Service Credits shall be applied for failure to meet the Service Levels.
- 3.2 For the avoidance of doubt, Service Credits and Service Termination Thresholds will be applied at contract level.
- 3.3 Not Used.
- 3.4 Not Used.

There will be a cap on the value of Service Credits to be applied to the Provider in any single month. The maximum Service Credit to be paid by the Provider in any single month shall not exceed [REDACTED] of the total Contract Price due for the month under consideration ("the Service Credit Cap"). (For the avoidance of doubt, Contract Price in this context will not include the pass through costs specified in Appendix 4 (Prices and Rates) Annex 1 (Rates Payable), Table D (Further Medical Evidence) in respect of Further Medical Evidence.

- 3.5 In any case where the result of a calculation made under this Appendix 14 goes to four or more decimal places, the result shall be rounded to the nearest three decimal places, and for any result where the fourth decimal point is a value of five (5) the result shall be rounded up to three decimal places.

Worked example:

0.0464 – rounded down to 0.046

0.0465 – rounded up to 0.047

0.0466 – rounded up to 0.047.

- 3.6 For the purposes of monitoring and reporting on performance against Service Levels SC4A, SC4B, SC5A, SC5B, SC6A, SC6B, SC7A, SC7B, SC14A and SC14B, and calculating any related Service Credits, the day on which the relevant case was referred by the Authority to the Provider shall be deemed to be the next Working Day where the Provider can demonstrate that such Referral occurred on or after 13:00 of such day.
- 3.7 For the purposes of calculating the Service Credit Cap specified in Paragraph 3.5 of this Appendix 14 (Service Credits) of the Contract:
- 3.7.1 the total Contract Price for the relevant Month will be the Total Monthly Price for that Month; and
- 3.7.2 there shall not be any cap or other limitation on the No Pay Amounts, and the Parties hereby agree and acknowledge that No Pay Amounts are separate and distinct from Service Credits under the Contract and will therefore not count towards the Service Credit Cap.

4 ANNUAL REVIEW

- 4.1 For the avoidance of doubt the unit value of Service Credits will not be subject to annual review.

5 Not Used.

6 SERVICE CREDIT TERMINATION THRESHOLDS

- 6.1 The Authority shall have the right to terminate the Contract pursuant to Clause H2 where the Service Credit cap is applied either:
- (a) in each month over a rolling three (3) Month period; or
- (b) in any six (6) Months in a rolling twelve (12) Month period.

7 SERVICE TERMINATION THRESHOLDS

- 7.1 Notwithstanding the provisions of paragraph 6.1 and without prejudice to its rights to terminate the Contract pursuant to clause H2, the Authority reserves the right to exercise its remedies under clauses F5.3 and F5.4 in the event that the Service Termination Threshold is reached or exceeded by the Provider in relation to any individual Service Level;
- 7.1.1 over a rolling three (3) Month period; or
- 7.1.2 in any six (6) Months in a rolling twelve (12) Month period.
- 7.2 Paragraph 7.1 shall not apply, and the Authority shall not be entitled to exercise any of its remedies under clauses A10.2.2, F5.3, F5.4, F5.6, F.10 or H2 (the **Authority Remedies**) to the extent that such Authority Remedies are triggered by the Provider exceeding the Service Termination Threshold or otherwise being in Default due to its failure to meet Service Levels SC4A or SC4B during a Service Credit Let Period.

8 SERVICE CONSISTENCY

- 8.1 Notwithstanding Service Levels being measured across the whole Contract for the purpose of applying Service Credits the Authority requires consistency of service delivery across the Contract. For the purpose of assessing such consistency, Service Levels shall also be measured at regional and/or consultation centre level. Where the Provider fails to meet the Service Levels required under the Contract the Authority reserves the right to take any remedial action available to it under the Contract.

9 SERVICE CREDIT BOARD

- 9.1 A Service Credit Board (SCB) will be established for the purpose of:

- Reviewing and considering whether any mitigation submitted by the Provider is relevant for the purpose of Clause F5.2.1 (Force Majeure or Default of the Authority) of the Contract
- Considering the application of Service Credit values and the performance achieved

- 9.2 The SCB will consist of the Authority and Provider senior management representatives, who will meet between the ninth and fifteenth Working Day of each month.

The Authority will be represented by:-

Head of Medical Services Contracts / Performance Account Manager / Head of Medical Services Commercials / Medical Services Commercial Manager

The Provider will be represented by:-

Operations Director / Commercial Director to be determined by the Provider.

- 9.3 Any proposed application and/or deferment of Service Credits will be determined as fully extinguished, partially extinguished or deferred/applied.

Annex 1

Service Levels and Termination Thresholds

In this Annex 1, reference to “**assessment reports**” and to “**report**” and to “**reports**” means Chargeable Output, “**DWP**” means the Authority, “**claimant**” means the Participant, “**Consultation centre consultation**” means Clinic Consultation, and “**HP**” refers to “Health Professional” which shall have the meaning given in the Specification.

1 Service Levels 1 to 3

1.1 Before the Second Variation Effective Date

The following table sets out Service Levels SC1 to SC3 (inclusive) which apply before the Acceptable/ Unacceptable Criteria enter into force (and, for the avoidance of doubt, such criteria shall so enter into force on the Second Variation Effective Date):

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (cross-reference to Annex G of Appendix 1 of the Contract)	Notes
SC1	Quality of assessment reports derived from the audit of reports	4% or less Grade C Reports in year one (1)* reducing to 3% or less in year two (2) and subsequent years. *Note: Year one (1) begins with commencement of the live assessment service.	[REDACTED] per case above 4% in year 1 and above 3% in year 2 and subsequent years.	Regional / Lot calculated on a rolling 3 Monthly basis	10% or more of Grade C Reports. Over a rolling three (3) Month period or Any six (6) Months in a rolling twelve (12) Months	30	This target relates to the quality of assessment reports derived from agreed audit procedures where a Grade C Report fails to meet professional standards. Providers must use the Lancaster mode in relation to sample sizes.

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (cross-reference to Annex G of Appendix 1 of the Contract)	Notes
SC2	Quality of assessment reports derived from the audit of reports	20% or less Grade B Reports in year one (1)*, reducing to 15% or less in year two (2) and subsequent years. *Note: Year one (1) begins with commencement of the live assessment service.	[REDACTED] per case above 20% in year 1 and 15% in year 2.	Regional / Lot calculated on a rolling 3 Monthly basis	No Termination Threshold	31	This target relates to the quality of assessment reports derived from agreed audit procedures where there are elements of the report that could be improved. Providers must use the Lancaster model in relation to sample sizes.
SC3	Re-work of assessment reports deemed not fit for purpose. To be 'fit for purpose' reports must be:- <ul style="list-style-type: none"> Fair & impartial Legible and concise In accordance with legislation Comprehensive, clearly explaining medical issues 	Non-compliant/re-work reports to be 1% or less in year one (1)*, reducing to 0.75% in year two (2) and 0.5% in year three (3). *Note: Year one (1) begins with commencement of the live assessment service.	[REDACTED] per report (ie the administration cost to the Authority), on each occasion when a report is returned for re-work.	Lot, Region and each Consultation Centre Calculate d on a monthly basis.	5% or more reports deemed not fit for purpose. Over a rolling three (3) Month period or Any Six (6) Months in a rolling Twelve (12) Months	34	

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (cross-reference to Annex G of Appendix 1 of the Contract)	Notes
	<p>raised</p> <ul style="list-style-type: none"> • In plain English/free of medical jargon • Presented clearly • Complete with answers to all queries relating to disability/incapacity matters raised by DWP • Free of unexplained medical abbreviations • Capable of Comprehensively providing information to the Authority 						

1.2 From the Second Variation Effective Date

The following table sets out Service Levels SC1 to SC3 (inclusive) as they shall each apply from and including the Second Variation Effective Date:

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (cross-reference to Annex G of Appendix 1 of the Contract)	Notes
SC1	Quality of assessment reports derived from the audit of reports	<p>9.5% or less Unacceptable Reports in SC1 Transition P1.</p> <p>3.5% or less Unacceptable Reports in SC1 Transition P2.</p> <p>3% or less Unacceptable Reports in SC1 Transition P3.</p> <p>3% or less Unacceptable Reports after SC1 Transition P3.</p>	No Service Credit, but No Pay Amount applied in accordance with paragraph 5A and paragraph 5B and paragraph 5C of Appendix 4 (Prices and Rates)	<p>During the SC1 Transition Total Period:</p> <p>Regional/ Lot, calculated Monthly, and reported on per SC1 Transition Period basis in accordance with clause F5A.</p> <p>After SC1 Transition P3:</p> <p>Regional / Lot calculated Monthly starting with the Rolling Quarter ending 31 January 2017, and reported on a rolling 3 Monthly basis</p>	<p>14.5% or more Grade C Reports or Unacceptable Reports in SC1 Transition P1.</p> <p>10% or more Grade C Reports or Unacceptable Reports in SC1 Transition P2.</p> <p>10% or more Grade C or Unacceptable Reports in SC1 Transition P3.</p> <p>And:</p> <p>10% or more Grade C or Unacceptable Reports from the end of SC1 Transition P3 onwards.</p> <p>Over a</p>	30	This target relates to the quality of assessment reports derived from agreed audit procedures where an Unacceptable Report fails to meet professional standards. Providers must use the Lancaster model in relation to sample sizes.

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (cross-reference to Annex G of Appendix 1 of the Contract)	Notes
					rolling three (3) Month period or Any six (6) Months in a rolling twelve (12) Month period starting with the rolling twelve (12) Month period ending 31 May 2017		
SC2	NOT USED	NOT USED	NOT USED	NOT USED	NOT USED	NOT USED	NOT USED
SC3	<p>Re-work of assessment reports deemed not fit for purpose.</p> <p>To be 'fit for purpose' reports must be:-</p> <ul style="list-style-type: none"> Fair & impartial Legible and concise In accordance with legislation 	<p>Non-compliant/re-work reports to be 1% or less in year one (1)*, reducing to 0.75% in year two (2) and 0.5% in year three (3) and for the duration of the Contract Period.</p> <p>*Note: Year one (1) begins with commencement of the live assessment</p>	[REDACTED] per report (i.e. the administration cost to the Authority), on each occasion when a report is returned for re-work.	<p>Lot, Region and each Consultation Centre</p> <p>Calculated on a Monthly basis.</p>	<p>5% or more reports deemed not fit for purpose.</p> <p>Over a rolling three (3) Month period or</p> <p>Any Six (6) Months in a rolling Twelve (12) Months</p>	34	

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (cross-reference to Annex G of Appendix 1 of the Contract)	Notes
	<ul style="list-style-type: none"> Comprehensive, clearly explaining medical issues raised In plain English/free of medical jargon Presented clearly Complete with answers to all queries relating to disability/incapacity matters raised by DWP Free of unexplained medical abbreviations <p>Capable of comprehensively providing information to the Authority</p>	service.					

2 Service Levels SC4A to SC14B (inclusive)

The following table sets out Service Levels SC4A to SC14B (inclusive) as they shall each apply from and including the Second Variation Effective Date:

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (cross-reference to Annex G of Appendix 1 of the Contract)	Notes
SC 4A	PIP Assessment end to end assessment process (excluding TI cases).	All Cleared within an AACT of 35 Working Days	Total Monthly Price [REDACTED] (AACT – 35) If AACT is less than or equal to 35, the Service Credit shall be deemed to be zero.	Lot, Region and each Consultation Centre Weekly and Monthly	An AACT of 40 Working Days over a rolling three (3) Month period or in any six (6) Months in a rolling twelve (12) Month Period all where a Service Credit Let has not been in place	32	
SC 4B	PIP Assessment end to end assessment process (excluding TI cases).	No cases older than fifty five (55) Working Days as at the end of the Month.	Service Credit payable per case older than 55 Working Days as at the end of the Month	Lot, Region and each Consultation Centre. Weekly and Monthly	No termination threshold.	32	

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (cross-reference to Annex G of Appendix 1 of the Contract)	Notes
			<p>as follows:</p> <p>By way of worked example: A case is 56 Working Days old at the end of Month A, resulting in a [REDACTED] Service Credit in respect of that case for that Month. At the end of the following Month (A+1), the case is still not Cleared and is</p>				

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (cross-reference to Annex G of Appendix 1 of the Contract)	Notes
			<p>77 Working Days old, resulting in a [REDACTED] Service Credit in respect of that case for that Month. At the end of the following Month (A+2), the case is still not Cleared and is 100 Working Days old, resulting in a [REDACTED] Service Credit in respect of that</p>				

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (cross-reference to Annex G of Appendix 1 of the Contract)	Notes
			<p>case for that Month. At the end of the following Month, the case is Cleared so no further Service Credit is due. Total SC4B Service Credits on that case is therefore</p> <p>[REDACTED].</p> <p>Age of cases at end of Month (Working Days)</p> <p>56 – 65</p> <p>66 – 75</p> <p>76 – 85</p>	<p>Service Credit (£)</p> <p>16</p> <p>18</p> <p>20</p> <p>22</p> <p>24</p>			

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (cross-reference to Annex G of Appendix 1 of the Contract)	Notes
			86 – 95 96 - 105				
SC 5A	<p>Terminally III (TI) cases end to end assessment process.</p> <p>Formula :</p> <p>Service Credit = (Y-(Zx2))x£12</p> <p>where: 'Y' means the sum of the total number of Working Days spent on each and every TI assessment</p>	All TI cases cleared within an average period of two (2) Working Days to be calculated on an in-Month basis.	[REDACTED] for each Working Day which exceeds the average period of 2 Working Days (Monthly)	Lot, Region and Sub Region monthly	<p>All TI cases cleared within an average period of four (4) Working Days to be calculated on an in-Month basis.</p> <p>Over a rolling three (3) Month period or Any six (6) Months in a rolling twelve (12) Months</p> <p>Formula:</p> <p>Average number of TI cases cleared within a Month = A/B</p> <p>where: 'A' means the sum of the total number of Working Days spent on each and every TI assessment</p>	33	

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (cross-reference to Annex G of Appendix 1 of the Contract)	Notes
	<p>cleared within the Month.</p> <p>'Z' means the sum of the total number of TI assessment referrals cleared within the Month.</p> <p>of the total number of TI assessment referrals cleared within the Month.</p> <p>referrals cleared within the Month.</p> <p>Example 1: In this</p>				<p>cleared within the Month</p> <p>'B' means the sum of the total number of TI assessment referrals cleared within the Month.</p> <p>Example 1: In this example, the Provider cleared 400 TI assessment referrals in the relevant Month ("B"). The total sum of the number Working Days for all cleared TI assessment referrals was 1000 ("A").</p> <p>1000/400 = 2.5</p> <p>The Provider cleared all TI assessment referrals within average period of 2.5 Working Days in</p>		

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (cross-reference to Annex G of Appendix 1 of the Contract)	Notes
	<p>example, the Provider cleared 400 TI assessment referrals in the relevant Month ("B"). The total sum of the number Working Days for all cleared TITI assessment Example 1: In this example, the Provider cleared 500 TI assessment referrals in the relevant Month ("Z"). The total sum of</p>				<p>the relevant Month.</p> <p>Example 2: In this example, the Provider cleared 200 TI assessment referrals in the relevant Month ("B"). The total sum of the number of Working Days for all cleared TI assessment referrals was 1000 ("A").</p> <p>$1000/200 = 5$</p> <p>The Provider cleared all TI assessment referrals within average period of 5 Working Days in the relevant Month.</p> <p>Therefore the in-Month threshold is breached</p>		

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (cross-reference to Annex G of Appendix 1 of the Contract)	Notes
	<p>the number of Working Days for all cleared TI assessment referrals was 1000 ("Y").</p> <p>1000- (500 x 2) = 0 x £12 = £0</p> <p>The Provider cleared all TI assessment referrals within an average period of 2 Working Days in the relevant Month and therefore service credit is</p>						

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (cross-reference to Annex G of Appendix 1 of the Contract)	Notes
	<p>payable.</p> <p>Example 2: In this example, the Provider cleared 450 TI assessment referrals in the relevant Month ("Z"). The total sum for the number of Working Days for all cleared TI assessment referrals was 1000 ("Y").</p> <p>1000- (450 x 2) = 100 x £12 = £1,200</p>						

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (cross-reference to Annex G of Appendix 1 of the Contract)	Notes
	The Provider failed to clear all TI assessment referrals within an average an period of 2 Working Days in the relevant Month and a service credit of £1,200 is therefore payable.						
SC 5B	Terminally III (TI) cases end to end assessment process.	100% to be cleared within five (5) Working Days.	[REDACTED] per case below 100% (Monthly)	Lot, Region and each Consultation Centre Weekly and monthly	98% cleared within Five (5) Working Days Over a rolling three (3) Month period or Any six (6) Months in a rolling twelve (12) Months	33	
SC 6A	Authority referrals for	98% cleared within two	[REDACTED] per	Lot, Region and each Consultation	90% cleared within Two (2) Working Days	10	Includes providing written or

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (cross-reference to Annex G of Appendix 1 of the Contract)	Notes
	advice	(2) Working Days.	case below 98% (Monthly)	Centre Weekly/Monthly	Over a rolling three (3) Month period or Any six (6) Months in a rolling twelve (12) Months		telephone advice.
SC 6B	Authority referrals for advice	No cases older than three (3) Working Days as at the end of the Month.	[REDACTED] per case, older than three (3) Working Days as at the end of the Month	Lot, Region and each Consultation Centre Weekly/Monthly	No termination threshold.	10	Includes providing written or telephone advice.
SC 7A	Re-work of assessment reports deemed not fit for purpose.	98% cleared within two (2) Working Days.	[REDACTED] per case below 98% (Monthly)	Lot, Region and each Consultation Centre Weekly/monthly	90% cleared within two (2) Working Days Over a rolling three (3) Month period or Any six (6) Months in a rolling twelve (12) Months	35	Links to SLA SC3 above.
SC 7B	Re-work of assessment	No cases older than three (3)	[REDACTED] per	Lot, Region and each Consultation	No termination threshold.	35	Links to SLA SC3 above.

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (cross-reference to Annex G of Appendix 1 of the Contract)	Notes
	ent reports deemed not fit for purpose	Working Days as at the end of the Month.	case older than three (3) Working Days as at the end of the Month	Centre Weekly/monthly			
SC 8A	Claimant call waiting time	80% of calls to be answered within thirty (30) seconds	[REDACTED] per case below 80% (Monthly).	Lot, Region Daily/Weekly/monthly	No termination threshold.	11	This is in line with DWP standards.
SC 8B	Claimant call waiting time	In total, 90% of all calls to be answered.	[REDACTED] per case below 90% (Monthly)	Lot, Region Daily/ Weekly/monthly	80% of all calls answered Over a rolling three (3) Month period or Any six (6) Months in a rolling twelve (12) Months	11	This is in line with DWP standards.
SC 9	Claimant Satisfaction Rate relating to the quality of service provided.	Claimant Satisfaction Rate to be at least 90%.	[REDACTED] per case below 90% (quarterly).	Lot, Region and each Consultation Centre Quarterly/Annually (Supported by MI provided monthly)	No Termination Threshold	12	Note – sample size to be determined by DWP. Independent survey to be

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (cross-reference to Annex G of Appendix 1 of the Contract)	Notes
							undertaken
SC 10	NOT USED	NOT USED	NOT USED	NOT USED	NOT USED	NOT USED	NOT USED
SC 11A	Consultation Waiting Time	Consultation centre consultations – 90% of all claimants to be examined within thirty (30) minutes of their appointment time.	[REDACTED] per case below 90% (monthly).	Lot, Region and each Consultation Centre Monthly, Rolling 12 Months.	80% of claimants examined within thirty (30) minutes of appointment. Over a rolling three (3) Month period or Any six (6) Months in a rolling twelve (12) Months	14	
SC 11B	Consultation Waiting Time	Home Consultations – 90% of claimants to be examined within sixty (60) minutes of their	[REDACTED] per case below 90% (monthly).	Lot, Region and each Consultation Centre Monthly, Rolling 12 Months.	80% of claimants examined within sixty (60) minutes of their appointment time. Over a rolling three (3)	14	

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (cross-reference to Annex G of Appendix 1 of the Contract)	Notes
		appointment time.			Month period or Any six (6) Months in a rolling twelve (12) Months		
SC 12	<p>Claimants sent home unseen – where onus is on the Provider includes:</p> <ul style="list-style-type: none"> Claimant called in error Same gender not provided when requested Special requirements not provided when requested 	No more than 1% of Claimants who attend their examination to be Sent home unseen.	[REDACTED] per case above 1% (monthly).	Lot, Region and each Consultation Centre Monthly, Rolling 12 Months.	<p>10% of claimants sent home unseen.</p> <p>Over a rolling three (3) Month period or Any six (6) Months in a rolling twelve (12) Months</p>	16	<p>Note – this will not apply where onus is on the claimant e.g. claimant arrives late for their appointment.</p> <p>Provider to ensure management of overall HP availability and only under exceptional circumstances should HP unavailability/non-attendance be provided as mitigation</p>

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (cross-reference to Annex G of Appendix 1 of the Contract)	Notes
	<p>sted in advance</p> <ul style="list-style-type: none"> • Claimant arrived on time but would not wait more than 30 minutes • Number of claimants attended exceeds capacity • HP unavailable • HP did not attend for session • System 						with robust reasoning.

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (cross-reference to Annex G of Appendix 1 of the Contract)	Notes
	m performance problem						
SC 13	Continuous Professional Development (CPD) for Medical Personnel: Delivery of Training Programme	By 31 July each year*, the Provider will have delivered completely all components of the agreed training programme to the Medical Personnel for that year. *Note: 12 months after contract award and annually thereafter.	Single annual credit of [REDACTED] for failed delivery	Delivery of Annual Report confirming achievement by Lot and Region.	No termination threshold.	17	
SC 14A	Re-work where face to face re-examination is	99% cleared within twenty (20) Working	[REDACTED] per case below 99%	Lot, Region and Sub-Region. Monthly.	No termination threshold.	36	New Service Credit added to contract after

A	B	C	D	E	F	G	H
No.	SLA Service requirement	Service Level	Service Credit	Management Information Reporting Level and Duration	Service Termination Threshold	Supporting MI Requirements (cross-reference to Annex G of Appendix 1 of the Contract)	Notes
	required.	Days.	(Monthly)				agreement with Commercials on 7th January 2013.
SC 14B	Re-work where face to face re-examination is required.	No cases older than twenty five (25) Working Days as at the end of the Month.	[REDACTED] per case older than 25 Working Days as at the end of the Month	Lot, Region and Sub-Region. Monthly.	No termination threshold.	36	

3 Other Service Levels

The following table sets out Service Levels 1 to 14 (inclusive) as they shall each apply from and including the Second Variation Effective Date:

No.	SLA	Threshold Level	Supporting MI Requirements (Cross-reference to Appendix 1 Annex G of the Contract)	Notes
1	Complaints Response Times	Acknowledged within 2 Working Days. 90% of responses to be made within 20 Working Days.	21(a), 21(f) and 21(g)	
2	Complaints Quality of responses	95% of all responses must be fit for purpose	21(b)	
3	CPD for Medical Personnel Training Needs Analysis (TNA)	By 31 May each year, the Provider will deliver an agreed Training Needs Analysis.	18	
4	Training for Medical Personnel: Delivery of Training Plan.	By 31 July each year, the Provider will deliver an agreed Training Plan which sets out in detail the manner in which the agreed training Programme will be delivered during the following year.	19	
5	Annual training evaluation report	By 30 November each year, the Provider will have undertaken a training evaluation of the agreed training delivery/ Plan/Programme/ for that year.	20	

No.	SLA	Threshold Level	Supporting MI Requirements (Cross-reference to Appendix 1 Annex G of the Contract)	Notes
6	Number of complaints against HPs after a consultation	No more than 0.5% Consultations conducted will result in a complaint against the Health Professional.	21(c)	Note – this does not include complaints against the decision outcome, it relates specifically to HPs.
7	Number of serious complaints against HPs after a consultation	No more than 10 Consultations per year conducted will result in a serious complaint against the Health Professional.	21(d)	
8	Number of complaints and serious complaints, with reasons and outcomes.	Number of Health Professionals with more than 3 complaints in 3 months.	21(e)	
9	Number of cases selected for medical quality audit against agreed audit sample size	The numbers of cases audited must equal the agreed sample size (once volumes have been determined).	N/A	
10	Provision of Management Information Accuracy – Must be fully auditable	100% accurate reports received within the specified number of Working Days.	N/A	
11	Provision of Management Information Response Times	MI to be provided daily, weekly, monthly as required.	N/A	

No.	SLA	Threshold Level	Supporting MI Requirements (Cross-reference to Appendix 1 Annex G of the Contract)	Notes
12	Treat Official Correspondence (including MP Correspondence, Parliamentary Questions, Subject Access Requests, etc.)	Response Times for Treat Official Correspondence will be agreed on a case by case basis. Agreed deadlines for individual responses must be adhered to. The response provided within the required turnaround time must be a full response or, if a full response cannot be provided, an update on what stage the response has reached and the date the full response can be expected by the Authority.	N/A	
13	Claimant Special Requirements - Interpreters, Same Sex HP. (subject to Claimant's willingness to travel to an alternative assessment centre and to the Provider receiving 2 Working Days notice)	95% of referrals for special requirements must be met.	6	
14	Payment of claimant (and companion where applicable) travelling expenses	100% of claimants must be paid within 14 calendar days of receipt.	22	
15	Chargeable Outputs graded as "Acceptable" or as "Acceptable HP Learning Required"	A minimum of 85% of Chargeable Outputs must be assessed as "Acceptable" or "Acceptable HP Learning Required".	31A	

4 Service Level 16

The following table sets out Service Level 16 (inclusive) as it shall apply from and including the 1 August 2019:

No	SLA	Threshold Level	Supporting MI Requirements (Cross reference to Appendix 1 Annex G of the Contract)	Notes
16	Write up of assessment reports	Complete more than 75% of assessment reports within one (1) Working Day of the relevant Consultation	9	

Annex 2

Proposed Clearance Profile

Clearances	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21
Lot 2 Consultation Assessment Output																								
Lot 2 Paper Based Review Output																								
Non-Chargeable Clearances																								

Annex 3 - Worked Examples

- 1 Worked Example for Under-referrals (as referred to at clause C1A.2):
- 2 **REDACTED IN FULL**

3 Worked Example for Service Credit Lets (as referred to at clause F5.2G):

Service Credit Let

REDACTED IN FULL

APPENDIX 15 – PERSONAL DATA, SPECIAL CATEGORIES OF PERSONAL DATA AND DATA SUBJECTS

DATA PROCESSING

The Provider shall comply with any further written instructions with respect to processing by the Authority.

Any such further instructions shall be incorporated into this Appendix 15.

The Provider shall maintain an up-to-date record of this Appendix 15. Changes to this Appendix 15, which fall outside minor operational updates, shall be agreed by the Parties

Description	Details
Subject matter of the processing	<p>The reform of Disability Living Allowance and the introduction of PIP is contained within the Social Security (Personal Independence Payment) Regulations 2013.</p> <p>A fundamental element of PIP was the introduction of an Independent Assessment Provider, which considers an individual's ability to carry out key daily living and mobility activities.</p> <p>Capita (the Independent Assessment Provider) performs PIP assessments for claimants referred by the DWP.</p> <p>Claimants make a PIP claim by phoning DWP and providing the following information:</p> <ul style="list-style-type: none">• contact details• date of birth• National Insurance number• bank or building society details• name and contact details of GP or other healthcare professionals (DWP will ask and record on PIPCS if consent is granted to contact the GP or other healthcare professionals)• details of any time spent abroad, or in a care home or hospital.• Claimants will then complete a PIP2 form which asks claimants to explain how their condition affects their daily life. <p>DWP supplies Capita with the above (except bank details) claimant data. Capita then performs an assessment which may involve a face-to-face meeting with the claimant.</p> <p>If the claimant has granted consent to contact the GP or other healthcare professionals, Capita may request further evidence to support the claimants PIP claim.</p> <p>Should a claimant withdraw consent at any stage Capita will not contact the GP or other healthcare professionals.</p>

	<p>The assessment is completed by Capita and sent back to DWP to make a decision on the claimants PIP eligibility.</p>
Duration of the processing	<p>Processing of data began on 31 July 2012. Capita will continue to process data in accordance with the contract, until 31 July 2019.</p>
Nature and purposes of the processing	<p>Arrange assessment appointments.</p> <p>Assess claimants against a set of functional indicators set out in the PIP Assessment Guide.</p> <p>Create a report of the functional assessment.</p> <p>Audit these reports.</p> <p>Pay claimants for travelling expenses.</p> <p>Pay GPs/HPs for provision of medical evidence.</p> <p>The Provider may anonymise the Personal Data and the Special Categories of Personal Data for statistical analysis in order to comply with its obligation under this Contract but shall ensure that the anonymised data cannot be de-anonymised.</p>
Type of Personal Data [and Special Categories of Personal Data]	<p>Information supplied by DWP to Capita may include:</p> <ul style="list-style-type: none"> • • National Insurance Number, • • Name, • • Address, • • Telephone Number, • • E-mail Address, • • GP Details, • • Date of Birth • • Gender • • Further Evidence provided by the customer • • If translator is required for assessment • • If same gender required for assessment • • DLA evidence • • Details of Appointee <p>Further information potentially gathered by Capita:</p>

	<p>Further Medical Evidence, Assessment evidence, audio recording when requested, telephone audio recording if Enquiry Centre used.</p> <p>GPs and other Health Professionals will also provide DWP with bank account details that will allow Capita to pay for further evidence.</p> <p>Data which is considered Sensitive:</p> <p>Medical information (Official -Sensitive). GDPR Special categories, children between the age of 16-18 who may previously have claimed DLA but need to claim PIP.</p>
Categories of Data Subject	<p>Claimants</p> <p>GPs/Health Professionals</p>
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under European Union or European member state law to preserve that type of data</p>	<p>Data is retained in line with the Data Retention Policy agreed with DWP.</p> <p>At the end of the contract a copy of the data will be returned to DWP via secure media and the original data storage securely wiped.</p>

APPENDIX 16 –PROVIDER ASSURANCE

1 Introduction

- 1.1 The Provider Assurance Team (PAT) is part of the Authority's Finance Group in the Contracted Health & Employment Services Directorate (CHES) and has been in operation since October 2009.
- 1.2 The primary purpose of PAT is to provide the CHES Director with an assurance that CHES provider systems of internal control are such that payments made to providers are in accordance with the Authority's and Her Majesty's Treasury's requirements.
- 1.3 PAT reviews and tests CHES providers' systems of internal control to establish how effective they are at managing risk to the Authority in relation to provision expenditure and service delivery including the arrangements they have in place for their supply chain.
- 1.4 This work is carried out by PAT by reviewing CHES providers' internal control systems to assess their ability to manage risk across three key areas:
 - **Governance Arrangements** - covering the providers' governance arrangements, systems for tracking and reporting performance and their anti-fraud measures;
 - **Service Delivery** - includes the providers' systems for starting, ending and moving Participants through provision and generally looks to ensure that the Authority is getting the service it is paying for. This also covers management of the supply chain;
 - **Claim Procedures and Payments** - looks to ensure that providers have in place effective systems to support their claims for payment, including appropriate segregation of duties.

2 How PAT operates

- 2.1 PAT operates at a national level enabling it to present the Provider operating across regions with a single view of the effectiveness of its systems. The Provider shall be allocated a nominated Senior Provider Assurance Manager as a single point of contact within the Authority for management of assurance related issues / concerns.
- 2.2 On completion of each review the Provider shall be awarded a PAT assurance rating in one of the following four categories - (i) weak; (ii) limited; (iii) reasonable; or (iv) strong. The Provider shall be sent a formal report detailing the review findings including key strengths and areas for improvement, and where weaknesses have been identified. The Provider is required to complete and return an action plan, by such time to be agreed with PAT following receipt of the formal report, setting out appropriate steps for improvement. PAT shall follow up action plans until PAT is satisfied that all required actions have been undertaken.
- 2.3 The description of the four assurance levels are as follows:
 - **Strong Assurance** - governance, risk management and control arrangements operated provide strong assurance that material risks are identified and managed efficiently and effectively, although improvements may be recommended;
 - **Reasonable Assurance** - governance, risk management and control arrangements operated provide reasonable assurance that material risks are identified and managed efficiently and effectively. Remedial action is required to improve the control environment;

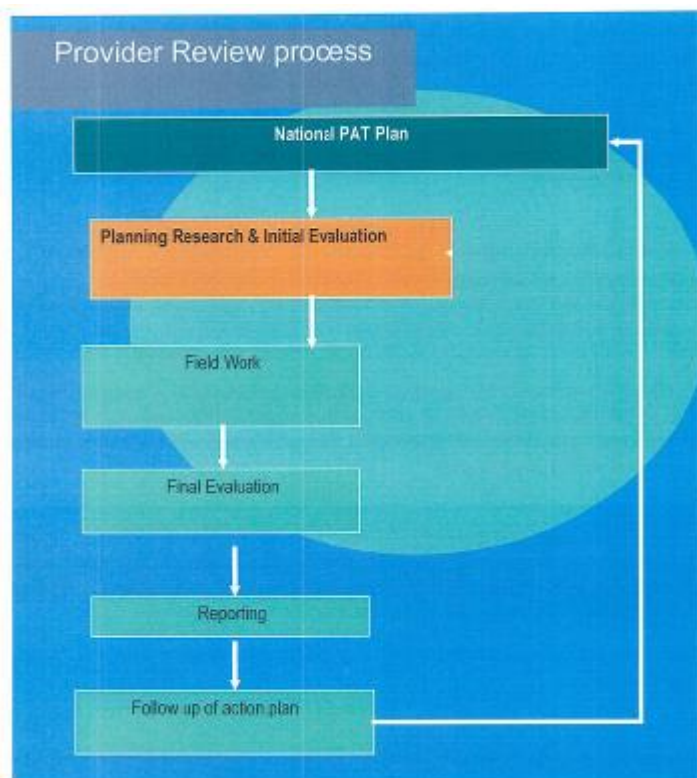
- Limited Assurance - governance, risk management and control arrangements operated provide limited assurance that material risks are identified and managed efficiently and effectively. Corrective action is required to resolve control weaknesses; and
- Weak Assurance - governance, risk management and control arrangements operated provide weak assurance that material risks are identified and managed effectively. Urgent and significant corrective action is required to resolve significant control weaknesses.

3 How We Plan

- 3.1 In order to manage review activity and direct our resources in the most effective way, PAT operates a national plan covering all CHES providers in scope for PAT reviews. Provider reviews are allocated in priority order according to risk. This is determined by a number of factors including the current assurance rating, length of time since the previous review, and Authority stakeholder intelligence.

4 The Review Process

- 4.1 PAT look for evidence that systems are in place across provider organisations to manage key risks to DWP expenditure. To facilitate this process the key risks have been broken down across the three scope areas set out at paragraph 1.4 and PAT will examine the Provider's controls to look at how effective it is in managing the risks identified.
- 4.2 There are five stages to the review process which can take up to 23 weeks to complete. The bulk of Provider facing activity takes place within field testing which generally lasts no longer than five weeks.



5 Planning Research and Initial Evaluation

- 5.1 This stage PAT shall pull together all relevant information about the Provider, form a paper-based opinion about the Provider's systems and develop the testing strategy to be used at the Provider's Premises.

- 5.2 PAT shall send two (2) documents to the Provider at the beginning of the review:
- a Provider Systems Questionnaire (PSQ) which asks a series of questions about the Provider's systems across each of the 3 scope areas;
 - a site information stencil to confirm information about the Premises.
- 5.3 PAT shall also seek feedback from other colleagues within the Authority who work closely with the Provider. Intelligence is gathered from these sources during the planning process and used alongside the PSQ response from the Provider when forming an initial view of the Provider's risk and development of the test strategy.

6 Field Work at Providers

- 6.1 Field work shall commence following a formal start-up meeting between PAT and the Provider on a date to be agreed between the Provider and PAT. The purpose of this meeting is to brief the Provider on the forthcoming review and agree the terms of engagement throughout including timescales for final feedback and the timeframe for providing all evidence.
- 6.2 Based on the planning, research and initial evaluation, visits are arranged at the Provider's Premises to carry out any testing deemed necessary to form a judgement as to the effectiveness of the systems under review.
- 6.3 The fieldwork can be conducted at any of the Provider's Premises across the country and choosing which Premises to visit will be determined by a number of factors, e.g. the provisions and activities delivered at individual sites, any intelligence gathered during the planning stage which may indicate weaknesses in certain areas, or the availability of PAT resource.
- 6.4 The tests will typically include reviewing key policy documents, examining customer files, interviewing Provider staff, and performing checks in sufficient quantities to allow the team to form an opinion across the Provider's systems as a whole. This may mean that testing has to be extended in some circumstances or that it may be cut short in others.
- 6.5 During the testing period PAT provides a written summary of the key points found at that point in time. This allows the Provider to understand and discuss the findings to date.
- 6.6 Throughout the testing period the Provider shall be given the opportunity to provide any supporting documentation and/or missing evidence that has been requested by PAT but all evidence must be provided by the date agreed at the start up meeting.

7 Final Evaluation

- 7.1 Evaluation of the Provider's systems is continuous throughout the end-to-end PAT process. Once testing is complete all the findings are considered and an overall assurance level shall be awarded covering the three scope areas of Governance Arrangements, Service Delivery and Claims Procedures & Payments based on the assessment of the adequacy and effectiveness of the Provider's systems across all aspects of the provision delivered under the Contract.
- 7.2 The final evaluation and assurance level shall be formally presented to the Provider at a final feedback meeting at a time agreed between PAT and the Provider in advance. At this meeting PAT and the Provider shall discuss what actions are going to be taken to address any issues raised and timescales for satisfactory completion of those actions.

8 Review Outputs

- 8.1 Following the final feedback, a report shall be produced by PAT and sent to the Provider. The report will contain details of PAT's findings and opinion against all key risk areas across the three scope areas and an overall assurance level assessment for the PAT report.
- 8.2 An action plan shall be attached to the report covering all the issues raised at the feedback meeting. The Provider shall return the action plan within 10 Working Days of receipt. The Provider's response shall contain any timescales for implementing any necessary improvements.
- 8.3 The Provider shall also be required to complete and return a feedback stencil to the Senior Provider Assurance Manager to support PAT continuous improvement.
- 8.4 Where the Provider has any issues or causes for concern with the PAT review process that cannot be addressed throughout the course of the review, then the Provider may raise these in writing with the Head of Provider Assurance Team.
- 8.5 The Provider is not entitled to appeal the level of assurance awarded. PAT undertake a period of extensive evaluation to ensure that it has a good understanding of the Provider's systems and processes and it seeks to gain sufficient evidence through testing to reach a sound conclusion regarding the adequacy and effectiveness of the Provider's controls.
- 8.6 The final feedback meeting shall allow the Provider ample opportunity to discuss the findings and assurance level, before the final report is issued.
- 8.7 If the Provider does not agree with the outcome of the PAT review, the Provider may discuss its concerns with the Senior Assurance Manager (SAM) and/or Head of PAT. However, unless the findings are factually incorrect PAT will not review the assurance rating once awarded.
- 8.8 The main focus of any meeting or correspondence after an assurance rating has been given shall concentrate on the implementation of the areas for improvement as detailed in the action plan to strengthen the Provider's controls/maintain a strong level of control in preparation for any subsequent review.
- 8.9 The report is also sent to the Authority's stakeholders which typically include (but not exclusively):
- Performance Managers;
 - Commercial Directorate;
 - Security Risk Advice Team;
 - Counter Fraud & Investigation.

9 Follow Up of Action Plan

- 9.1 Confirmation is sought by performance managers on behalf of PAT that all actions have been implemented. This follow up will take place within the timescales agreed with PAT.

10 Other Potential Actions

- 10.1 Without prejudice to any other of the Authority's rights under the Contract, there may be other actions required depending on the findings of the review including:
- Overpayment recovery - if overpayments are identified and evidence could not be produced during the review then the Authority may seek to recover any overpayments; and

- Backtracking - if any overpayments or errors identified during the review indicate they are as a result of systematic weaknesses then the Provider may be asked to 'back track'. In such cases the Provider shall be required to provide the applicable evidence over a specified period of time and in doing so identify for any overpayments. The results of the backtracking will be verified by PAT before any subsequent action is taken.

11 Provider Assurance Team Reporting

11.1 The Authority has the right to periodically publish assurance levels of the Provider.

11.2 All PAT provider assurance reports are shared with the CHES Director and other senior managers within the Authority.

11.3 The Authority may take remedial actions under the Contract in the following circumstances:

- If, following a weak or limited assurance level from PAT, the Provider's subsequent assurance level is the same or worse for the same reasons, or the Provider is awarded a consecutive third weak or limited assurance, regardless of the reasons:
- following a review, if the Provider fails to submit and/or implement the action plan within the agreed timescales;
- where there are suspicions that the Provider may be acting inappropriately: or
- where there are serious concerns around data security.

12 Contact details

12.1 The contact details for PAT are listed below and enquiries can be submitted to the PAT central inbox provider.assuranceteam1@dwp.gsi.gov.uk. The Authority may amend the contact details for PAT from time to time and shall inform the Provider in such instances.

Senior Assurance Manager Contact Details
[REDACTED]
[REDACTED]
[REDACTED]

Head of Provider Assurance Team - [REDACTED]

[REDACTED]

Operational Policy Lead - [REDACTED]

[REDACTED]