

OFFICIAL – COMMERCIAL

**SCHEDULE 7.5**

**FINANCIAL REPORTS AND AUDIT RIGHTS**

**Financial Reports and Audit Rights****1 DEFINITIONS**

1.1 In this Schedule, the following definitions shall apply:

<b>“Final Reconciliation Report”</b>	the final reconciliation report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B to this Schedule;
<b>“Financial Reports”</b>	the Contract Cost Register and the reports listed in the table in Paragraph 1.1 of Part B to this Schedule;
<b>“Financial Representative”</b>	a reasonably skilled and experienced member of the Supplier’s staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports;
<b>“Financial Transparency Objectives”</b>	has the meaning given in Paragraph 1 of Part A to this Schedule;
<b>“Onerous Contract”</b>	a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it, as defined under International Accounting Standard 37;
<b>“Onerous Contract Report”</b>	means a report provided by the Supplier pursuant to Paragraph 3 of Part A to this Schedule;
<b>“Open Book Data”</b>	complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to: <ul style="list-style-type: none"> <li>(a) the Supplier’s Costs broken down against each Service and/or Deliverable, including:               <ul style="list-style-type: none"> <li>(i) actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;</li> <li>(ii) operating expenditure relating to the provision of the Services including an analysis showing:                   <ul style="list-style-type: none"> <li>(1) the unit costs and quantity of consumables and bought-in services;</li> <li>(2) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency); and</li> </ul> </li> </ul> </li> </ul>

- (3) a list of Costs underpinning those rates for each manpower grade;
- (4) travel and subsidence expenses
- (b) overheads;
- (c) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- (d) the Target Fee Achieved over the Term and on an annual basis;
- (e) confirmation that all methods of Cost apportionment and overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- (f) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
- (g) the actual Costs profile for each Service Period; and

**PART A: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA**

**1 FINANCIAL TRANSPARENCY OBJECTIVES**

1.1 The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with the Authority in order to achieve, the following objectives:

**(a) Understanding the Charges**

- (i) for the Authority to understand any Charges sought from it by the Supplier including an analysis of the Costs, overhead recoveries (where relevant) and time spent by Supplier Personnel in providing the Services; and
- (ii) for both Parties to be able to understand the Payment Model Construct and Cost forecasts made in the Contract Cost Register and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;

**(b) Agreeing the impact of Change**

- (i) for both Parties to agree the quantitative impact of any Changes that affect ongoing Costs and to identify how these could be mitigated and/or reflected in the Supplier's Charges; and
- (ii) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

**(c) Continuous improvement**

- (i) for the Parties to challenge each other with ideas for efficiency and improvements; and
- (ii) to enable the Authority to demonstrate that it is achieving value for money for the tax payer relative to current market prices,

(together the “**Financial Transparency Objectives**”).

**2 OPEN BOOK DATA**

2.1 The Supplier acknowledges the importance to the Authority of the Financial Transparency Objectives and the Authority's need for complete transparency in the way in which the Charges are calculated.

2.2 During the Term, and for a period of 7 years following the end of the Term, the Supplier shall:

- (a) maintain and retain the Open Book Data; and
- (b) disclose and allow the Authority and/or the Audit Agents access to the Open Book Data.

**3 ONEROUS CONTRACTS**

3.1 If the Supplier publicly designates the Agreement as an Onerous Contract (including where the Supplier has identified the Agreement as such in any published accounts or public reports and announcements), the Supplier shall promptly notify the Authority of the designation and shall prepare and deliver to the Authority within the timescales

agreed by the Parties (and in any event, no later than 2 months following the publication of the designation) a draft Onerous Contract Report which includes the following:

- (a) an initial root cause analysis of the issues and circumstances which may have contributed to the Agreement being designated as an Onerous Contract;
- (b) an initial risk analysis and impact assessment on the provision of the Services as a result of the Supplier's designation of the Agreement as an Onerous Contract;
- (c) the measures which the Supplier intends to put in place to minimise and mitigate any adverse impact on the provision on the Services; and
- (d) details of any other options which could be put in place to remove the designation of the Agreement as an Onerous Contract and/or which could minimise and mitigate any adverse impact on the provision of the Services.

3.2 Following receipt of the Onerous Contract Report, the Authority shall review and comment on the report as soon as reasonably practicable and the Parties shall cooperate in good faith to agree the final form of the report, which shall be submitted to the Contract Management Board, such final form report to be agreed no later than 1 month following the Authority's receipt of the draft Onerous Contract Report.

3.3 The Contract Management Board shall meet within 14 Working Days of the final Onerous Contract Report being agreed by the Parties to discuss the contents of the report; and the Parties shall procure the attendance at the meeting of any key participants where reasonably required (including the Cabinet Office Markets and Suppliers Team where the Supplier is a Strategic Supplier; representatives from any Key Sub-contractors; and the project's senior responsible officers (or equivalent) for each Party).

3.4 The Supplier acknowledges and agrees that the report is submitted to the Authority and Contract Management Board on an information only basis and the Authority and Contract Management Board's receipt of and comments in relation to the report shall not be deemed to be an acceptance or rejection of the report nor shall it relieve the Supplier of any liability under this Agreement. Any Changes to be agreed by the Parties pursuant to the report shall be subject to the Change Control Procedure.

**PART B: FINANCIAL REPORTS****1 PROVISION OF THE FINANCIAL REPORTS**

1.1 The Supplier shall provide:

- (a) the Contract Cost Register on or before the Effective Date; and
- (b) during the Term the following financial reports to the Authority, in the frequency specified below:

<b>Financial Report</b>	<b>When to be provided</b>
<b>Supplier Cost Report</b>	As specified in Paragraph 6.1 of Schedule 7.1
<b>Final Reconciliation Report</b>	This is required within 6 months after the end of the Term

1.2 The Supplier shall provide to the Authority the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Authority to the Supplier on or before the Effective Date for the purposes of this Agreement. The Authority shall be entitled to modify the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.

1.3 A copy of each Financial Report shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.

1.4 With the exception of the Supplier Cost Report which shall comply with the provisions of Paragraph 40.3 of Schedule 7.1 (*Charges and Invoicing*), each Financial Report shall:

- (a) be completed by the Supplier using reasonable skill and care;
- (b) incorporate and use the same defined terms as are used in this Agreement;
- (c) quote all monetary values in pounds sterling;
- (d) quote all Costs as exclusive of any VAT; and
- (e) quote all Costs and Charges based on current prices.

1.5 The Final Reconciliation Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Financial Report), acting with express authority, as:

- (a) being accurate and not misleading;
- (b) having been prepared in conformity with generally accepted accounting principles within the United Kingdom;
- (c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and

- (d) compliant with the requirements of Paragraph 1.6.

1.6 The Supplier shall:

- (a) prepare the Supplier Cost Report in accordance with the provisions of Schedule 7.1 (Charges and Invoicing);
- (b) prepare the Final Reconciliation Report in accordance with the format and methodology as specified by the Authority;
- (c) ensure that the Final Reconciliation Report is a true and fair reflection of the Costs; and
- (d) not have any other internal financial model in relation to the Services inconsistent with the Contract Cost Register and the Payment Model Construct.

1.7 During the Term, and for a period of 18 months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Authority may have on any of the Financial Reports and/or Open Book Data.

1.8 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:

- (a) the Costs incurred (or those forecast to be incurred) by the Supplier; and/or
- (b) the forecast Charges for the remainder of the Term,

the Supplier shall, as soon as practicable, notify the Authority in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this Paragraph 1.8 shall not have the effect of amending any provisions of this Agreement.

## 2 **DISCUSSION OF THE FINAL RECONCILIATION REPORT**

2.1 Following the delivery by the Supplier of the Final Reconciliation Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

## 3 **KEY SUB CONTRACTORS**

3.1 The Supplier shall, if requested by the Authority, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.

3.2 Without prejudice to Paragraph 1.1 of Part C to this Schedule, the Supplier shall:

- (a) be responsible for auditing the financial models/reports of its Key Sub-contractors and for any associated costs and expenses incurred or forecast to be incurred; and
- (b) on written request by the Authority, provide the Authority or procure that the Authority is provided with:
  - (i) full copies of audit reports for the Key Sub-contractors. The Authority shall be entitled to rely on such audit reports; and

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- (ii) further explanation of, and supporting information in relation to, any audit reports provided.

**PART C: AUDIT RIGHTS****1 AUDIT RIGHTS**

1.1 The Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Agreement, including for the following purposes:

- (a) to verify the integrity and content of any Financial Report;
- (b) to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments);
- (c) to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
- (d) to verify the Open Book Data;
- (e) to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
- (f) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- (g) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Sub-contractors or their ability to perform the Services;
- (h) to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (i) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
- (j) to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
- (k) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (l) to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
- (m) to review any reports or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
- (n) to inspect the Supplier System (or any part of it) and the wider service delivery environment (or any part of it);

- (o) to review the accuracy and completeness of the Registers;
- (p) to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
- (q) to review the Supplier's compliance with the Standards;
- (r) to inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or
- (s) to review the integrity, confidentiality and security of the Authority Data.

1.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement, the Authority may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in the Implementation Period or in any Service Delivery Year.

1.3 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

**2 CONDUCT OF AUDITS**

2.1 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

2.2 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:

- (a) all information requested by the Authority within the permitted scope of the audit;
- (b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
- (c) access to the Supplier System; and
- (d) access to Supplier Personnel.

2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Performance Levels at a level of detail sufficient to verify compliance with the Target Performance Levels.

2.4 The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.

2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Supplier in which case the

Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

3 **USE OF SUPPLIER'S INTERNAL AUDIT TEAM**

- 3.1 As an alternative to the Authority's right pursuant to Paragraph 1.1 to exercise an audit either itself or through its Audit Agents, the Authority may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Paragraph 1.1.
- 3.2 Following the receipt of a request from the Authority under Paragraph 3.1 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:
  - (a) the resultant audit reports; and
  - (b) all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

4 **RESPONSE TO AUDITS**

- 4.1 If an audit undertaken pursuant to Paragraphs 1 or 3 identifies that:
  - (a) the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
  - (b) there is an error in a Financial Report, the Supplier shall promptly rectify the error;
  - (c) the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
    - (i) the amount overpaid;
    - (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
    - (iii) the reasonable costs incurred by the Authority in undertaking the audit,the Authority may exercise its right to deduct such amount from the Charges if it prefers; and
  - (d) the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.

**SCHEDULE 8.1**

**GOVERNANCE**

**1 DEFINITIONS**

1.1 In this Schedule, the following definitions shall apply:

<b>“Board or Forum Member”</b>	the initial persons appointed by the Authority and the Supplier to the Board or Forum and any replacements from time to time agreed by the Parties in accordance with Paragraph 3.3;
<b>“Board” or “Forum”</b>	shall mean any board or forum relating to a theme, topic or area as determined by the Authority; and
<b>“Project Managers”</b>	the individuals appointed as such by the Authority and the Supplier in accordance with Paragraph 2.

**2 MANAGEMENT OF THE SERVICES**

2.1 The Supplier and the Authority shall each appoint a Project Manager for the purposes of this Agreement through whom the Services shall be managed on a day-to-day basis.

2.2 All Parties shall ensure that appropriate resource is made available monthly, or more frequently if required, such that the aims, objectives, and specific provisions of this Agreement can be fully realised.

**3 BOARDS OR FORUMS****Establishment and structure of the Boards or Forums**

3.1 The Boards or Forums shall be established by the Authority in accordance with Annex 1 on which both the Supplier and the Authority shall be represented.

3.2 In relation to each Board or Forum the:

- (a) Authority and Supplier attendance is the minimum expectation; and
- (b) minimum frequency that the Board or Forum shall meet is monthly (unless otherwise agreed between the Parties).

3.3 In the event that either the Supplier or the Authority wishes to replace any of its appointed Board or Forum Members, that Party shall notify the other in writing of the proposed change for agreement by that other Party (such agreement not to be unreasonably withheld or delayed). Supplier agreement is not required for amendments to Authority Board or Forum members. Notwithstanding the foregoing, it is intended that each Authority Board or Forum Member has at all times a counterpart Supplier Board or Forum Member of equivalent seniority and expertise.

**Board or Forum meetings**

3.4 Each Party shall ensure that its Board or Forum Members shall make all reasonable efforts to attend Board or Forum meetings at which that Board or Forum Member's attendance is required. If any Board or Forum Member is not able to attend a Board or Forum meeting, that person shall use all reasonable endeavours to ensure that:

- (a) a delegate attends the relevant Board or Forum meeting in his/her/their place who (wherever possible) is properly briefed and prepared;
- (b) he/she/they are debriefed by such delegates after the Board or Forum meeting; and
- (c) delegates should be suitably empowered to make decisions or have access to empowered individuals for decisions to be made.

3.5 A chairperson shall be appointed by the Authority for each Board or Forum. The chairperson shall be responsible for:

- (a) scheduling Board or Forum meetings;
- (b) setting the agenda for Board or Forum meetings and circulating to all attendees in advance of such meeting;
- (c) chairing the Board or Forum meetings;
- (d) monitoring the progress of any follow up tasks and activities agreed to be carried out following Board or Forum meetings;
- (e) ensuring that minutes for Board or Forum meetings are recorded and disseminated electronically to the appropriate persons and to all Board or Forum meeting participants within seven (7) Working Days after the Board or Forum meeting; and
- (f) facilitating the process or procedure by which any decision agreed at any Board or Forum meeting is given effect in the appropriate manner.

3.6 Board or Forum meetings shall be quorate as long as at least one (1) representative with appropriate seniority, and if required, a delegated financial authority (DFA), from each Party are present.

3.7 The Parties shall ensure, as far as reasonably practicable, that all Boards or Forums shall resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Board or Forum Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

#### **4 BOARD OR FORUM SUBMISSIONS**

4.1 Submissions to the Board or Forum are to adhere to the Authority's prescribed content and times scales as outlined within the terms of reference (TOR) for each Board or Forum. Failure to comply with this Paragraph 4.1 will result in the submission being rejected prior to review by the Board or Forum.

4.2 TOR will be established for each Board or Forum in due course. An example TOR is set out in Annex 2.

#### **5 DETAIL OF BOARDS OR FORUMS**

5.1 Governance Boards or Forums, and/or meetings will be implemented in the following areas:

- (a) Strategic Supplier Relationship Forum;

- (b) Contract Management Board;
- (c) Annual Contract Review;
- (d) Change Forum;
- (e) Clinical Governance Quality Standards Framework (CGQSF), including Clinical & Policy Forums;
- (f) Estates;
- (g) Information Technology (IT);
- (h) Cost Engagement Meeting;
- (i) Performance;
- (j) Quality and Consistency; and
- (k) Training and Guidance (TAG) Editorial Board.

The Authority will hold Internal Governance Boards informing the above.

Additional meetings at an operational level will require appropriate resource from both the Supplier and Authority. Further details regarding these meetings will be supplied within the TOR for each Board or Forum area in due course (see Paragraph 4.2).

The Authority reserves the right to combine Boards or Forums where deemed appropriate e.g. where Boards or Forums may consist of similar members/themes.

5.2 Boards, or Forums will include discussion and feedback on, but not limited to:

- (a) PIP, WCA and Specialist Benefits;
- (b) Authority strategy and policy;
- (c) joint planning and strategic alignment;
- (d) stakeholder engagement, Claimant experience;
- (e) regional assurance consultation; and
- (f) feedback review of complaints and customer service outputs.

The list in this Paragraph 5.2 is non-exhaustive and may be changed by the Authority at any time.

5.3 Boards or Forums will:

- (a) include senior level guidance, leadership, and strategy for the overall delivery of the Services; and
- (b) be the point of discussion and / or escalation from the proposed areas listed below and carry out the specific obligations attributed to it as follows:
  - (i) ensure that this Agreement is operated throughout the Term in a manner which optimises the value for money, operational benefit,

and commercial benefit derived by both the Authority and the Supplier;

- (ii) receive and review impacted change requests and reports on technology, service and other developments from the Authority, the FAS Lot Suppliers and the IT Providers that offer potential for improving the benefit that all parties are receiving, in particular value for money and backlog reduction through service optimisation, determine business strategy and provide guidance on policy matters which may impact on the implementation of the Services or on any Optional Services;
- (iii) discuss and agree the commissioning and initiation of, and assess opportunities for, Optional Services; and
- (iv) provide guidance and agreement to the appropriate Board or Forum on relevant changes.

5.4 Boards or Forums are to be utilised to provide a governance route to include, but not be limited to, the following:

5.5 **Strategic Supplier Relationship Forum**

- a) The Authority intends to explore implementing a Strategic Supplier Relationship Forum (the “**SSRF**”) to provide an opportunity for strategic senior engagement with FAS Lot Suppliers across all of its commercial contracts with the Authority (where such arrangements are not already in place).
- b) The SSRF will underpin and support the formal governance arrangements detailed in this Schedule 8.1.
- c) The SSRF meetings will be held quarterly.
- d) The SSRF will comprise senior director level representation from both Parties.
- e) Attendees will be responsible for co-ordinating strategic updates on the activities that they lead. SSRF will either be expected to attend in person, or field an appropriate empowered deputy.

5.6 **Contract Management Board**

For attendance by senior officials. To be the escalation point for the Boards and Forums described in Paragraphs 5.7 to 5.15;

- (a) cross cutting collaboration across FAS Lot Suppliers, to meet programme objectives;
- (b) maintaining operational relationships. Develop operational/Supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same;
- (c) dispute resolution and escalation (as appropriate);
- (d) subject to the Change Control Procedure, accept or reject new risks proposed for inclusion in the risk register; and

- (e) ratify or refuse requests to close risks on the Risk Register and identify risks relating to or arising out of the performance of the Services and provisional owners of these risks.

#### 5.7 Annual Contract Review

- (a) review of Volume Clearance Targets and Monthly Volume Clearance Targets and the Authority reserves the right to change such targets through the Change Control Procedure in accordance with the outcome of the annual contract review;
- (b) review of adherence to CGQSF (Clinical Governance Quality Standards Framework) in accordance with Paragraph 21.6 of Schedule 2.1 (*Services Description*);
- (c) major annual review of continuous professional development as contemplated in Paragraphs 35.14 to 35.28 of Schedule 2.1 (*Services Description*);
- (d) review of training plans;
- (e) review lessons learned and how the Supplier intends to apply these in future delivery;
- (f) review locations and functions of all Sites to be used in the Service;
- (g) review of annual assurance of legal and statutory compliance;
- (h) review of Supplier compliance to the Welsh Language Act 1993 as per Schedule 12 (*Welsh Language Requirements*);
- (i) identify and manage risks; and
- (j) provide assurance to the Authority that risks are being effectively managed across the Services, including reporting the 'top 5' risks monthly, or more often if required.

#### 5.8 Change Forum

Changes will be approved or rejected by the Authority's internal Governance process. The Change Forum will support this process and include the following;

- (a) discuss the impact of Change Requests. Changes which will have a significant impact on the Services shall be escalated for Authority senior level guidance;
- (b) analyse and record the impact of all Changes, specifically whether the proposed Change:
  - (i) has an impact on other areas or aspects of this Agreement and/or other documentation relating to the Services;
  - (ii) has an impact on the ability of the Authority to meet its agreed business needs within agreed timescales;
  - (iii) will raise any risks or issues; and

- (iv) will provide value for money in consideration of any Changes to the financial model, future Charges and/or performance indicators and Target Performance Levels;
- (c) will provide recommendations regarding Change(s);
- (d) to ensure compliance with the Standards as outlined in Schedule 8.2 (*Change Control Procedure*);
- (e) identify and manage risks resulting from any proposed changes; and
- (f) discuss and agree the relative prioritisation of Changes on the consolidated workplan.

**5.9 Clinical Governance Quality Standards Framework (CGQSF)**

- (a) Continuous review of the Supplier's implementation of the Clinical Governance Quality Standards Framework (CGQSF) referred to in Paragraph 21.6 of Schedule 2.1 (*Services Description*) to confirm implementation at three levels: (a) individual Health Professional, (b) their line manager and (c) at an organisational level. In this regard, the Supplier acknowledges and agrees that:
  - (i) the Authority may appoint an independent body to review CGQSF implementation by the Supplier pursuant to Paragraph 21.8 of Schedule 2.1 (*Services Description*); and
  - (ii) the Authority and/or the independent body may review and observe the Supplier's internal CGQSF processes, procedures, meetings and standards, as contemplated by Paragraph 21.9 of Schedule 2.1 (*Services Description*).

**5.10 Estates**

- (a) Discussion of changes to the estates including business cases for the acquisition of additional property to deliver PIP, WCA and Specialist Benefits, and the divestment of estate due to consolidation of services;
- (b) oversight of estate strategy including approval of the continuation of PIP leases;
- (c) discussion of derogations from minimum design standards on new property via formal contract variation;
- (d) identification of estate related risks and provision of assurance to the Authority that risks are being effectively managed across the Services, including reporting the 'top 5' risks monthly, or more often if required;
- (e) point of escalation for issues relating to the estate that impact service delivery; and
- (f) receiving periodic reports and data on estate compliance and utilisation.

**5.11 Information Technology (IT)**

- (a) Monitor developments in new technology and reporting on their potential benefit to the Services including;

- (i) raising and tracking service impacting issues;
- (ii) deployment schedule of changes i.e. where the Authority IT services may be or may not be taken offline;
- (iii) discuss and review impact of changes to Supplier IT systems; and
- (iv) maintenance schedules;

- (b) provide advice, guidance, and information on technical issues; and
- (c) identify and manage risks.

### 5.12 Cost Engagement Meeting

The Authority will meet regularly with the Supplier in a separate cost engagement meeting to discuss with representatives of the Supplier issues that have been reviewed and discussed as part of the Authority's governance activities including, in particular: any queries and challenges in respect of the Supplier's costs; trends and variances between the actual financial results and the forecast and profile set out in the Contract Cost Register; and issues relating to Allowable Costs, Disallowable Costs and Pass-Through Costs.

### 5.13 Performance

The Performance Board or Forum shall meet monthly, as contemplated by Paragraph 4.2 of Part B of Schedule 2.2 (*Performance Levels*) to review, amongst other things (and subject always to the provisions of Paragraph 12 of Part A of Schedule 7.1 (*Charges and Invoicing*)), the Supplier's performance of the Operational Services in respect of the Service Period just ended.

The Authority and the Supplier shall review the Performance Monitoring Report and the Balanced Scorecard Report for the Service Period just ended alongside applicable data generated by the IT System, with a view to (and subject always to the provisions of Paragraph 12 of Part A of Schedule 7.1 (*Charges and Invoicing*)) agreeing the Supplier's performance in respect of that Service Period for the purposes of Paragraph 12 of Part A of Schedule 7.1 (*Charges and Invoicing*), provided always that where there is any discrepancy between the level of performance reported in the Performance Monitoring Report and/or the Balanced Scorecard Report as against the level of performance reflected in the data generated by the IT System, the data generated by the IT System shall (without prejudice to the provisions of Paragraph 13.6.1 of Part A of Schedule 7.1 (*Charges and Invoicing*)) be used for the purposes of Paragraph 12 of Part A of Schedule 7.1 (*Charges and Invoicing*).

The Supplier shall provide to the Authority all relevant performance data on matters such as sickness, attrition, payments etc, in respect of clinical and non-clinical Supplier Personnel deployed on Assessment activities (including management and support roles) from its own systems, as such data will not be recorded by the IT System.

### 5.14 Quality and Consistency

In the context of Paragraphs 21 to 25 of Schedule 2.1 (*Services Description*), the official reporting of service level performance will originate from the Authority and be shared with the Supplier. This reporting will be available from data generated by the

IT Providers' supporting systems (see Glossary of Terms and Glossary of Abbreviations in Schedule 2.1 (*Services Description*) for an explanation of some of the terms used in the list below):

- (a) review of Assessment Report Audit (ARA) levels in month achievement per Lot;
- (b) review award and recommendation consistency;
- (c) review of Audit Quality Assurance checks;
- (d) assurance re: volume of checks;
- (e) Supplier to demonstrate to the Authority how feedback from Clinical Observations has been acted upon (see Paragraph 12.51 of Schedule 2.1 (*Services Description*));
- (f) review of the operation and effectiveness of the Quality Management Regime;
- (g) review of failed targets by Lot and report on resolution /improvement;
- (h) overview of Supplier improvement plans and implementation progress;
- (i) review adherence to CGQSF;
- (j) identify and manage risks; and
- (k) provide assurance to the Authority that risks are being effectively managed across the Services, including reporting the 'top 5' risks monthly, or more often if required.

#### 5.15 **Training and Guidance (TAG) Editorial Board**

The TAG Editorial Board shall meet monthly as contemplated by Paragraph 35.45 of Schedule 2.1 (*Services Description*). In addition to its responsibilities and remit set out in Paragraphs 35.43 to 35.45 of Schedule 2.1 (*Services Description*), the TAG Editorial Board shall be responsible for:

- (a) content of the annual training programme including the training needs analysis (TNA) and evaluation;
- (b) identifying and manage risks; and
- (c) providing assurance to the Authority that risks are being effectively managed across the Services, including reporting the 'top 5' risks monthly, or more often if required.

**ANNEX 1: REPRESENTATION AND STRUCTURE OF BOARDS, OR FORUMS**

Each Board or Forum will be structured as follows:

Authority Members of	[ ] [Chairperson] plus Minimum of one representative with appropriate seniority, and if required delegated financial authority (DFA).
Supplier Members of	Minimum of one representative with appropriate seniority, and if required delegated financial authority (DFA).
Start Date for	On a date to be determined and agreed by both the Authority and the Supplier.
Frequency of	Monthly as a minimum, or more frequently if required by the Board or Forum.
Location of	Face to face / virtual, to be determined and agreed by both the Authority and the Supplier.

**Strategic Supplier Relationship Forum (SSRF)**

Authority Members of	Martin Hill [Chairperson] plus Minimum of one representative with appropriate seniority, and if required Delegated Financial Authority (DFA).
Supplier Members of	Minimum of one representative with appropriate seniority, and if required Delegated Financial Authority (DFA).
Start Date for	On a date to be determined and agreed by both the Authority and the Supplier.
Frequency of	Quarterly.
Location of	Face to Face / Virtual, to be determined and agreed by both the Authority and the Supplier.

**Contract Management Board**

Authority Members of	[Nick Butler] [Chairperson] plus Minimum of one representative with appropriate seniority, and if required Delegated Financial Authority (DFA).
Supplier Members of	Minimum of one representative with appropriate seniority, and if required Delegated Financial Authority (DFA).
Start Date for	On a date to be determined and agreed by both the Authority and the Supplier.
Frequency of	Monthly or more frequently if required by the authority.
Location of	Face to Face / Virtual, to be determined and agreed by both the Authority and the Supplier.

**Annual Contract Review**

Authority Members of	[Nick Butler] [Chairperson] plus Minimum of one representative with appropriate seniority, and if required Delegated Financial Authority (DFA).
Supplier Members of	Minimum of one representative with appropriate seniority, and if required Delegated Financial Authority (DFA).
Start Date for	On a date to be determined and agreed by both the Authority and the Supplier.
Frequency of	Annually.
Location of	Face to Face / Virtual, to be determined and agreed by both the Authority and the Supplier.

**Change Forum**

Authority Members of	[REDACTED] [Chairperson] plus Minimum of one representative with appropriate seniority, and if required Delegated Financial Authority (DFA).
Supplier Members of	Minimum of one representative with appropriate seniority, and if required Delegated Financial Authority (DFA).
Start Date for	On a date to be determined and agreed by both the Authority and the Supplier.
Frequency of	Monthly as a minimum, or more frequently if required by the Authority.
Location of	Face to Face / Virtual, to be determined and agreed by both the Authority and the Supplier.

**Clinical Governance (CGQSF)**

Authority Members of	Clinical Policy Clinician plus Minimum of one representative with appropriate seniority, and if required Delegated Financial Authority (DFA).
Supplier Members of	Minimum of one representative with appropriate seniority, and if required Delegated Financial Authority (DFA).
Start Date for	On a date to be determined and agreed by both the Authority and the Supplier.
Frequency of	Monthly, or more frequently if required by the Authority.
Location of	Face to Face / Virtual, to be determined and agreed by both the Authority and the Supplier.

**Estates**

Authority Members of	[REDACTED] [Chairperson] plus Minimum of one representative with appropriate seniority, and if required Delegated Financial Authority (DFA).
Supplier Members of	Minimum of one representative with appropriate seniority, and if required Delegated Financial Authority (DFA).
Start Date for	On a date to be determined and agreed by both the Authority and the Supplier.
Frequency of	Monthly as a minimum, or more frequently if required by the Authority.
Location of	Face to Face / Virtual, to be determined and agreed by both the Authority and the Supplier.

**IT/Technology (IT)**

Authority Members of	[REDACTED] [Chairperson] plus Minimum of one representative with appropriate seniority, and if required Delegated Financial Authority (DFA).
Supplier Members of	Minimum of one representative with appropriate seniority, and if required Delegated Financial Authority (DFA).
Start Date for	On a date to be determined and agreed by both the Authority and the Supplier.
Frequency of	Monthly as a minimum, or more frequently if required by the Authority.
Location of	Face to Face / Virtual, to be determined and agreed by both the Authority and the Supplier.

**Cost Engagement Meeting**

Authority Members of	[REDACTED] [Chairperson] plus Minimum of one representative with appropriate seniority, and if required Delegated Financial Authority (DFA).
Supplier Members of	Minimum of one representative with appropriate seniority, and if required Delegated Financial Authority (DFA).
Start Date for	On a date to be determined and agreed by both the Authority and the Supplier.
Frequency of	Monthly as a minimum, or more frequently if required by the Authority.
Location of	Face to Face / Virtual, to be determined and agreed by both the Authority and the Supplier.

**Performance**

Authority Members of	[REDACTED] [Chairperson] plus Minimum of one representative with appropriate seniority, and if required Delegated Financial Authority (DFA).
Supplier Members of	Minimum of one representative with appropriate seniority, and if required Delegated Financial Authority (DFA).
Start Date for	On a date to be determined and agreed by both the Authority and the Supplier.
Frequency of	Monthly as a minimum, or more frequently if required by the Authority.
Location of	Face to Face / Virtual, to be determined and agreed by both the Authority and the Supplier.

**Quality and Consistency**

Authority Members of	[REDACTED] [Chairperson] plus Minimum of one representative with appropriate seniority, and if required Delegated Financial Authority (DFA).
Supplier Members of	Minimum of one representative with appropriate seniority, and if required Delegated Financial Authority (DFA).
Start Date for	On a date to be determined and agreed by both the Authority and the Supplier.
Frequency of	Monthly as a minimum, or more frequently if required by the Authority.
Location of	Face to Face / Virtual, to be determined and agreed by both the Authority and the Supplier.

**Training and Guidance (TAG) Editorial Board**

Authority Members of	Clinical Policy Clinician plus Minimum of one representative with appropriate seniority, and if required Delegated Financial Authority (DFA).
Supplier Members of	Minimum of one representative with appropriate seniority, and if required Delegated Financial Authority (DFA).
Start Date for	On a date to be determined and agreed by both the Authority and the Supplier.
Frequency of	Monthly as a minimum, or more frequently if required by the Authority.
Location of	Face to Face / Virtual, to be determined and agreed by both the Authority and the Supplier.

**ANNEX 2: TERMS OF REFERENCE**



Example TOR

**SCHEDULE 8.2**  
**CHANGE CONTROL PROCEDURE**

## Change Control Procedure

### 1 DEFINITIONS

1.1 In this Schedule 8.2, the following definitions shall apply:

<b>“Authority Change Manager(s)”</b>	the person (or persons) appointed to that position by the Authority in accordance with Paragraph 2.2 from time to time and notified in writing to the Supplier or, if no person is notified, the Authority Representative;
<b>“Change Communication”</b>	any Change Request, Impact Assessment, Change Authorisation Note, RFOC or other communication sent or required to be sent pursuant to this Schedule 8.2;
<b>“Channel Mix Change”</b>	any change to alter the delivery channel mix which may be introduced in accordance with the Specialised Change Control Procedure;
<b>“Fast-track Change”</b>	any Contract Change expedited by the Authority in accordance with Paragraph 8;
<b>“HAS Change”</b>	any change to introduce HAS Testing and/or HAS Rollout, and/or to alter the proportion of the Services subject to HAS Testing and/or HAS Rollout, which may be introduced in accordance with the Specialised Change Control Procedure;;
<b>“Impact Assessment”</b>	an assessment of a Change Request in accordance with Paragraph 5;
<b>“Receiving Party”</b>	the Party which receives a proposed Contract Change;
<b>“RFOC”</b>	has the meaning given in Paragraph 9.2;
<b>“Supplier Change Manager”</b>	the person appointed to that position by the Supplier in accordance with Paragraph 2.2 from time to time and notified in writing to the Authority or, if no person is notified, the Supplier Representative; and
<b>“Volume Pivot”</b>	any change to alter the proportion of Assessments in respect of PIP, in respect of WCA and/or in respect of Specialist Benefits which may be introduced in accordance with the Specialised Change Control Procedure (such proportions as at the Effective Date being set out in the table in Paragraph 42.3 of Schedule 2.1 ( <i>Services Description</i> )).

### 2 GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

2.1 This Schedule 8.2 sets out the procedure for dealing with Changes.

2.2 The Supplier shall appoint a person as the Supplier Change Manager and the Authority shall appoint a person (or persons) as the Authority Change Manager(s) for the purposes of managing the Parties' respective obligations under this Schedule 8.2 and provide written notification of such appointment to the other Party within 3 months of the Implementation Services Commencement Date. The Supplier Change Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule 8.2. The Supplier shall ensure that the Supplier Change Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule 8.2. The Supplier Change Manager and the Authority Change Manager(s) will liaise with one another in relation to all issues relevant to Changes under this Agreement.

2.3 Operational Changes shall be processed in accordance with Paragraph 9. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.

2.4 Contract Changes that implement or otherwise relate to a Channel Mix Change, a HAS Change or a Volume Pivot shall be processed in accordance with the Specialised Change Control Procedure in Paragraph 10.

2.5 The Parties shall deal with Contract Change as follows:

- (a) either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
- (b) unless this Agreement otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 before the Contract Change can be either approved or implemented;
- (c) the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;
- (d) the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;
- (e) save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2; and
- (f) if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.

2.6 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in the Change Authorisation Note relating to such a Contract Change. The Change Authorisation Note shall specify Milestones and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.

2.7 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2, then:

- (a) unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the

existing terms of this Agreement as if the proposed Contract Change did not apply; and

(b) any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Agreement.

2.8 The Authority may provide to the Supplier from time to time a conformed copy of this Agreement which reflects all Contract Changes that have been agreed since the Effective Date.

**3 CHARGES AND COSTS**

3.1 Subject to Paragraph 3.3, any changes to the Charges shall be determined following the Target Cost Review process set out in Schedule 7.1 (*Charges and Invoicing*).

3.2 Any Costs incurred by the Supplier in preparing a Change Request, an Impact Assessment or progressing any Change Requests or information requests (see Paragraph 13) in accordance with this Schedule 8.2 shall be met by the Supplier within the Costs forming part of the Target Costs.

3.3 Any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.

3.4 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid by the Supplier.

**4 CHANGE REQUEST**

4.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 1 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change or a Contract Change to which the Specialised Change Control Procedure applies. The Supplier shall prepare an Impact Assessment in relation to every Change Request, to be provided to the Authority in accordance with the timescales set out in Paragraphs 4.2 and 4.3.

4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Authority with the Change Request (unless otherwise agreed with the Authority). If the Authority reasonably considers that it requires further information or clarifications regarding the proposed Change Request so that it may properly evaluate the Change Request, then promptly within a reasonable time of receiving the Change Request, it shall notify the Supplier of this fact and detail the further information and/or clarification that it requires. The Supplier shall then respond to those clarifications and re-issue a revised Change Request and/or Impact Assessment within five (5) Working Days of receiving such notification (unless otherwise agreed with the Authority). At the Authority's discretion, the Parties may repeat the process described in this Paragraph 4.2 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and any related Impact Assessment. Unless otherwise confirmed by the Authority at the time of the Change Request, the aim of the Parties shall be to agree any Impact Assessments within 30 days of the relevant Change Request.

4.3 If the Authority issues the Change Request, then the Authority will consider the timescales associated with each Change Request in its own right and will provide a proposed deadline and such other timescale requirements relating to the proposed Contract Change and any required Impact Assessment from the Supplier (which could include, without limitation, the timescale for implementation of the proposed Contract Change if confirmed by the Authority) that it considers to be reasonable in all circumstances. Should the Supplier be unable to meet that deadline and/or the other timescale requirements, then it should contact the Authority as soon as possible with its reasons for being unable to do so requesting an extension. An alternative deadline and/or other timescale requirements will then be considered by the Authority acting reasonably and may be notified to the Supplier. For the avoidance of doubt the Authority may, having considered the request, reject any extension request from the Supplier and require the Supplier to comply with the original timescales where the Authority considers these are reasonable notwithstanding any reasons put forward by the Supplier as to why it is unable to meet such original deadline and/or the other related timescale requirements.

4.4 If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient information is received by the Authority to fully understand:

- (a) the nature of the request for clarification; and
- (b) the reasonable justification for the request,

the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

## 5 **IMPACT ASSESSMENT**

5.1 Each Impact Assessment shall be completed in good faith and shall include:

- (a) details of the proposed Contract Change including the reason for the Contract Change;
- (b) details of the impact of the proposed Contract Change on the Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Agreement including any efficiencies and/or other benefits that that the proposed Contract Change is intended to achieve;
- (c) any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:
  - (i) the Services Description and any associated performance requirements;
  - (ii) the format of Authority Data, as set out in the Services Description;
  - (iii) the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;
  - (iv) other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority IT Services;

- (d) details of the cost of implementing the proposed Contract Change;
- (e) details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
- (f) a timetable for the implementation, together with any proposals for the testing of the Contract Change;
- (g) details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
- (h) such other information as the Authority may reasonably request in (or in response to) the Change Request.

5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the UK, the preparation of the Impact Assessment shall also be subject to Clause 24 (*Protection of Personal Data*).

5.3 Subject to the provisions of Paragraph 5.4, the Authority shall review the Impact Assessment and respond to the Supplier within a reasonable period of time taking into account the nature of the proposed Contract Change.

5.4 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change it shall follow the clarification process set out in Paragraph 4.2 above.

5.5 The calculation of costs for the purposes of Paragraphs 5.1(d) and (e) shall:

- (a) be based on the process for determining any changes to the Charges set out in Paragraph 3;
- (b) facilitate the Financial Transparency Objectives;
- (c) include estimated volumes of each type of resource to be employed and the applicable rate card;
- (d) include full disclosure of any assumptions underlying such Impact Assessment;
- (e) include evidence of the cost of any assets required for the Change; and
- (f) include details of any new Sub-contracts necessary to accomplish the Change.

## **6 AUTHORITY'S RIGHT OF APPROVAL**

6.1 Taking into account the nature and complexity of the proposed Contract Change, promptly within a reasonable period of time of receiving the Impact Assessment from the Supplier or of receiving the further information that it may request pursuant to Paragraph 5.4, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:

- (a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;

- (b) in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
- (c) in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within 5 Working Days of such request (or as otherwise agreed with the Authority). Subject to Paragraph 5.4, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change promptly within a reasonable period of time taking into account the nature and complexity of the proposed Contract Change.

6.2 If the Authority approves the proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 7, then the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Authority's signature the Change Authorisation Note shall constitute (or, where the Authority has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Agreement.

6.3 If the Authority does not sign the Change Authorisation Note within 10 Working Days following delivery by the Supplier, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within 5 Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

## **7 SUPPLIER'S RIGHT OF APPROVAL**

7.1 Following an Impact Assessment, if:

- (a) the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:
  - (i) materially and adversely affect the risks to the health and safety of any person; and/or
  - (ii) require the Services to be performed in a way that infringes any Law; and/or
- (b) the Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within 5 Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 4.3.

**8 FAST-TRACK CHANGES**

- 8.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.
- 8.2 The Authority (acting reasonably) may notify the Supplier in writing to revise the processes and/or timescales from time to time in relation to a particular Change Request so as to fast track such Change Request and the Supplier shall comply with such revised timescales and/or processes in respect of such Change Request.

**9 OPERATIONAL CHANGE PROCEDURE**

- 9.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:
  - (a) have an impact on the business of the Authority;
  - (b) require a change to this Agreement;
  - (c) have a direct impact on use of the Services; or
  - (d) involve the Authority in paying any additional Charges or other costs.
- 9.2 The Authority may request an Operational Change by submitting a written request for Operational Change ("RFOC") to the Supplier Change Manager.
- 9.3 The RFOC shall include the following details:
  - (a) the proposed Operational Change; and
  - (b) the time-scale for completion of the Operational Change.

- 9.4 The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.
- 9.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Authority when the Operational Change is completed.

**10 SPECIALISED CHANGE CONTROL PROCEDURE**

- 10.1 The Parties agree that Channel Mix Changes, HAS Changes and Volume Pivots may be introduced at the option of the Authority. The Supplier shall cooperate fully with the Authority to implement these changes in accordance with the Specialised Change Control Procedure set out in this Paragraph 10.
- 10.2 The Authority may exercise its option to introduce a Channel Mix Change, HAS Change or a Volume Pivot by submitting a Change Request to the Supplier Representative. The Parties shall comply with the provisions of Paragraphs 4.3 and 4.4 in relation to any such Change Request.
- 10.3 An Impact Assessment in relation to the Change Request shall be completed in accordance with Paragraph 5. The Authority shall evaluate the Change Request and Impact Assessment in accordance with Paragraph 6. The Supplier shall have a right of approval in accordance with Paragraph 7.

10.4 The Parties shall fast track Change Requests under the Specialised Change Control Procedure in accordance with Paragraph 8 where possible, with each Party acting reasonably and promptly, taking into account the urgency of the Authority's requirement for the relevant Change to be implemented.

**11 COMMUNICATIONS**

11.1 For any Change Communication to be valid under this Schedule 8.2, it must be sent to either the Authority Change Manager(s) or the Supplier Change Manager, as applicable. The provisions of Clause 46 (*Notices*) shall apply to a Change Communication as if it were a notice.

**12 TEMPLATES**

12.1 The Authority may by written notification provide the Supplier with new and /or updated template documents (including, without limitation any new or updated template Change Request) to support the processes set out in this Schedule 8.2 and the Supplier shall use such template documents from the effective date of such notification from the Authority. For the avoidance of doubt, no other process shall apply in respect to the introduction of any such new or amended templates.

**13 INFORMATION REQUESTS**

13.1 The Authority may request information from the Supplier relating to the operation of the Services or otherwise in connection with this Agreement. The Supplier shall respond to such requests within five (5) Working Days of such request or as otherwise agreed with the Authority in writing at the time of the request.

**14 ESCALATION PROCESS**

14.1 Without prejudice to any other rights or remedies of the Authority, if the Supplier fails to comply with the processes set out in this Schedule 8.2, then such failure may be escalated to the Supplier's account manager and then via the relevant governance arrangements set out in Schedule 8.1 (*Governance*).

**ANNEX 1: CHANGE REQUEST**

CR NO.:	TITLE:		TYPE OF CHANGE:
CONTRACT:		REQUIRED BY DATE:	
ACTION:		NAME:	DATE:
RAISED BY:			
AREA(S) IMPACTED (OPTIONAL FIELD):			
DOES THE SPECIALISED CHANGE CONTROL PROCEDURE APPLY TO THE REQUESTED CONTRACT CHANGE? Y / N			
ASSIGNED FOR IMPACT ASSESSMENT BY:			
ASSIGNED FOR IMPACT ASSESSMENT TO:			
SUPPLIER REFERENCE NO.:			
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):			
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:			
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:			
SIGNATURE OF REQUESTING CHANGE MANAGER:			
DATE OF REQUEST:			

**ANNEX 2: CHANGE AUTHORISATION NOTE**

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

**SCHEDULE 8.3**  
**DISPUTE RESOLUTION PROCEDURE**

## Dispute Resolution Procedure

### 1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

<b>“CEDR”</b>	the Centre for Effective Dispute Resolution of 100 St Paul’s Churchyard, London, EC4M 8BU;
<b>“Counter Notice”</b>	has the meaning given in Paragraph 7.2;
<b>“Expedited Dispute Timetable”</b>	the expedited timetable for resolving a Dispute as set out in Paragraph 3;
<b>“Expert”</b>	in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute;
<b>“Expert Determination”</b>	determination by an Expert in accordance with Paragraph 6;
<b>“LCIA”</b>	has the meaning given in Paragraph 7.5;
<b>“Mediation Notice”</b>	has the meaning given in Paragraph 4.2;
<b>“Mediator”</b>	has the meaning given in Paragraph 5.2;
<b>“Multi-Party Dispute”</b>	a Dispute which involves the Parties and one or more Related Third Parties;
<b>“Multi-Party Dispute Representatives”</b>	has the meaning given in Paragraph 9.6;
<b>“Multi-Party Dispute Resolution Board”</b>	has the meaning given in Paragraph 9.6;
<b>“Multi-Party Dispute Resolution Procedure”</b>	has the meaning given in Paragraph 9.1;
<b>“Multi-Party Procedure Initiation Notice”</b>	has the meaning given in Paragraph 9.2;
<b>“Related Third Party”</b>	<p>any FAS Lot Supplier (as defined in the Glossary of Terms in Schedule 2.1 (<i>Services Description</i>)) and any party to:</p> <ul style="list-style-type: none"> <li>(a) another contract with the Authority or the Supplier which is relevant to this Agreement; or</li> <li>(b) a Sub-contract;</li> </ul>

<b>“Supplier Request”</b>	a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.
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## 2 DISPUTE NOTICES

2.1 If a Dispute arises then:

- (a) the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
- (b) if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice:

- (a) shall set out:
  - (i) the material particulars of the Dispute;
  - (ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen including the legal basis of any such Dispute; and
  - (iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and
- (b) may specify in accordance with the requirements of Paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case Paragraph 2.3 shall apply.

2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to Paragraph 2.2(b), then:

- (a) if it is served by the Authority, it shall be treated as a Multi-Party Procedure Initiation Notice (as defined in Paragraph 9.2); and
- (b) if it is served by the Supplier, it shall be treated as a Supplier Request, and in each case the provisions of Paragraph 9 shall apply.

2.4 Subject to Paragraphs 2.5 and 3.2 and so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:

- (a) first by commercial negotiation (as prescribed in Paragraph 4);
- (b) then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5); and

- (c) lastly by recourse to arbitration (as prescribed in Paragraph 6.5) or litigation (in accordance with Clause 48 (*Governing Law and Jurisdiction*)).
- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.
- 2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under Paragraph 8.

### **3 EXPEDITED DISPUTE TIMETABLE**

- 3.1 In exceptional circumstances where the use of the time periods in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within 5 Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
  - (a) in Paragraph 4.2(b), 10 Working Days;
  - (b) in Paragraph 5.2, 10 Working Days;
  - (c) in Paragraph 6.2, 5 Working Days; and
  - (d) in Paragraph 7.2, 10 Working Days.

- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within 2 Working Days after the deadline has passed, the Authority may set a revised deadline provided that it is not less than 5 Working Days before the end of the time period specified in the applicable Paragraphs (or 2 Working Days in the case of Paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set a revised deadline, then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

### **4 COMMERCIAL NEGOTIATION**

- 4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and the Supplier (acting in good faith) shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Authority's Deputy Director (or equivalent) and the Supplier's Commercial Director (or equivalent).

4.2 If:

- (a) the Parties, acting reasonably and with due consideration to the value and nature of the Dispute, have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this Paragraph 4; or
- (b) the Parties have not settled the Dispute in accordance with Paragraph 4.1 within 30 Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation in accordance with Paragraph 5 (a “**Mediation Notice**”).

## 5 MEDIATION

5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree) unless:

- (a) the Authority (acting reasonably) considers that the dispute is not suitable for resolution by mediation; or
- (b) the Supplier (acting reasonably) does not agree to mediation.

5.2 The Parties shall, acting reasonably and in good faith, seek to agree on the joint appointment of an independent person to mediate the Dispute (the “**Mediator**”) within 20 Working Days from (and including) the service of a Mediation Notice. If the Parties are unable to agree on the joint appointment of the Mediator within such 20 Working Days, then either Party may apply to CEDR to nominate such a person.

5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all the circumstances.

5.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate) and stated to be as such. The Mediator shall assist the Parties in recording the outcome of the mediation.

## 6 EXPERT DETERMINATION

6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT, accounting or finance nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 or, if applicable, mediation in accordance with Paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an Expert for determination.

6.2 The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Working Days of the relevant request made pursuant to Paragraph 6.1, or if the person appointed is unable or unwilling to act, the Expert shall be appointed:

- (a) if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);
- (b) if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
- (c) if the Dispute relates to a matter of a technical nature not falling within Paragraphs 6.2(a) or (b), on the instructions of the president (or equivalent) of:
  - (i) an appropriate body agreed between the Parties; or
  - (ii) if the Parties do not reach agreement on the relevant body within 15 Working Days of the relevant request made pursuant to Paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.

6.3 The Expert shall act on the following basis:

- (a) they shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- (b) the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make their determination within 30 Working Days of their appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- (d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the Parties;
- (e) the process shall be conducted in private and shall be confidential; and
- (f) the Expert shall determine how and by whom the costs of the determination, including their fees and expenses as the Expert, are to be paid.

6.4 Any payment award determined by an Expert for any Dispute shall be limited to £200,000 (exclusive of VAT).

6.5 Notwithstanding the provisions of Paragraph 6.4 above, the Parties may by written agreement specify a higher limit for any payment award that may be determined by an Expert for a given Dispute.

## 7 ARBITRATION

7.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.

7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have 15 Working Days following receipt of such notice to serve a reply (a “**Counter Notice**”) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.

7.3 If the Authority serves a Counter Notice, then:

- (a) if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or
- (b) if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.

7.4 If the Authority does not serve a Counter Notice within the 15 Working Day period referred to in Paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.

7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:

- (a) the Dispute shall be referred to and finally resolved by arbitration under the London Court of International Arbitration (“**LCIA**”) Arbitration Rules (subject to sub-Paragraphs 7.5(g) and (h));
- (b) the arbitration shall be administered by the LCIA;
- (c) the LCIA Arbitration Rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrators shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) the number of arbitrators shall be three;
- (e) the Authority and the Supplier shall each be entitled to appoint an arbitrator and these two arbitrators shall then appoint a third arbitrator, who shall be the chair of the arbitral tribunal;
- (f) if either Party fails to appoint an arbitrator within 10 Working Days of receiving notice of the appointment of an arbitrator by the other Party, the LCIA shall, at the request of either Party, appoint an arbitrator on behalf of the defaulting Party. If the first and second arbitrator appointed fail to agree upon a third arbitrator within 10 Working Days of the appointment of the second arbitrator, the third arbitrator shall, at the request of either Party, be appointed by the LCIA;
- (g) the arbitration proceedings shall take place in London and in the English language; and
- (h) the seat of the arbitration shall be London.

## 8 URGENT RELIEF

8.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

- (a) for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or
- (b) where compliance with Paragraphs 2.1 and 4.1 may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

## 9 MULTI-PARTY DISPUTES

9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 9 (the "**Multi-Party Dispute Resolution Procedure**").

9.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier which sets out the Authority's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice being a "**Multi-Party Procedure Initiation Notice**".

9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination in accordance with Paragraph 6 or to arbitration in accordance with Paragraph 7, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute involve one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.

9.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:

- (a) a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
- (b) not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 8.

9.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.

9.6 Following service of a Multi-Party Procedure Initiation Notice, a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the "**Multi-Party Dispute Resolution Board**") comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:

- (a) the Authority;
- (b) the Supplier;
- (c) each Related Third Party involved in the Multi-Party Dispute; and

(d) any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,

(together “**Multi-Party Dispute Representatives**”).

9.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:

- (a) the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
- (b) the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place (including virtually where agreed in writing by the Parties) as the Parties may agree or, if the Parties do not reach agreement on the time and place within 5 Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
- (c) in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the legal rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

9.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within 25 Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:

- (a) either Party may serve a Mediation Notice in respect of the Multi-Party Dispute, in which case Paragraph 5 shall apply;
- (b) provided that the Multi-Party Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT, accounting or finance nature, either Party may request that the Multi-Party Dispute is referred to an Expert, in which case Paragraph 6 shall apply; and/or
- (c) subject to Paragraph 9.9, Paragraph 7 shall apply to the Multi-Party Dispute,

and in each case references to the “Supplier” or the “Parties” in such provisions shall include a reference to all Related Third Parties.

9.9 If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct

contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-Contractor, by the Supplier.

**10 COSTS**

10.1 Legal costs relating to Disputes, whether initiated by the Authority, the Supplier or any other party, shall be Disallowable Costs.

OFFICIAL – COMMERCIAL

**SCHEDULE 8.4**

**MANAGEMENT INFORMATION AND RECORDS PROVISIONS**

**PART A – MANAGEMENT INFORMATION**

**1 FORMAT AND STRUCTURE OF MANAGEMENT INFORMATION/MI REPORTS**

- 1.1 The Supplier shall provide the Management Information set out in this Schedule 8.4 in the format specified in (or determined pursuant to) this Schedule 8.4 or in such format as may be specified elsewhere in this Agreement, or where no such format is specified or determined, in such format as may be reasonably requested by the Authority from time to time, including MS Excel, MS Word and/or Portable Document Format (PDF).
- 1.2 The Supplier shall, in the period prior to the Operational Service Commencement Date, work with the Authority (where requested) to develop and finalise the required structure, format and/or content of Management Information and/or MI Reports to ensure that such Management Information and MI Reports are provided in such form as the Authority may reasonably require for the purposes of this Agreement. Where Personal Data is required to be provided to the Authority, the Supplier shall provide such Personal Data using such form of transmission and/or in such format as the Authority shall reasonably require to ensure continued compliance with the Data Protection Legislation.
- 1.3 The Supplier shall gather relevant Management Information (including staffing data, detailed cost information and operational case management data), for the purposes of (amongst other things):
  - (a) performance monitoring;
  - (b) developing business insight to support continuous improvement;
  - (c) identifying trends; and
  - (d) to demonstrate value for money,

and the Supplier shall make available any such data to the Authority as and when requested by the Authority, together with such analysis in respect of that data (and such analysis being presented in such form) as the Authority may reasonably require from time to time.

- 1.4 The Supplier shall, upon request by the Authority, provide Management Information and/or Performance Monitoring Reports against Authority specified operational areas (subject to the Authority providing the postcode information).

**2 MANAGEMENT INFORMATION**

- 2.1 The Supplier shall provide such Management Information relating to the performance of the Services and the Supplier's compliance with its obligations under this Agreement as the Authority shall reasonably require from time to time to enable the Authority to (amongst other things):
  - (a) monitor the performance of the Supplier in the provision of Services against the Target Performance Levels, the Volume Clearance Targets and the Monthly Volume Clearance Targets and in accordance with all other provisions of this Agreement;
  - (b) monitor the quality of Assessment Reports and advice provided by the Supplier pursuant to Schedule 2.1 (*Services Description*);
  - (c) monitor the time taken by the Supplier to undertake specific steps in the Assessment process; and

- (d) (to the extent not contemplated in Paragraphs 2.1(a) to 2.1(c)), monitor the Supplier's compliance with its other obligations under this Agreement.

2.2 The Management Information shall include (but is not limited to and may be amended):

- (a) delay reports;
- (b) reports relating to testing and tests carried out under Schedule 2.4 (*Security Management*) and Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
- (c) Case Management Information and Case Management Information Reports required at Annex 1 and the Management Information set out or referred to within Schedule 2.1 (*Services Description*), such reports and information to be provided to the Authority weekly (on or before the second Working Day of each week), monthly (on or before the fifth Working Day of each month, quarterly (on or before the fifth Working Day of each quarter) and annually (on or before the fifth Working Day of the next Service Delivery Year), provided always that where delays to reporting occur due to issues of data availability with the IT Provider, the Supplier shall provide the Authority with such reports and information at the earliest achievable date;
- (d) reports set out and/or information required at Annex 2;
- (e) reports detailing the quality, audit and performance of Health Professionals, as set out at Annex 3, as required by Paragraph 39 of Schedule 2.1 (*Service Requirements*);
- (f) security reports;
- (g) Force Majeure Event reports;
- (h) information on Insurances, as specified in Paragraph 4.1 of Schedule 2.5 (*Insurance Requirements*);
- (i) information and/or reports relating to any Sites (excluding Authority Premises except as stated otherwise) as per Schedule 15.1 (*Estates*) as set out in Annex 4 to this Schedule 8.4;
- (j) Financial Reports (including those set out at Schedule 7.5 (*Financial Reports and Audit Rights*) and the additional financial management information required to be submitted by the Supplier to the Authority from time to time as set out in (and in accordance with) Annex 5;
- (k) information and reports relating to Supplier Personnel, as referred to in Paragraph 2.3;
- (l) information relating to workforce and capacity planning, as referred to in Paragraph 2.5;
- (m) information relating to policy evaluation, as referred to in Paragraph 2.6;
- (n) details of MI Failures and MI Admin Fees, as defined (and referred to) in Paragraph 2 of Part B; and
- (o) reports to satisfy particular business requirements within such timescales as may be reasonably specified by the Authority from time to time, including:

- (i) weekly performance dashboard (content/format to be specified);
- (ii) medical recruitment standards;
- (iii) Health Professional numbers by capability/Assessment Types;
- (iv) list of Assets used to deliver the Services;
- (v) list of those Operating Sites used in the delivery of the Services;
- (vi) Supplier Personnel redundancies;
- (vii) Supplier Personnel grievance cases; and
- (viii) data processing and contingency arrangements.

### **Management Information - Staffing**

2.3 The Supplier shall (and shall procure that each Sub-contractor shall) maintain detailed Management Information relating to all clinical and non-clinical Supplier Personnel deployed on Assessment activities (including management and support roles) who are employed throughout the Term and shall provide a report of such information to the Authority on a monthly basis, such report shall include details of:

- (a) total number of such Supplier Personnel full-time equivalent (FTE) (clinical and non-clinical);
- (b) a breakdown of deployment of such Supplier Personnel on Assessment activities (broken down by Assessment Channel);
- (c) absences (relating to sickness and other reasons) of such Supplier Personnel;
- (d) joining and leaving dates, status of Authority SoS Representative's Approval, geographical location and time in post for each member of such Supplier Personnel;
- (e) recruitment demand for such Supplier Personnel by location and the recruitment pipeline to meet that demand, by recruitment process stage;
- (f) salaries and overtime information for such Supplier Personnel; and
- (g) attrition levels, with reasons for leaving, for such Supplier Personnel.

2.4 The Authority shall (acting reasonably) notify the Supplier of the detail and format of the report referred to in Paragraph 2.3.

### **Workforce and Capacity Planning**

2.5 In addition to the staffing information referred to at Paragraph 2.3, the Supplier shall on a monthly basis update and submit its workforce plans and Assessment volume forecast models in respect of the Term as part of the Management Information, such plans and forecasts to include details of all assumptions relating to recruitment, attrition, absences and productivity of Supplier Personnel. The Authority shall (acting reasonably) notify the Supplier of the required structure, format and content for such plans and forecasts, provided always that the Authority (acting reasonably) reserves the right to alter such structure, format and/or content from time to time.

### **Policy Evaluation**

2.6 The Supplier shall provide information and any other additional reports which are reasonably required by the Authority from time to time to assist the Authority in policy monitoring and evaluation.

### **3 MANAGEMENT INFORMATION VALIDATION**

3.1 The Supplier warrants and represents that all Management Information and MI Reports submitted to the Authority pursuant to this Schedule 8.4 shall be validated as being accurate, fully auditable, complete and presented in the relevant format as at the date of submission of such Management Information to the Authority.

3.2 Not used.

### **4 CHANGES TO MANAGEMENT INFORMATION REQUIREMENTS**

4.1 The Authority may change its requirements in respect of Management Information from time to time, including to take into account:

- (a) new processes implemented pursuant to and in accordance with the Change Control Procedure;
- (b) any change to the design of one or more of the Assessments; and/or
- (c) a change to the IT System,

and such changes shall (to the extent that they are not otherwise addressed as part of any Change in respect of the matters referred to in Paragraphs 4.1(a) to 4.1(c)) be processed in accordance with the Change Control Procedure.

4.2 Without prejudice to Paragraph 4.1, the Authority shall give notice in writing to the Supplier of any changes required to the content and/or format of any MI Report and shall specify the date from which such changes to the content and/or format of such MI Report shall be effective, which date shall be at least 30 calendar days following the date of the notice.

4.3 If the Authority notifies the Supplier of any changes to the content required and/or format of the MI Report at any time pursuant to Paragraph 4.2, then the Supplier shall provide all MI Reports in accordance with such notification, provided always that the Authority shall be entitled to request a back series of MI Reports (containing the new content and/or using the new format) for comparability purposes.

### **5 TRANSPARENCY REPORTS AND TRANSPARENCY INFORMATION**

5.1 Within 3 months of the Implementation Services Commencement Date the Supplier shall provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) draft reports in accordance with Annex 7 (once approved, the “**Transparency Reports**”).

5.2 If the Authority rejects any draft Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by the Authority within 5 days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.

- 5.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 7.
- 5.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under Paragraph 5.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 5.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.
- 5.6 The Authority reserves the right to publish Transparency Information relating to each FAS Lot Supplier and to share such information across the other FAS Lot Suppliers.
- 5.7 The Supplier shall provide full, accurate and complete Supply Chain Transparency Information Reports to the Authority 30 days prior to the end of each of the Authority's financial year (not including the 2023/2024 financial year) by providing all of the information described in the Supply Chain Transparency Information Template in the format set out in Annex 8.

## **6 FREEDOM OF INFORMATION**

- 6.1 The Parties acknowledge that any Management Information supplied to the Authority for the Authority's normal operational activities, including but not limited to, administering this Agreement, monitoring public expenditure, identifying savings or potential savings and planning future procurement Activity, shall be deemed to be Transparency Information for the purposes of Clause 23 (*Transparency and Freedom of Information*) of the Agreement, and so the Authority may publish the Management Information to the public (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA being redacted).

**PART B - RECORDS**

**1 RECORDS**

1.1 The Supplier shall retain and maintain all Management Information and all records referred to in Annex 6 (including superseded Management Information and records) (together the “Records”):

- (a) in accordance with the requirements of the National Archives' Records Management Code, Good Industry Practice and the Data Protection Legislation;
- (b) in chronological order;
- (c) in a form that is capable of audit; and
- (d) at its own expense.

1.2 The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.

1.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.

1.4 Save where expressly stated to the contrary elsewhere in this Agreement, the Supplier shall, during the Term and for a period of at least 7 years, following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.

1.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least 7 years after the expiry or termination of this Agreement.

1.6 Without prejudice to the foregoing, the Supplier shall provide the Authority:

- (a) as soon as they are available, and in any event within 60 Working Days after the end of the first 6 months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its unaudited interim accounts and, if applicable, of consolidated unaudited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (LSE) (whether or not it is) be required to be sent to shareholders as at the end of and for each such 6 month period; and
- (b) as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than 130 Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, a copy of the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period, together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.

**2 MANAGEMENT INFORMATION MI ADMIN FEES**

2.1 For the purposes of this Paragraph 2 and elsewhere in this Agreement:

- (a) “**MI Failure**” means a failure by the Supplier to provide a MI Report as required in this Schedule 8.4; and

(b) “**MI Admin Fees**” means the costs incurred by the Authority in mitigating or rectifying the MI Failure in question, including the costs of Authority staff (or third parties appointed by or on behalf of the Authority) accessing, processing and/or analysing the relevant MI and/or generating the MI Report which is the subject of the MI Failure in question.

2.2 Save to the extent that the MI Failure in question is one to which the provisions of Clauses 26.14 to 26.18 (*Liquidated Damages*) apply, if, at any point during the Term, a MI Failure occurs, the Authority shall have the right to charge the Supplier the MI Admin Fees in respect of each such MI Failure (which for the avoidance of doubt shall be a Disallowable Cost).

2.3 The Supplier acknowledges and agrees that the MI Admin Fees are a fair reflection of the additional costs incurred by the Authority as a result of the Supplier failing to supply any such MI Report as required by this Agreement.

2.4 The Authority shall notify the Supplier if any MI Admin Fees arise pursuant to Paragraph 2.2, and shall be entitled to invoice the Supplier for such MI Admin Fees, which shall be payable by the Supplier within 30 days of the date of the relevant invoice. Any exercise by the Authority of its rights under Paragraph 2.2 shall be without prejudice to any other rights or remedies that may arise under or pursuant to this Agreement.

2.5 If the Supplier fails to pay any undisputed MI Admin Fees, the Authority shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

**ANNEX 1****PERFORMANCE REPORTING & CASE MANAGEMENT INFORMATION**

Case Management Information Reports to be made available on a weekly basis (covering Monday to Sunday) as well as a monthly report covering the calendar month period. Case Management Information Reports shall also be available at Lot and sub-Lot level. Sub-Lot reporting should reflect – a) Supplier's organisational structure e.g. Assessment Centre, as well as, b) Claimant postcode areas (outcodes e.g. S1). For the avoidance of doubt the below list is non-exhaustive and subject to addition or amendment by the Authority (acting reasonably) from time to time.

For the purposes of this Annex 1, capitalised terms that are used in this Annex 1 and are not otherwise defined in Schedule 1 (*Definitions*) shall have the meaning given in the Glossary of Terms in Schedule 2.1 (*Services Description*) or Schedule 2.2 (*Performance Levels*), as applicable.

For the avoidance of doubt, references to Referrals, Consultations and other terms that apply to the PIP Services, the WCA Services and the Specialist Benefit Services shall be deemed to refer only to the PIP Services, the WCA Services or the Specialist Benefit Services (as applicable) in this Annex 1.

**PIP**

<b>Description</b>	<b>Case Management Information</b>	<b>Reporting Level</b>	<b>Additional Breakdowns</b>
Further Medical Evidence (FME)	No. of Referrals where FME is requested by the Supplier Percentage of Referrals where FME is requested by the Supplier Average number of days taken to obtain FME  No. of requests to the Supplier from the Authority to request FME after Assessment Report completed	Lot Sub-Lot	
Requests for advice from the Authority	No. of requests for Supplementary Advice Notes received from the Authority	Lot Sub-Lot	
Outstanding Referrals	No. of Referrals outstanding	Lot Sub-Lot	Referral stage Referral type (ie. new claim, award review and DLA conversion cases) Time bands (supplying the information by age profile ie. 0-5 days, 5-10 days, 50+ days etc.)
Unable to Attend	No. of Claimants unable to attend Consultation Percentage of Claimants unable to attend Consultation	Lot Sub-Lot	Reason for not attending Referral type

Description	Case Management Information	Reporting Level	Additional Breakdowns
			Assessment Channel (ie. Face to Face Consultation, Telephone Consultation, Video Consultation & PBR)
Failed to Attend	Nº of Claimants who Failed to Attend Percentage of Claimants who Failed to Attend	Lot Sub-Lot	Referral type Assessment Channel (ie. Face to Face Consultation, Telephone Consultation, Video Consultation & PBR)
Additional Requirements	Nº of Additional Requirements requested Percentage of Additional Requirements met/not met	Lot Sub-Lot	Additional Requirement type
Consultation Time	Average time (in mins) of Consultation	Lot Sub-Lot	Referral type Assessment Channel HP has/has not obtained Authority SoS Representative's Approval
Preparation time	Average time (in minutes) of preparation	Lot Sub-Lot	Referral type Assessment Channel HP has/has not obtained Authority SoS Representative's Approval
Assessment Report completion time	Average time (in minutes) of Assessment Report completion	Lot Sub-Lot	Referral type Assessment Channel HP has/has not obtained Authority SoS Representative's Approval
Requests for advice, clarification and/or reconsideration of advice pursuant to Paragraph 15 of Part B of	Nº of requests for advice etc received Nº of requests for advice etc completed Nº of requests for advice etc outstanding Average time to complete requests for advice etc	Lot Sub-Lot	Referral type Assessment Channel HP has/has not obtained Authority SoS Representative's Approval Outstanding by time bands (supplying the information by age

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Description	Case Management Information	Reporting Level	Additional Breakdowns
Schedule 2.1 (Services Description)			profile ie. 0-5 days, 5-10 days, 50+ days etc.)
Call Waiting Times	N° of inbound calls N° of calls answered N° of calls answered within 60 seconds Percentage of calls answered within 60 seconds N° of calls answered within 61 - 90 seconds Percentage of calls answered within 61 - 90 seconds N° of calls answered within 91-120 seconds Percentage of calls answered within 91 - 120 seconds N° of calls answered over 120 seconds Percentage of calls answered over 120 seconds N° of calls lost/abandoned Percentage of calls lost/abandoned	Lot	
Initial Referral State	N° of initial Referrals received N° of initial Referrals Cleared N° of initial Referrals outstanding Average number of Working Days to Clear initial Referral Average age of outstanding initial Referrals N° of initial Referrals that result in Consultation required Percentage of initial Referrals that result in Consultation required	Lot Sub-Lot	Referral type Assessment Channel
Consultation Waiting Time	Percentage of Claimants seen within x <sup>1</sup> mins of Consultation appointment time Percentage of Claimants examined within x <sup>2</sup> mins of Home Consultation appointment time	Lot Sub-Lot	Assessment Channel
Cancellations	N° of scheduled appointments for Consultations N° of cancellations of Consultations N° of Consultations cancelled within 2 hours before or after	Lot Sub-Lot	* Referral type * Assessment Channel

<sup>1</sup> x signifies that the Authority may require information on a range of timings

<sup>2</sup> x signifies that the Authority may require information on a range of timings

Description	Case Management Information	Reporting Level	Additional Breakdowns
	appointment start time Percentage of Claimant Consultations cancelled		* Cancelled by Supplier/Claimant * Cancellation reason
Complaints	Nº of Complaint acknowledgements issued by the Supplier Average time to clear Complaint acknowledgement Nº of full Complaint responses issued Average time to clear full Complaint response Percentage of full Complaint responses Nº of Complaints which are (a) clinical and (b) operational in nature, expressed as a proportion of total Complaints	Lot Sub-Lot	
HP Complaints	Nº of Complaints against the assessing HP Nº of Consultations resulting in Complaint against the assessing HP % of Consultations resulting in Complaint against the assessing HP Nº of Complaints outstanding Nº of HPs with more than 3 Complaints in 3 months Nº of Complaints which relate to HPs expressed as a proportion of total Complaints	Lot Sub-Lot	Reason for Complaint Outcome of Complaint Individual HP
Payment of Claimant Expenses	Nº of Claimant expense requests received Average time to process payment of Claimant expenses Nº of expense payments issued	Lot Sub-Lot	
Special Rules End of Life (SREL) Assessments	Nº of Referrals in respect of SREL that are Cleared Nº of Referrals in respect of SREL that are Cleared that met SREL requirement Average time to Clear Referral in respect of SREL Percentage of Referrals in respect of SREL Cleared in x <sup>3</sup> Working Days	Lot Sub-Lot	
Prognosis (prior to the Authority	Nº of Paper Based Reviews (PBR) and Consultations by review period	Lot Sub-Lot	< 9 months > or = to 9-12 months > or = to 12-24 months

<sup>3</sup> x signifies that the Authority will measure the percentage of Referrals in respect of SREL Cleared in a number of Working Day time frames

Description	Case Management Information	Reporting Level	Additional Breakdowns
Decision Makers decision)			> or = to 2-5 years Change unlikely
PIP Assessment End-to-End	No. of Referrals (other than Referrals in respect of SREL) Cleared Total Working Days to Clear Referrals (other than Referrals in respect of SREL) Actual Average Clearance Time (AACT) for Referrals (other than Referrals in respect of SREL) No. of Referrals (other than Referrals in respect of SREL) outstanding with the Supplier Total number of Referrals made by the Authority Total number of Referrals compared to forecast over time period	Lot Sub-Lot	Assessment Type Assessment Channel Time bands
Re-work where further consultation is required.	No. of Re-work cases that require further consultation No. of Re-work cases that require further consultation completed No. of Re-work cases that require further consultation completed in 25 Working Days or less No. of Re-work cases that require further consultation outstanding No. of Re-work cases that require further consultation outstanding >25 Working Days	Lot Sub-Lot	
Re-work where further consultation is <u>not</u> required	No. of Re-work cases that do not require further consultation No. of Re-work cases that do not require further consultation completed No. of Re-work cases that do not require further consultation completed in 2 Working Days or less No. of Re-work cases that do not require further consultation outstanding No. of Re-work cases that do not require further consultation outstanding >2 Working Days	Lot Sub-Lot	
Safeguarding	No. of safeguarding referrals made by the Supplier	Lot Sub-Lot	
Unexpected Findings	No. of unexpected findings forms completed by the Supplier	Lot Sub-Lot	
Volume Clearance Target	Assessment Specific Clearances in respect of PIP against Assessment Specific Target Volume in respect of PIP.	Lot Sub-Lot	

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<b>Description</b>	<b>Case Management Information</b>	<b>Reporting Level</b>	<b>Additional Breakdowns</b>
Productivity	Assessments completed per day per HP by HP experience cohort	Lot Sub-Lot	
Consultations Scheduled	Numbers of Consultations scheduled for future weeks compared with required Consultations to deliver the Assessment Specific Target Volume in respect of PIP.	Lot Sub-Lot	

## WCA and Specialist Benefits

The following types of Management Information shall be provided by the Supplier separately in relation to each of WCA and Specialist Benefits.

Description	Management Information	Reporting Level	Additional Breakdowns
Further Medical Evidence (FME)	N° of Referrals where FME is requested by the Supplier Percentage of Referrals where FME is requested by the Supplier Average number of days taken to obtain FME  N° of requests to the Supplier from the Authority to request FME after Assessment Report completed	Lot Sub-Lot	Assessment Channel
Cancellations	* N° of scheduled appointments for Consultations * N° of cancellations of Consultations * N° of Consultations cancelled within 2 hours before or after appointment start time * Percentage of Consultations cancelled	* Lot * Sub-Lot	* Benefit Type * Referral type * Assessment Channel * Cancelled by Supplier/Claimant * Cancellation reason
Assessment Centre Wait Times	* N° of Consultations cleared * N° of Claimants examined within 30 minutes of their Consultation appointment time * N° of Claimants examined outside of 30 minutes of their Consultation appointment time * Percentage of Claimants examined within 30 minutes of their Consultation appointment time	* Lot * Sub-Lot	* Benefit Type * Referral type * Assessment Channel * Referral outcome
Home Consultation Wait Times	* N° of Home Consultations cleared * N° of Home Consultations commenced within 60 minutes * N° of Home Consultations commenced outside of 60 minutes * Percentage of Home Consultations commenced within 60 minutes	* Lot * Sub-Lot	* Benefit Type * Referral type
Call Waiting Times	* N° of inbound calls * N° of calls answered * N° of calls answered within 90 seconds * N° of calls answered outside of 90 seconds	* Lot	

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Description	Management Information	Reporting Level	Additional Breakdowns
	<ul style="list-style-type: none"> <li>* Percentage of calls answered within 90 seconds</li> <li>* N° of calls lost</li> <li>* Percentage of calls answered</li> </ul>		
End-to-End Clearance Times	<ul style="list-style-type: none"> <li>* N° of Referrals</li> <li>* N° of Referrals Cleared</li> <li>* N° of Referrals Cleared in 34 Working Days</li> <li>* N° of Referrals Cleared outside 34 Working Days</li> <li>* Actual Average Clearance Time</li> <li>* Percentage of Referrals Cleared in 34 Working Days</li> </ul>	<ul style="list-style-type: none"> <li>* Lot</li> <li>* Sub-Lot</li> </ul>	<ul style="list-style-type: none"> <li>* Benefit Type</li> <li>* Referral type (Initial Referral or Re-Referral)</li> <li>* Assessment Channel</li> <li>* Referral outcome</li> </ul>
End-to-End Clearance Times	<ul style="list-style-type: none"> <li>* N° of Referrals outstanding</li> <li>* N° of Referrals outstanding within 60 Working Days</li> <li>* N° of Referrals outstanding outside of 60 Working Days</li> <li>* N° of Referrals outstanding within 1 year</li> <li>* N° of Referrals outstanding outside of 1 year</li> <li>* Average age of outstanding Referrals</li> <li>* Percentage of Referrals outstanding after 60 Working Days</li> <li>* Percentage of Referrals outstanding after 1 year</li> </ul>	<ul style="list-style-type: none"> <li>* Lot</li> <li>* Sub-Lot</li> </ul>	<ul style="list-style-type: none"> <li>* Benefit Type</li> <li>* Referral type</li> <li>* Time Bands</li> <li>* Referral stage</li> </ul>
Special Rules End of Life (SREL) (End-to-End Clearance Times)	<ul style="list-style-type: none"> <li>* N° of Referrals in respect of SREL received</li> <li>* N° of Referrals in respect of SREL that are Cleared</li> <li>* N° of Referrals in respect of SREL that are Cleared in 5 Working Days</li> <li>* N° of Referrals in respect of SREL that are Cleared outside of 5 Working Days</li> <li>* Percentage of Referrals in respect of SREL that are Cleared in 5 Working Days</li> <li>* Actual Average Clearance Time</li> <li>* N° of Referrals in respect of SREL outstanding</li> </ul>	<ul style="list-style-type: none"> <li>* Lot</li> <li>* Sub-Lot</li> </ul>	<ul style="list-style-type: none"> <li>* Benefit Type</li> <li>* Referral type</li> <li>* Assessment Channel</li> <li>* Referral outcome</li> <li>* Outstanding by Time Band</li> </ul>

Description	Management Information	Reporting Level	Additional Breakdowns
Re-work	<ul style="list-style-type: none"> <li>* Nº. of Re-work cases completed</li> <li>* Nº. of Re-work cases fit for purpose</li> <li>* Nº. of Re-work cases NOT fit for purpose</li> <li>* Percentage of Re-work fit for purpose</li> </ul>	<ul style="list-style-type: none"> <li>* Lot</li> <li>* Sub-Lot</li> </ul>	<ul style="list-style-type: none"> <li>* Benefit Type</li> <li>* Referral type</li> <li>* Assessment Channel</li> <li>* Referral outcome</li> </ul>
Re-work	<ul style="list-style-type: none"> <li>* Nº. of Re-work requests received</li> <li>* Nº. of Re-work requests completed within 2 Working Days</li> <li>* Nº. of Re-work requests completed outside 2 Working Days</li> <li>* Nº. of Re-work requests outstanding</li> <li>* Average age of cases outstanding</li> <li>* Percentage of Re-work requests completed within 2 Working Days</li> </ul>	<ul style="list-style-type: none"> <li>* Lot</li> <li>* Sub-Lot</li> </ul>	<ul style="list-style-type: none"> <li>* Benefit Type</li> <li>* Referral type</li> <li>* Rework reason</li> <li>* Assessment Channel</li> <li>* Referral outcome</li> </ul>
Re-work	<ul style="list-style-type: none"> <li>* Nº. of Re-work appointments outstanding</li> <li>* Nº. of Re-work appointments outstanding after 25 Working Days</li> </ul>	<ul style="list-style-type: none"> <li>* Lot</li> <li>* Sub-Lot</li> </ul>	<ul style="list-style-type: none"> <li>* Benefit Type</li> <li>* Assessment Channel</li> <li>* Referral status</li> </ul>
Safeguarding	Nº of safeguarding referrals made by the Supplier	<ul style="list-style-type: none"> <li>* Lot</li> <li>* Sub-Lot</li> </ul>	
Requests for advice, clarification and/or reconsideration of advice pursuant to Paragraph 15 of Part B of Schedule 2.1 (Services Description)	<ul style="list-style-type: none"> <li>* Nº. of requests for advice etc received</li> <li>* Nº. of requests for advice etc completed within 2 Working Days</li> <li>* Nº. of requests for advice etc completed outside 2 Working Days</li> <li>* Nº. of requests for advice etc outstanding</li> <li>* Average age of requests for advice etc outstanding</li> <li>* Percentage of requests for advice etc completed within 2 Working Days</li> </ul>	<ul style="list-style-type: none"> <li>* Lot</li> <li>* Sub-Lot</li> </ul>	<ul style="list-style-type: none"> <li>* Benefit Type</li> <li>* Referral type</li> <li>* Assessment Channel</li> <li>* Referral outcome</li> </ul>
Payment of Claimant Expenses	<ul style="list-style-type: none"> <li>* Nº. of Claimant expense claims received</li> <li>* Nº. of Claimant expense claims paid</li> <li>* Nº. of Claimant expense claims paid within 10 Working Days of receipt</li> </ul>	<ul style="list-style-type: none"> <li>* Lot</li> <li>* Sub-Lot</li> </ul>	

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Description	Management Information	Reporting Level	Additional Breakdowns
	<ul style="list-style-type: none"> <li>* Nº of Claimant expense claims paid outside 10 Working Days of receipt</li> <li>* Nº of Claimant expense claims outstanding</li> <li>* Percentage of Claimant expense claims paid within 10 Working Days of receipt</li> </ul>		
Complaints	<ul style="list-style-type: none"> <li>* Nº of Complaints received</li> <li>* Nº of Complaints acknowledged within 2 Working Days</li> <li>* Nº of Complaints acknowledged outside of 2 Working Days</li> <li>* Percentage of Complaints acknowledged within 2 Working Days</li> <li>* Nº of Complaints which are (a) clinical and (b) operational in nature, expressed as a proportion of total Complaints</li> </ul>	* Lot	
HP Complaints	<ul style="list-style-type: none"> <li>* Nº of Consultations</li> <li>* Nº of Consultations resulting in a Complaint against the assessing HP</li> <li>* Percentage of Consultations resulting in Complaints against the assessing HP</li> <li>* Nº of Complaints received against the assessing HPs</li> <li>* Nº of Complaints which relate to HPs expressed as a proportion of total Complaints</li> </ul>	<ul style="list-style-type: none"> <li>* Lot</li> <li>* Sub-Lot</li> </ul>	*Assessment Channel
Complaints	<ul style="list-style-type: none"> <li>* Nº of Complaint responses</li> <li>* Nº of Complaint responses within 20 Working Days</li> <li>* Nº of Complaint responses outside 20 Working Days</li> <li>* Percentage of Complaint responses within 20 Working Days</li> </ul>	* Lot	
Complaints	<ul style="list-style-type: none"> <li>* Nº of Complaints outstanding</li> <li>* Nº of Complaints outstanding after 30 days</li> </ul>	* Lot	

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Description	Management Information	Reporting Level	Additional Breakdowns
Additional Requirements	* Nº of Additional Requirements requests * Nº of Additional Requirements met * Nº of Additional Requirements not met * Percentage of Additional Requirements met	* Lot * Sub-Lot	
Volume Clearance Target	Assessment Specific Clearances in respect of WCA against Assessment Specific Target Volume in respect of WCA.	Lot Sub-Lot	
Productivity	Assessments completed per day per HP by HP experience cohort.	Lot Sub-Lot	
Consultations Scheduled	Numbers of Consultations scheduled for future weeks compared with required Consultations to deliver the Assessment Specific Target Volume in respect of WCA and the Volume Clearance Target in respect of WCA	Lot Sub-Lot	

**ANNEX 2****ADDITIONAL INFORMATION**

In addition and without prejudice to the Supplier's other Management Information obligations set out elsewhere in this Agreement (including those set out in Schedule 2.1 (*Services Description*) and Schedule 7.5 (*Financial Reports and Audit Rights*)), the Supplier shall supply the information listed in the table below which is relevant to the delivery of the Services to the Authority, using formats and to timescales as specified by the Authority from time to time. For the avoidance of doubt the below list is non-exhaustive and subject to addition or amendment by the Authority (acting reasonably) from time to time.

<b>MI Required</b>	<b>Frequency/Date Required</b>
Diversity & Equality Delivery Plan in accordance with Schedule 14 ( <i>Life Chances</i> ).	6 months after the Operational Service Commencement Date, and annually thereafter.
Copy of board minutes for the Guarantor where the Guarantee has been signed.	On or about the Effective Date (and in any event no later than 20 Working Days after the Effective Date).
Workforce Monitoring Declaration in accordance with Schedule 14 ( <i>Life Chances</i> ).	6 months following the Operational Service Commencement Date and annually thereafter.
Apprenticeships & Skills Report in accordance with Schedule 23 ( <i>Apprenticeships and Skills Requirements</i> ).	6 months after the Operational Service Commencement Date and annually thereafter.
His Majesty's Government (HMG) Baseline Personnel Security Standard - Supplier's Declaration (see HMG Baseline Personnel Security Standard - A Guide for DWP Contractors)	Within 4 weeks of the Operational Service Commencement Date and submitted for each calendar year thereafter within 1 month of the end of each calendar year (i.e. by 31 <sup>st</sup> January for year ending 31 <sup>st</sup> December).
Sustainable Development Policy Statement & Sustainable Development Plan in accordance with Schedule 2.3 ( <i>Standards</i> ).	6 months following the Operational Service Commencement Date and annually thereafter.
Transparency Reports in accordance with Paragraphs 5.1 to 5.3 of Part A to this Schedule 8.4.	Within 3 months of the Implementation Services Commencement Date and up to date reports provided at the frequency set out in Annex 7 of this Schedule 8.4.
Supply Chain Transparency Information Reports in accordance with Paragraph 5.7 of Part A to this Schedule 8.4.	30 days prior to the end of each of the Authority's financial year in the template set out in Annex 8 of this Schedule 8.4.
The Supplier will evaluate the effectiveness of the Continuous Professional Development (CPD) programme and produce a training evaluation report in accordance with Paragraph 35.24 of Schedule 2.1 ( <i>Services Description</i> ). The format and timescales of the evaluation will be specified by the Authority.	Twice yearly.
The Supplier will implement the Authority's Clinical Governance Quality and Standards Framework and provide evidence of compliance. Further details are held in Paragraphs 21.6 to 21.9 and Annex 5, in each case of Schedule 2.1 ( <i>Services Description</i> ).	Annually on each anniversary of the Operational Service Commencement Date.

MI Required	Frequency/Date Required
Implementation of the Quality Management Regime pursuant to Schedule 2.1 ( <i>Services Description</i> ) and Schedule 8.1 ( <i>Governance</i> ).	Monthly
The Supplier shall provide to the Authority its Social Value Report and Social Value Action Plan as outlined in Paragraph 2 of Schedule 24 ( <i>Social Value</i> ).	At the end of each Service Delivery Year.
<p>The Supplier shall report on:</p> <ul style="list-style-type: none"> <li>• The percentage of all suppliers within the Supplier's supply chain to have implemented documented measures to improve the physical and mental health and wellbeing of their employees and other staff, as a proportion of all suppliers in the Supplier's supply chain.</li> <li>• The number of suppliers within the Supplier's supply chain to have implemented the six standards in the Mental Health at Work commitment (or equivalent).</li> <li>• The percentage of all suppliers within the Supplier's supply chain to have implemented the six standards in the Mental Health at Work commitment (or equivalent), as a proportion of all suppliers in the Supplier's supply chain.</li> <li>• The percentage of full time equivalent (FTE) disabled people employed or engaged by the Supplier as part of its Contract Workforce (as defined in Paragraph 1.4 of Schedule 24 (<i>Social Value</i>)), as a proportion of the Supplier's total Contract Workforce, by UK region.</li> <li>• The number of full time equivalent (FTE) disabled people employed or engaged by the Supplier as part of its Contract Workforce, by UK region.</li> </ul>	No later than 20 Working Days after the end of each Service Delivery Year.

**ANNEX 3****HP QUALITY REPORTS**

For the purposes of this Annex 3, capitalised terms that are used in this Annex 3 and are not otherwise defined in Schedule 1 (*Definitions*) shall have the meaning given in the Glossary of Terms in Schedule 2.1 (*Services Description*) or Schedule 2.2 (*Performance Levels*), as applicable.

The Authority will provide a template that details the requirements of the HP quality reports. These reports will need to cover all Assessment types (PIP, WCA and SB) and all channel types. The following list is an example of the different types of information that will be required in these reports (this list is not exhaustive):

- a) Quality performance levels, broken down by sub-region and/or supply chain partner (SCP).
- b) Quality issues by activity or descriptor, and by audit criteria, in month and trends.
- c) Information about the quality of routing decisions (for example, decisions to ask Claimants to attend Consultations or decisions about which Consultation channel is most appropriate).
- d) Monitoring and analysis of the consistency of all outcomes by individual HP and by site with narrative on any issues and actions undertaken in relation to the accuracy of advice.
- e) The feedback from observations (by the Supplier and Authority).
- f) Information about the effectiveness of the Supplier's quality management regime, including the performance of Supplier's auditors (for example, how many unacceptable reports were audited by the Supplier).
- g) Overview (and detail where required) of specific quality activities or initiatives being undertaken by the Supplier, including those which are part of the Supplier's quality improvement plan
- h) Overview and information about safeguarding activity.

This information would be the basis for further discussion at the relevant governance meeting(s).

ANNEX 4ESTATES MANAGEMENT INFORMATION

	<b>Item</b>	<b>Notes</b>	<b>Frequency of Reporting</b>
<b>Cost</b>	Rent Rates Landlord service charge Facilities management (FM) Costs Utilities Costs Insurance Dilapidations/reinstatement estimate	Per annum or per month Per annum or per month Per annum or per month Include all soft and hard FM Costs Per annum or per month Per annum or per month	Propose x2 annually
<b>Property</b>	Operating Site address and postcode/UPRN Floor area Tenancy type Lease start date Lease end date Inside/outside 1954 Landlord & Tenant Act Lease break option(s) date Lease break type Lease break notice period EPC rating  Property strategy	Sq <sup>m</sup> net internal Lease/Licence/tenancy at will/casual hire  Landlord/tenant/mutual	Propose x2 annually  1x annually (unless otherwise requested by the Authority)
<b>Utilisation</b>	No. of Assessment rooms Assessments per day/month No. of staff/FTE based at Site	To be developed further with Suppliers. Utilisation metrics may depend on Suppliers' operating models.	2x annually for all Operating Sites but data may be requested more frequently on specific sites to support decisions on Acquisition, retention or Disposal.  <b>Note:</b> Utilisation data will also be required for Authority Premises.

**ANNEX 5****ADDITIONAL FINANCIAL MANAGEMENT INFORMATION**

<b>Management Information Required</b>	<b>Frequency or Date Required By</b>
Any material changes to the Supplier's and/or Guarantor's organisation that impacts on its ongoing financial viability including details of the revenue replacement strategy and impact awareness on the organisation's profitability and stability where significant contracts are due to end.	Immediately
Any proposed change of Control, changes to the organisational control or group structure of the Supplier and/or the Guarantor, proposed mergers or acquisitions or proposed changes to the Supplier's financial viability.	Immediately
Any financial information relating to the Supplier, including a copy of its Annual Accounts, Annual Returns, Management Accounts, evidence to the Authority's satisfaction of its assets, liabilities and funding position, and copies of its board papers and board minutes.	Immediately on request
Where a Guarantee has been provided in accordance with Clause 4.5 ( <i>Condition Precedent</i> ), a copy of the Guarantor's Annual Accounts, Annual Returns, Management Accounts, evidence to the Authority's satisfaction of its assets, liabilities and funding position, and copies of its board papers and board minutes, and, where the Guarantor is not a UK company, a translation and conversion (Profit and Loss, Balance Sheet and key Balance Sheet Notes) into pounds sterling, stating the conversion rate used.	Immediately on request
Any further information as the Authority may reasonably request.	Immediately on request
A summary of the Supplier's compliance with its obligation to pay any undisputed sums which are due from it to a Sub-contractor within 30 days from the receipt of a valid invoice.	Quarterly
A Profit Warning Event (as defined in Paragraph 1.2 of Schedule 7.4 ( <i>Financial Distress</i> )).	Immediately

**ANNEX 6****RECORDS TO BE KEPT BY THE SUPPLIER**

The Supplier shall keep all records relating or in connection with the Agreement including the records set out below. For the avoidance of doubt the below list is non-exhaustive and subject to addition or amendment by the Authority (acting reasonably) from time to time.

1. This Agreement, its Schedules and Annexes and all amendments to such documents.
2. All other documents which this Agreement expressly requires to be prepared.
3. Records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel.
4. Notices, reports and other documentation submitted by any Expert.
5. All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and Supplier Equipment.
6. Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
7. All formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of the Services.
8. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
9. Documents prepared by the Supplier in support of claims for the Charges.
10. Documents submitted by the Supplier pursuant to the Change Control Procedure.
11. Documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure.
12. Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor, where such change may cause a change of Control, including documents detailing the identity of the persons changing such ownership or interest.
13. Invoices and records related to Value Added Tax (VAT) sought to be recovered by the Supplier.
14. Financial records, including audited and un-audited accounts of the Guarantor and the Supplier.
15. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
16. All documents relating to the Insurances to be maintained under this Agreement and any claims made in respect of them.
17. All documents and data referred to in Schedule 2.4 (*Security Management*).

18. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement.
19. All documents and records (including records generated by the Claimant Enquiry Service and the Clinical Enquiry Service, records in relation to Supplier Personnel, timesheets for Supplier Personnel, Training Programmes and Training Plans, training records for Supplier Personnel, goods received documentation, Supplier accreditation records and any Complaints received) in relation to the Services being delivered.
20. Accurate records of call audios which for the avoidance of doubt includes calls by way of video or other such method of communications, and call histories for all calls to the Claimant Enquiry Service for a maximum of 24 months and provide prompt access to such records to the Authority upon the Authority's request. Such audio records and call histories shall be available for inspection by the Authority and/or its nominee at any time and the Authority and/or its nominee may make copies of any such records and documents.
21. Detailed records in respect of each Claimant and their Assessment (which are required to be taken by or on behalf of the Supplier pursuant to and in accordance with Schedule 2.1 (*Services Description*)) and which, without prejudice to the Supplier's other obligations in respect of providing access to Management Information and/or records elsewhere in this Agreement, the Supplier shall provide to the Authority (through access to the IT System) as and when required by the Authority including in the circumstances of a Complaint.
22. All Management Information provided by the Supplier to the Authority as required under this Schedule 8.4.

**ANNEX 7**  
**TRANSPARENCY REPORTS**

<b>TITLE</b>	<b>CONTENT</b>	<b>FORMAT</b>	<b>FREQUENCY</b>
<i>(Performance)</i>			
<i>(Charges)</i>			
<i>(Major sub-contractors)</i>			
<i>(Technical)</i>			
<i>(Performance management)</i>			

**ANNEX 8****SUPPLY CHAIN TRANSPARENCY INFORMATION TEMPLATE**

	Financial Year 20[  ]/20[  ]*			
	Under this Agreement		Supplier as a whole	
	£	%	£	%
Estimated total contract revenue (£) to be received in this Financial Year	£[  ]	100%	£[  ]	100%
Total value of Sub-contracted revenues (£) in this Financial Year	£[  ]	[  ]	£[  ]	[  ]
Total value of Sub-contracted revenues to SMEs (£) in this Financial Year	£[  ]	[  ]	£[  ]	[  ]
Total value of Sub-contracted revenues to VCSEs (£) in this Financial Year	£[  ]	[  ]	£[  ]	[  ]

\*The Authority's financial year runs from 1 April to 31 March.

**ANNEX 9****MATERIAL MI REPORTS**

The table below sets out the Material MI Reports as of the Effective Date:

<b>Report required</b>	<b>Where the report is required in the Contract</b>
All reports required under Annex 1 of this Schedule 8.4	Annex 1
Copy of board minutes for the Guarantor where the Guarantee has been signed	Row 2 of the table in Annex 2
Supply Chain Transparency Information Reports in accordance with Paragraph 5.7 of Part A to this Schedule 8.4	Row 8 of the table in Annex 2
Implementation of the Quality Management Regime pursuant to Schedule 2.1 ( <i>Services Description</i> ) and Schedule 8.1 ( <i>Governance</i> )	Row 12 of the table in Annex 2
Social Value Report and Social Value Action Plan as outlined in Paragraph 2 of Schedule 24 ( <i>Social Value</i> )	Row 13 of the table in Annex 2
HP Quality Reports	Annex 3
All Estate Management Information reports	Annex 4
Additional Financial Management Information (other than any further information as the Authority may reasonably request)	Annex 5
Workforce and Capacity Planning Report	Paragraph 2.5 of Part A
Evidence that the Insurances are in force and effect and meet the requirements of Schedule 2.5 ( <i>Insurance Requirements</i> )	Paragraph 2.2(h) of Part A
Notification of the cancellation, suspension, termination or non-renewal of Insurances	Paragraph 2.2(h) of Part A
Register of all claims under the Insurances in connection with the Agreement	Paragraph 2.2(h) of Part A

OFFICIAL – COMMERCIAL

**SCHEDULE 8.5**  
**EXIT MANAGEMENT**

## Exit Management

### 1 DEFINITIONS

1.1 In this Schedule 8.5, the following definitions shall apply:

<b>“Emergency Exit”</b>	any termination of this Agreement which is a:
	(a) termination of the whole or part of this Agreement in accordance with Clause 35 ( <i>Termination Rights</i> ), except where the period of notice given under that Clause is greater than or equal to 6 months;
	(b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 35 ( <i>Termination Rights</i> ); or
	(c) wrongful termination or repudiation of this Agreement by either Party;
<b>“Ethical Wall Agreement”</b>	an ethical wall agreement in a form similar to the draft ethical wall agreement set out at Annex 2;
<b>“Exclusive Assets”</b>	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;
<b>“Exit Information”</b>	has the meaning given in Paragraph 3.1;
<b>“Exit Manager”</b>	the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties' respective obligations under this Schedule 8.5;
<b>“Lease”</b>	has the meaning given in Paragraph 1 of Schedule 15.1 ( <i>Estates</i> );
<b>“Licence”</b>	has the meaning given in Paragraph 1 of Schedule 15.1 ( <i>Estates</i> );
<b>“Net Book Value”</b>	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of the same date as this Agreement;
<b>“Non-Exclusive Assets”</b>	those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services but which are also used by the Supplier or Key Sub-contractor for other purposes of material value;
<b>“Ordinary Exit”</b>	any termination of the whole or any part of this Agreement which occurs:

	<ul style="list-style-type: none"> <li>(a) pursuant to Clause 35 (<i>Termination Rights</i>) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or</li> <li>(b) as a result of the expiry of the Initial Term or any Extension Period;</li> </ul>
<b>“Registers”</b>	the register and configuration database referred to in Paragraphs 2.1(a) and 2.1(b);
<b>“Transferable Assets”</b>	those of the Exclusive Assets which are capable of legal transfer to the Authority;
<b>“Transferable Contracts”</b>	the Sub-contracts, licences or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation; and
<b>“Transferring Contracts”</b>	has the meaning given in Paragraph 7.2(c).

## **2 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT**

### 2.1 During the Term, the Supplier shall:

- (a) create and maintain and provide to the Authority on request a register of all:
  - (i) Assets, detailing their:
    - (A) make, model and asset number;
    - (B) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
    - (C) Net Book Value;
    - (D) condition and physical location; and
    - (E) use (including technical specifications); and
  - (ii) Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
- (b) create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Authority and/or any Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;

- (c) agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
- (d) at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.

2.2 The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.

2.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule 8.5 and provide written notification of such appointment to the other Party within 3 months of the Implementation Services Commencement Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule 8.5. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule 8.5. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule 8.5 and each Party's compliance with it.

**3 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES**

3.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:

- (a) details of the Service(s);
- (b) a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
- (c) an inventory of Authority Data in the Supplier's possession or control;
- (d) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
- (e) a list of on-going and/or threatened disputes in relation to the provision of the Services;
- (f) to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Agreement; and
- (g) such other material and information as the Authority shall reasonably require,

(together, the "**Exit Information**").

3.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier 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 3.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).

- 3.3 The Supplier shall:
  - (a) notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and
  - (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Authority.
- 3.4 The Supplier may charge the Authority for its reasonable additional costs in relation to the provision of Exit Information to the extent the Authority requests more than 6 updates in any 6 month period, except to the extent that the Authority's further requests for Exit Information are due to the failure by the Supplier to provide Exit Information which complies with the provisions of Paragraph 3.5, in which case, the Supplier shall provide the Authority with further updates free of charge until such time the Exit Information provided to the Authority complies with the requirements set out in Paragraph 3.5. A request for an update by the Authority under this Paragraph 3.4 shall not constitute a waiver of the Supplier's obligations under Paragraph 3.5 or waiver of any remedy available to the Authority.
- 3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
  - (a) prepare an informed offer for those Services; and
  - (b) not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).
- 3.6 The Supplier agrees to indemnify and keep the Authority fully indemnified for itself and on behalf of any Replacement Supplier in respect of any claims, costs (including reasonable legal costs), demands, and liabilities arising from the provision by the Supplier to the Authority of Exit Information that does not comply with the requirements of Paragraph 3.5 ("**Inaccurate Exit Information**"), to the extent that any such claim, cost, demand or liability arises from the use of the Inaccurate Exit Information in a manner that can reasonably be assumed to be proper in bidding for or providing Replacement Services.

#### **4 OBLIGATION TO ENTER INTO AN ETHICAL WALL AGREEMENT ON RE-TENDERING OF SERVICES**

- 4.1 The Authority may require the Supplier to enter into the Ethical Wall Agreement at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.
- 4.2 If required to enter into the Ethical Wall Agreement, the Supplier will return a signed copy of the Ethical Wall Agreement within 10 Working Days of receipt. The Supplier's costs of entering into the Ethical Wall Agreement will be borne solely by the Supplier.

#### **5 EXIT PLAN**

5.1 The Supplier shall, within 3 months after the Implementation Services Commencement Date (or by such other date as may be agreed by the Authority), deliver to the Authority an Exit Plan which:

- (a) sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Authority and/or its Replacement Supplier on the Partial Termination, expiry or termination of this Agreement;
- (b) complies with the requirements set out in Paragraph 5.3; and
- (c) is otherwise reasonably satisfactory to the Authority.

5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

5.3 The Exit Plan shall set out, as a minimum:

- (a) how the Exit Information is obtained;
- (b) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;
- (c) a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Agreement;
- (d) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
- (e) the management structure to be employed during the Termination Assistance Period;
- (f) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
- (g) how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
- (h) the scope of the Termination Services that may be required for the benefit of the Authority and lists of any and all documentation or information that the Supplier is required to provide to the Authority as part of the Termination Services (including such of the services, documentation and information set out in Annex 1 as are applicable);
- (i) a timetable and critical issues for providing the Termination Services;

- (j) any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
- (k) how the Termination Services would be provided (if required) during the Termination Assistance Period;
- (l) procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 9.1 (*Staff Transfer*); and
- (m) how each of the issues set out in this Schedule 8.5 will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.

5.4 The Parties acknowledge that the migration of the Services from the Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others and/or such that certain of the Services will be transferred to different Replacement Suppliers at different times.

5.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule 8.5 in the first month of each Service Delivery Year (commencing with the second Service Delivery Year) and if requested by the Authority following the occurrence of a Financial Distress Event, within 14 days of such request, to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Authority for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

### **Finalisation of the Exit Plan**

5.6 Within 20 Working Days after service of a Termination Notice by either Party or 6 months prior to the expiry of this Agreement, the Supplier will submit for the Authority's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule 8.5 and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.

5.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Services in accordance with the principles set out in this Schedule 8.5 and the last approved version of the Exit Plan (insofar as relevant).

## **6 TERMINATION SERVICES**

### **Notification of Requirements for Termination Services**

6.1 The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a “**Termination Assistance Notice**”) at least 4 months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

- (a) the date from which Termination Services are required;
- (b) the nature of the Termination Services required; and
- (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the expiry of the Initial Term or any Extension Period or earlier termination of this Agreement.

6.2 The Authority shall have:

- (a) an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend the Termination Assistance Period beyond the date which is 30 months after expiry of the Initial Term or any Extension Period or earlier termination of this Agreement and provided that it shall notify the Supplier to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and
- (b) the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Supplier to such effect.

### **Termination Assistance Period**

6.3 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:

- (a) continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 6.1, provide the Termination Services;
- (b) in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
- (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Authority;
- (d) provide the Services and the Termination Services at no detriment to the Target Performance Levels, Volume Clearance Targets and/or Monthly Volume Clearance Targets, save to the extent that the Parties agree otherwise in accordance with Paragraph 6.5; and
- (e) at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.

- 6.4 Without prejudice to the Supplier's obligations under Paragraph 6.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Authority, any reasonable additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.
- 6.5 If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Volume Clearance Targets and/or the Monthly Volume Clearance Targets, the Parties shall vary the relevant Target Performance Level(s), the Volume Clearance Targets and/or the Monthly Volume Clearance Targets to take account of such adverse effect.

### **Termination Obligations**

- 6.6 The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination.
- 6.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule 8.5) in respect of the Services that have been terminated, the Supplier shall:
  - (a) cease to use the Authority Data;
  - (b) conduct a full and thorough search for any electronic and paper records held by the Supplier which contain Authority Data in accordance with the Authority instructions;
  - (c) provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
  - (d) erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data in accordance with Schedule 2.4 (*Security Requirements*) (and any Security Policies and Standards and any other policies, practices or requirements referred to in that Schedule) and promptly certify to the Authority that it has completed such deletion;
  - (e) return to the Authority or permit the Authority to recover from the Supplier (at the Authority's discretion) such of the following as is in the Supplier's possession or control:
    - (i) all IT Equipment and copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Agreement;
    - (ii) all materials created by the Supplier under this Agreement in which the IPRs are owned by the Authority;
    - (iii) any parts of the IT Environment and any other equipment which belongs to the Authority; and

- (iv) any items that have been on-charged to the Authority, such as consumables;
- (f) vacate any Authority Premises unless access is required to continue to deliver the Services; and
- (g) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after the Partial Termination, expiry or termination of this Agreement to:
  - (i) such information relating to the Services as remains in the possession or control of the Supplier; and
  - (ii) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 6.7(g)(ii).

6.8 Upon Partial Termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule 8.5), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.

6.9 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the terminated Services shall be terminated with effect from the end of the Termination Assistance Period.

**7 ASSETS AND SUB-CONTRACTS**

7.1 Following service by either Party of a Termination Notice or Partial Termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, in respect of the terminated Services, without the Authority's prior written consent:

- (a) terminate, enter into or vary any Sub-contract or any Lease or Licence of any Operating Sites except to the extent that such change does not or will not affect the provision of Services or the Charges;
- (b) (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
- (c) terminate, enter into or vary any licence for software in connection with the Services.

7.2 Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 6.3(e), the Authority shall provide written notice to the Supplier setting out:

- (a) which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier in respect of the terminated Services (“**Transferring Assets**”);
- (b) which, if any, of:
  - (i) the Exclusive Assets that are not Transferable Assets; and
  - (ii) the Non-Exclusive Assets,
 the Authority and/or the Replacement Supplier requires the continued use of; and
- (c) which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the “**Transferring Contracts**”),

in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services or Replacement Services. Where requested by the Supplier, the Authority and/or its Replacement Supplier shall discuss in good faith with the Supplier which Transferable Contracts are used by the Supplier in matters unconnected to the Services or Replacement Services.

- 7.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:
  - (a) a Termination Payment is payable by the Authority to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment;
  - (b) the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Agreement, in which case the Authority shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges; or
  - (c) the Transferring Asset has no Net Book Value, in which case it shall transfer free of charge to the Authority,
 in each case such transfer shall include all relevant unexpired guarantees and/or warranties.
- 7.4 Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.
- 7.5 Where the Supplier is notified in accordance with Paragraph 7.2(b) that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:

- (a) procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
- (b) procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.

7.6 Where the Authority makes a request pursuant to Paragraph 7.2(c), the Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.

7.7 The Authority shall:

- (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
- (b) once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

7.8 The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.

7.9 The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to Paragraph 7.6 both:

- (a) in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
- (b) in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier's failure to comply with Clauses 16 (*Intellectual Property Rights*) and/or Clause 17 (*Transfer and Licences Granted by the Supplier*).

7.10 Where the Authority has not notified the Supplier that it requires continued use of an Exclusive Asset that is not a Transferring Asset pursuant to Paragraph 7.5, the Authority shall have no further liability for such Exclusive Assets on termination or expiry of this Agreement.

7.11 The Supplier shall return, sell or otherwise dispose of the Property in such manner and within such timescales as the Authority may reasonably request on termination or expiry of this Agreement. The proceeds of any sale of the Property shall be paid or transferred as directed by the Authority.

## **8 SUPPLIER PERSONNEL**

8.1 The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 9.1 (*Staff Transfer*) shall apply.

- 8.2 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.
- 8.3 During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Authority and/or the Replacement Supplier.
- 8.4 The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 8.5 The Supplier shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier, except that this Paragraph 8.5 shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

## **9 CHARGES**

- 9.1 During the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), the Authority shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.
- 9.2 Where the Authority requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with Paragraph 6.2:
  - (a) where more than 6 months' notice is provided, the same rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable; and
  - (b) where less than 6 months' notice is provided, no more than 1.1 times the rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable.
- 9.3 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 9.4 Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule 8.5. For the avoidance of doubt, the Authority shall not be obliged to pay any charges, costs or other sums in relation to:
  - 9.4.1 the Supplier's preparation of the Exit Plan;

- 9.4.2 the Supplier's implementation of those activities, commitments or obligations to be carried out under the Exit Plan that are not Termination Services. Such activities, commitments and obligations include those described in Paragraphs 5.3(a), 5.3(b), 5.3(c), 5.3(d), 5.3(e), 5.3(f), 5.3(g), 5.3(l) and 5.3(m); and
- 9.4.3 any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period which are not within the scope of the Termination Services described in the Exit Plan (such Termination Services to be within the scope of those services listed in Annex 1).

## **10 APPORTIONMENTS**

- 10.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
  - (a) the amounts shall be annualised and divided by 365 to reach a daily rate;
  - (b) the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
  - (c) the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 10.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 10.1 as soon as reasonably practicable.

**ANNEX 1: SCOPE OF THE TERMINATION SERVICES**

1.1 The Termination Services to be provided by the Supplier shall include such of the following services as the Authority may specify:

- (a) notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
- (b) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority and/or the Replacement Supplier after the end of the Termination Assistance Period;
- (c) delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12 month period immediately prior to the commencement of the Termination Services;
- (d) providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
- (e) with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
- (f) providing the Authority with any problem logs which have not previously been provided to the Authority;
- (g) providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of 12 months after the Termination Assistance Period;
- (h) providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
- (i) reviewing all Supplier Software and Third Party Software used in connection with the Services and providing details of these to the Authority and/or the Replacement Supplier;
- (j) agreeing with the Authority an effective communication strategy and joint communications plan which sets out the implications for Supplier Personnel, Authority staff, customers and key stakeholders;
- (k) providing assistance and expertise as necessary to support the Authority and/or the Replacement Supplier develop the migration plan for business operations and Authority Data to the Replacement Supplier, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Authority Data;

- (l) providing all necessary support, equipment, tools, and data migration services and/or automated programming interfaces, in order to enable and support the execution of the migration plan by the Authority and/or Replacement Supplier;
- (m) making available to the Authority and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry;
- (n) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- (o) delivering copies of any production databases (with content listings) to the Authority's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Authority;
- (p) assisting with the loading, testing and implementation of any production databases;
- (q) assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;
- (r) providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
- (s) answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;
- (t) agreeing with the Authority and/or the Replacement Supplier a plan for the migration of the Authority Data to the Authority and/or the Replacement Supplier;
- (u) providing access to the Authority and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 months afterwards for the purpose of the smooth transfer of the Services to the Authority and/or the Replacement Supplier:
  - (i) to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
  - (ii) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- (v) knowledge transfer services, including:
  - (i) transferring all training material and providing appropriate training to those Authority and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;

- (ii) providing for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents;
- (iii) providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- (iv) allowing the Authority and/or the Replacement Supplier to work alongside and observe the performance of the Services by the Supplier at its Sites used to fulfil the Services (subject to compliance by the Authority and the Replacement Supplier with any applicable security and/or health and safety restrictions),

and any such person who is provided with such knowledge transfer services will sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require).

1.2 The Supplier shall:

- (a) provide a documented plan relating to the training matters referred to in Paragraph 1.1(m) for agreement by the Authority at the time of termination or expiry of this Agreement; and
- (b) fully co-operate in the execution of the Authority Database migration plan agreed pursuant to Paragraph 1.1(t), providing skills and expertise of a reasonably acceptable standard.

1.3 To facilitate the transfer of knowledge from the Supplier to the Authority and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Authority and/or the Replacement Supplier.

1.4 The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to Paragraphs 1.1(u) and 1.1(v) shall include:

- (a) copies of up-to-date training, procedures and operations manuals (in any form or media);
- (b) product information;
- (c) agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;
- (d) key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule 8.5;
- (e) information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;

- (f) details of physical and logical security processes and tools which will be available to the Authority; and
- (g) any relevant interface information,

and such information shall be updated by the Supplier at the end of the Termination Assistance Period.

1.5 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or the Authority access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:

- (a) any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 1.5 shall:
  - (i) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
  - (ii) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Authority deems reasonable; and
- (b) the Authority and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

**ANNEX 2: DRAFT ETHICAL WALL AGREEMENT**

[THE AUTHORITY]

and

[THE COUNTERPARTY]

**ETHICAL WALL AGREEMENT**

This Agreement is dated [ ] 20[ ]

Between

- (1) **[INSERT NAME OF AUTHORITY]** (the "Authority") [acting on behalf of the Crown] of [insert Authority's address]; and
- (2) **[NAME OF COUNTERPARTY]** a [company]/[limited liability partnership] registered in England and Wales under registered number [insert registered number] whose registered office is at [insert Counterparty's registered address] (the "Counterparty").

### BACKGROUND

- (A) The Authority is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Public Contracts Regulations 2015 (as amended) (the **PCR**). The purpose of this document ("Agreement") is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Procurement.
- (B) The Authority is conducting a procurement exercise for the [supply/purchase] of [insert details of project/goods/services] (the "Purpose").
- (C) The Authority has an obligation to deal with conflicts of interest as set out in Regulation 24 (1) of the PCR. The concept of conflict of interest is wide. In the PCR it is described as covering at least "*any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure*" (Regulation 24(2)). "Staff members" refers to staff members of the Authority or of a procurement service provider acting on behalf of the Authority who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure. "Procurement service provider" refers to a public or private body which offers ancillary purchasing activities on the market.
- (D) Pursuant to Regulation 41 of the PCR, the Authority is under an obligation to ensure that competition is not distorted by the participation of any bidder. Accordingly, the Authority has identified that a potential distortion of competition could arise as a consequence of a bidder wishing to submit a Tender for this procurement, where it has also performed services for the Authority under existing contractual arrangements or as a subcontractor under those same arrangements.
- (E) The Parties wish to enter into this Agreement to ensure that a set of management processes, barriers and disciplines are put in place to ensure that conflicts of interest do not arise, and that the Counterparty does not obtain an unfair competitive advantage over Other Bidders.

**IT IS AGREED:****DEFINITIONS AND INTERPRETATION**

1.1 The following words and expressions shall have the following meanings in this agreement and its recitals:

**"Affiliate"** means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;

**"Agreement"** means this ethical walls agreement duly executed by the Parties;

**"Bid Team"** means any Counterparty, Affiliate, connected to the preparation of an ITT Response;

**"Central Government Body"** means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

**"Conflicted Personnel"** means any Counterparty, Affiliate, staff or agents of the Counterparty or an Affiliate who, because of the Counterparty's relationship with the Authority under any Contract have or have had access to information which creates or may create a conflict of interest;

**"Contract"** means the [contract for [ ]] dated [ ] between the Authority and the Counterparty and/or an Affiliate;

**"Control"** means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **"Controls"** and **"Controlled"** shall be interpreted accordingly;

**"Effective Date"** means the date of this Agreement as set out above;

**"Invitation to Tender"** or **"ITT"** means an invitation to submit tenders issued by the Authority as part of an ITT Process;

**"ITT Process"** means, with regard to the Purpose, the relevant procedure provided for in the PCR which the Authority has elected to use to select a contractor, together with all relevant information, correspondence and/or documents issued by the Authority as part of that procurement exercise, all information, correspondence and/or documents issued by the bidders in response together with any resulting contract;

**"ITT Response"** means the tender submitted or to be submitted by the Counterparty or an Affiliate [(or, where relevant, by an Other Bidder)] in response to an ITT;

**“Other Affiliate”** any person who is a subsidiary, subsidiary undertaking or holding company of any Other Bidder;

**“Other Bidder”** means any other bidder or potential bidder that is not the Counterparty or any Affiliate that has or is taking part in the ITT Process;

**“Parties”** means the Authority and the Counterparty (and **“Party”** shall be construed accordingly);

**“Procurement Process”** means the period commencing on the earlier of: (a) the publication of the first notice in relation to the Purpose; and (b) the execution of this Agreement, and ending on the occurrence of: (i) the publication by the Authority of all contract award notices that result from the ITT Process; or (ii) the abandonment or termination of the ITT Process as notified by the Authority;

**“Professional Advisor”** means a supplier, subcontractor, advisor or consultant engaged by the Counterparty under the auspices of compiling its ITT Response;

**“Purpose”** has the meaning given to it in recital (B) to this Agreement;

**“Representative”** refers to a person's officers, directors, employees, advisers and agents and, where the context admits, providers or potential providers of finance to the Counterparty or any Affiliate in connection with the ITT Process and the representatives of such providers or potential providers of finance; and

**“Third Party”** means any person who is not a Party and includes Other Affiliates and Other Bidders and / or their Representatives.

- 1.2 Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
- 1.3 Reference to the disclosure of information, or provision of access, by or to the Authority or the Counterparty includes disclosure, or provision of access, by or to the representatives of the Authority or Representatives of the Counterparty (as the case may be).
- 1.4 Reference to persons includes legal and natural persons.
- 1.5 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
- 1.6 Reference to Clauses and recitals is to Clauses of and recitals to this Agreement.
- 1.7 Reference to any gender includes any other.
- 1.8 Reference to writing includes email.
- 1.9 The terms “associate”, “holding company”, “subsidiary”, “subsidiary undertaking” and “wholly owned subsidiary” have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act, the words ‘holds a majority of the voting rights’ shall be changed to ‘holds 30% or more of the voting rights’, and other expressions shall be construed accordingly.
- 1.10 The words “include” and “including” are to be construed without limitation.
- 1.11 The singular includes the plural and vice versa.

1.12 The headings contained in this Agreement shall not affect its construction or interpretation.

## **2 ETHICAL WALLS**

2.1 In consideration of the sum of £1 payable by the Authority to the Counterparty, receipt of which is hereby acknowledged, the Counterparty:

- (a) shall take all appropriate steps to ensure that neither the Counterparty nor its Affiliates and/or Representatives are 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 Counterparty or its Affiliates or Representatives and the duties owed to the Authority under the Contract or pursuant to an open and transparent ITT Process;
- (b) acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty or an Affiliate intends to take part in the ITT Process and, because of the Counterparty's relationship with the Authority under any Contract, the Counterparty, its Affiliates and/or Representatives have or have had access to information which could provide the Counterparty and/or its Affiliates with an advantage and render unfair an otherwise genuine and open competitive ITT Process; and
- (c) where there is or is likely to be a conflict of interest or the perception of a conflict of interest of any kind in relation to the ITT Process, shall comply with Clause 2.2.

2.2 The Counterparty shall:

- (a) Not assign any of the Conflicted Personnel to the Bid Team at any time;
- (b) Provide to the Authority a complete and up to date list of the Conflicted Personnel and the Bid Team and reissue such list upon any change to it;
- (c) Ensure that by no act or omission by itself, its staff, agents and/or Affiliates results in information of any kind or in any format and however so stored:
  - (i) about the Contract, its performance, operation and all matters connected or ancillary to it becoming available to the Bid Team; and/or
  - (ii) which would or could in the opinion of the Authority confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process becoming available to the Bid Team;
- (d) Ensure that by no act or omission by itself, its staff, agents and/or Affiliates and in particular the Bid Team results in information of any kind or in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
- (e) Ensure that confidentiality agreements which flow down the Counterparty's obligations in this Agreement are entered into as necessary between the Authority and the Counterparty, its Affiliates, its

staff, agents, any Conflicted Personnel, and between any other parties necessary in a form to be prescribed by the Authority;

- (f) physically separate the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
- (g) provide regular training to its staff, agents and its Affiliates to ensure it is complying with this Agreement;
- (h) monitor Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement ensure adherence to the ethical wall arrangements;
- (i) ensure that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
- (j) comply with any other action as the Authority, acting reasonably, may direct.

2.3 In addition to the obligations set out in Clause 2.1(a) and 2.1(c), the Counterparty shall:

- (a) notify the Authority immediately of all perceived, potential and/or actual conflicts of interest that arise;
- (b) submit in writing to the Authority full details of the nature of the conflict including (without limitation) full details of the risk assessments undertaken, the impact or potential impact of the conflict, the measures and arrangements that have been established and/or are due to be established to eliminate the conflict and the Counterparty's plans to prevent future conflicts of interests from arising; and
- (c) seek the Authority's approval thereto,

which the Authority shall have the right to grant, grant conditionally or deny (if the Authority denies its approval the Counterparty shall repeat the process set out in this Clause 2.3 until such time as the Authority grants approval or the Counterparty withdraws from the ITT Process).

2.4 Any breach of Clause 2.1, Clause 2.2 or Clause 2.3 shall entitle the Authority to exclude the Counterparty or any Affiliate or Representative from the ITT Process, and the Authority may, in addition to the right to exclude, take such other steps as it deems necessary where, in the reasonable opinion of the Authority there has been a breach of Clause 2.1, Clause 2.2 or Clause 2.3.

2.5 The Counterparty will provide, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 2.1 and 2.2 as reasonably requested by the Authority.

2.6 The Authority reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 2.1(c) and 2.2.

2.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses 2.5 and 2.6, does not constitute acceptance by the Authority of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Agreement.

2.8 The actions of the Authority pursuant to Clause 2.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

2.9 In no event shall the Authority be liable for any bid costs incurred by:

- (a) the Counterparty or any Affiliate or Representative; or
- (b) any Third Party,

as a result of any breach by the Counterparty, Affiliate or Representative of this Agreement, including, without limitation, where the Counterparty or any Affiliate or Representative, or any Third Party is or are excluded from the ITT Process.

2.10 The Counterparty acknowledges and agrees that:

- (a) neither damages nor specific performance are adequate remedies in the event of its breach of the obligations in this Clause 2; and
- (b) in the event of such breach by the Counterparty of any of its obligations in this Clause 2 which cannot be effectively remedied the Authority shall have the right to terminate this Agreement and the Counterparty's participation in the ITT Process.

### **3 SOLE RESPONSIBILITY**

3.1 It is the sole responsibility of the Counterparty to comply with the terms of this Agreement. No approval by the Authority of any procedures, agreements or arrangements provided by the Counterparty or any Affiliate or Representative to the Authority shall discharge the Counterparty's obligations.

### **4 WAIVER AND INVALIDITY**

4.1 No failure or delay by any Party in exercising any right, power or privilege under this Agreement or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.

4.2 If any provision of this Agreement is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of the provisions of this Agreement in relation to any other Party or any other jurisdiction.

### **5 ASSIGNMENT AND NOVATION**

5.1 Subject to Clause 5.2 the Parties shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.

5.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:

- (a) any Central Government Body; or
- (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; and

(c) the Counterparty shall, at the Authority's request, enter into a novation agreement in such form as the Authority may reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 5.2.

5.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

## **6 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

6.1 A person who is not a Party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any term of this Agreement but this does not affect any right remedy of any person which exists or is available otherwise than pursuant to that Act.

## **7 TRANSPARENCY**

7.1 The Parties acknowledge and agree that the Authority is under a legal duty pursuant to the PCR to run transparent and fair procurement processes. Accordingly, the Authority may disclose the contents of this Agreement to potential bidders in the ITT Process, for the purposes of transparency and in order to evidence that a fair procurement process has been followed.

## **8 NOTICES**

8.1 Any notices sent under this Agreement must be in writing.

8.2 The following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

<b>Manner of Delivery</b>	<b>Deemed time of service</b>	<b>Proof of service</b>
Email	9.00am on the first Working Day after sending.	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Royal Mail Signed For™ 1 <sup>st</sup> Class or other prepaid, next working day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

	or on the next Working Day (if after 5.00pm).	
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8.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

	Counterparty	Authority
Contact		
Address		
Email		

8.4 This Clause 8 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

## **9 WAIVER AND CUMULATIVE REMEDIES**

9.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

9.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

## **10 TERM**

10.1 Each Party's obligations under this Agreement shall continue in full force and effect for the period of the duration of the Procurement Process.

## **11 GOVERNING LAW AND JURISDICTION**

11.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

11.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

OFFICIAL – COMMERCIAL

Signed by the Authority

Name:

Signature:

Position in Authority:

Counterparty Signed by the

Name:

Signature:

Position in Counterparty:

OFFICIAL – COMMERCIAL

**SCHEDULE 8.6**

**SERVICE CONTINUITY PLAN AND CORPORATE RESOLUTION PLANNING**

**PART A: SERVICE CONTINUITY PLAN****1 DEFINITIONS**

1.1 In this Schedule, the following definitions shall apply:

<b>“Business Continuity Plan”</b>	has the meaning given in Paragraph 2.2(a)(ii) of this Part A;
<b>“Business Continuity Services”</b>	has the meaning given in Paragraph 4.2(k) of this Part A;
<b>“Department”</b>	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> <li>(a) Government Department; or</li> <li>(b) Non-Ministerial Department;</li> </ul>
<b>“Disaster”</b>	the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services, will be unavailable for a period of 24 hours, or which it is reasonably anticipated by either Party will mean that the Services or a material part of the Services will be unavailable for that period;
<b>“Disaster Recovery Plan”</b>	has the meaning given in Paragraph 2.2(a)(iii) of this Part A;
<b>“Disaster Recovery Services”</b>	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
<b>“Disaster Recovery System”</b>	the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
<b>“Grace Period”</b>	has the meaning given in Paragraph 2.8(b)(i) of Part B;
<b>“Insolvency Continuity Plan”</b>	has the meaning given in Paragraph 2.2(a)(iv) of this Part A;
<b>“Related Service Provider”</b>	any person who provides services to the Authority in relation to this Agreement from time to time, which persons include as at the Effective Date the IT Providers and the FAS Lot Suppliers;
<b>“Review Report”</b>	has the meaning given in Paragraph 7.2 of this Part A; and

**“Service Continuity Plan”** means the plan prepared pursuant to Paragraph 2 of this Part A which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan.

## 2 **SERVICE CONTINUITY PLAN**

2.1 Within 40 Working Days from the Implementation Services Commencement Date the Supplier shall prepare and deliver to the Authority for the Authority's written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

- (a) ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services (including where caused by an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member); and
- (b) the recovery of the Services in the event of a Disaster.

2.2 The Service Continuity Plan shall:

- (a) be divided into four parts:
  - (i) Part A which shall set out general principles applicable to the Service Continuity Plan;
  - (ii) Part B which shall relate to business continuity (the “**Business Continuity Plan**”);
  - (iii) Part C which shall relate to disaster recovery (the “**Disaster Recovery Plan**”);
  - (iv) Part D which shall relate to an Insolvency Event of the Supplier, any Key Sub-contractors and/or any Supplier Group member (the “**Insolvency Continuity Plan**”); and
- (b) unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of Paragraphs 3 to 6 of this Part A.

2.3 Following receipt of the draft Service Continuity Plan from the Supplier, the Authority shall:

- (a) review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and
- (b) notify the Supplier in writing that it approves or rejects the draft Service Continuity Plan no later than 20 Working Days after the date on which the draft Service Continuity Plan is first delivered to the Authority.

2.4 If the Authority rejects the draft Service Continuity Plan:

- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the draft Service Continuity Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Service Continuity Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of

rejection. The provisions of Paragraph 2.3 of this Part A and this Paragraph 2.4 shall apply again to any resubmitted draft Service Continuity Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

### **3 SERVICE CONTINUITY PLAN: PART A – GENERAL PRINCIPLES AND REQUIREMENTS**

3.1 Part A of the Service Continuity Plan shall:

- (a) set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;
- (b) provide details of how the invocation of any element of the Service Continuity Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider;
- (c) contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Service Provider with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable;
- (d) detail how the Service Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity and/or insolvency continuity plan of the Authority and any of its other Related Service Providers in each case as notified to the Supplier by the Authority from time to time;
- (e) contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;
- (f) contain a risk analysis, including:
  - (i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
  - (ii) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
  - (iii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider;
  - (iv) identification of risks arising from an Insolvency Event of the Supplier, any Key Sub-contractors and/or Supplier Group member; and
  - (v) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- (g) provide for documentation of processes, including business processes, and procedures;
- (h) set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Authority;

- (i) identify the procedures for reverting to “normal service”;
- (j) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
- (k) identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the Service Continuity Plan; and
- (l) provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority’s business continuity plans.

3.2 The Service Continuity Plan shall be designed so as to ensure that:

- (a) the Services are provided in accordance with this Agreement at all times during and after the invocation of the Service Continuity Plan;
- (b) the adverse impact of any Disaster; service failure; an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member; or disruption on the operations of the Authority, is minimal as far as reasonably possible;
- (c) it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and
- (d) there is a process for the management of disaster recovery testing detailed in the Service Continuity Plan.

3.3 The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Services, to the business processes facilitated by and the business operations supported by the Services, and/or changes to the Supplier Group structure.

3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Levels (including the Target Performance Levels and/or Minimum Performance Levels), the Volume Clearance Targets, the Monthly Volume Clearance Targets and/or the Service Regression Failure Performance Levels or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Agreement.

#### **4 SERVICE CONTINUITY PLAN: PART B – BUSINESS CONTINUITY**

##### **PRINCIPLES AND CONTENTS**

4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:

- (a) the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
- (b) the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

4.2 The Business Continuity Plan shall:

- (a) set out the purpose and scope of the plan;
- (b) set out the strategic aims and objectives;
- (c) define the roles and responsibilities of the Supplier Personnel;
- (d) set out the recovery periods;
- (e) clearly set out the communication arrangements including communications to Claimants, to the Authority and to any other relevant third parties;
- (f) include a contact list and details of how the Business Continuity Plan will be flowed down and distributed to contacts;
- (g) address the various possible levels of failures of or disruptions to the Services;
- (h) clearly set out the plans for continuity and recovery in relation to the loss, failure or unavailability of services including: technology, personnel, telecommunications, Supplier equipment, Sites, Sub-contractors, partners, other relevant third party suppliers, data and failure of the overall Services;
- (i) provide details of how the security assets will be maintained;
- (j) provide details of the clerical contingency arrangements that will be put in place for ensuring the continuity of the Services, including the provision of Assessments and associated Management Information, in the event of IT failure or unavailability;
- (k) set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the "**Business Continuity Services**");
- (l) set out the processes in place to ensure minimum disruption to the Authority's required standard of Services in the event of a major system failure or building evacuation;
- (m) specify any applicable Performance Levels (including the Target Performance Levels and/or Minimum Performance Levels), the Volume Clearance Targets, the Monthly Volume Clearance Targets and/or the Service Regression Failure Performance Levels with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Levels (including the Target Performance Levels and/or Minimum Performance Levels), the Volume Clearance Targets, the Monthly Volume Clearance Targets and/or the Service Regression Failure Performance Levels in respect of other Services during any period of invocation of the Business Continuity Plan; and
- (n) clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

**5 SERVICE CONTINUITY PLAN: PART C – DISASTER RECOVERY**

**PRINCIPLES AND CONTENTS**

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall include the following:
  - (a) the technical design and build specification of the Disaster Recovery System;
  - (b) details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
    - (i) data centre and disaster recovery site audits;
    - (ii) backup methodology and details of the Supplier's approach to data back-up and data verification;
    - (iii) identification of all potential disaster scenarios;
    - (iv) risk analysis;
    - (v) documentation of processes and procedures;
    - (vi) hardware configuration details;
    - (vii) network planning including details of all relevant data networks and communication links;
    - (viii) invocation rules;
    - (ix) Service recovery procedures; and
    - (x) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
  - (c) any applicable Performance Levels (including the Target Performance Levels and/or Minimum Performance Levels), the Volume Clearance Targets, the Monthly Volume Clearance Targets and/or the Service Regression Failure Performance Levels with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Levels (including the Target Performance Levels and/or Minimum Performance Levels), the Volume Clearance Targets, the Monthly Volume Clearance Targets and/or the Service Regression Failure Performance Levels in respect of other Services during any period of invocation of the Disaster Recovery Plan;
  - (d) details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
  - (e) access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule 8.6; and

(f) testing and management arrangements.

**6 SERVICE CONTINUITY PLAN: PART D – INSOLVENCY CONTINUITY PLAN**

**PRINCIPLES AND CONTENTS**

6.1 The Insolvency Continuity Plan shall be designed by the Supplier to permit continuity of the business operations of the Authority supported by the Services through continued provision of the Services following an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member with, as far as reasonably possible, minimal adverse impact.

6.2 The Insolvency Continuity Plan shall include the following:

- (a) communication strategies which are designed to minimise the potential disruption to the provision of the Services, including key contact details in respect of the supply chain and key contact details for operational and contract Supplier Personnel, Key Sub-contractor personnel and Supplier Group member personnel;
- (b) identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Supplier, Key Sub-contractors and Supplier Group members where failure of those dependencies could reasonably have an adverse impact on the Services;
- (c) plans to manage and mitigate identified risks;
- (d) details of the roles and responsibilities of the Supplier, Key Sub-contractors and/or Supplier Group members to minimise and mitigate the effects of an Insolvency Event of such persons on the Services;
- (e) details of the recovery team to be put in place by the Supplier (which may include representatives of the Supplier, Key Sub-contractors and Supplier Group members); and
- (f) sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Supplier.

**7 REVIEW AND AMENDMENT OF THE SERVICE CONTINUITY PLAN**

7.1 The Supplier shall review and update the Service Continuity Plan (and the risk analysis on which it is based):

- (a) on a regular basis and as a minimum once every 6 months;
- (b) within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9 of this Part A;
- (c) within 14 days of a Financial Distress Event;
- (d) within 30 days of a Corporate Change Event (unless the Relevant Authority (acting reasonably) agrees to a Grace Period, as set out in Paragraph 2.8(b)(i) of Part B, in which case that Grace Period will apply); and
- (e) where the Authority requests any additional reviews (over and above those provided for in Paragraphs 7.1(a) to 7.1(d) of this Part A) by notifying the Supplier to such effect in writing, whereupon the Supplier

shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.

7.2 Each review of the Service Continuity Plan pursuant to Paragraph 7.1 of this Part A shall be a review of the procedures and methodologies set out in the Service Continuity Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the Service Continuity Plan or the last review of the Service Continuity Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the Service Continuity Plan. The review shall be completed by the Supplier within the period required by the Service Continuity Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the Service Continuity Plan, provide to the Authority a report (a "Review Report") setting out:

- (a) the findings of the review;
- (b) any changes in the risk profile associated with the Services; and
- (c) the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the Service Continuity Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

7.3 Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:

- (a) review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
- (b) notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than 20 Working Days after the date on which they are first delivered to the Authority.

7.4 If the Authority rejects the Review Report and/or the Supplier's Proposals:

- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 7.3 of this Part A and this Paragraph 7.4 shall apply again to any resubmitted Review Report and

Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

7.5 The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

**8 TESTING OF THE SERVICE CONTINUITY PLAN**

8.1 The Supplier shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every Service Delivery Year). Subject to Paragraph 8.2 of this Part A, the Authority may require the Supplier to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Service Continuity Plan.

8.2 If the Authority requires an additional test of the Service Continuity Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the Service Continuity Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the Service Continuity Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.

8.3 The Supplier shall undertake and manage testing of the Service Continuity Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.

8.4 The Supplier shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.

8.5 The Supplier shall, within 20 Working Days of the conclusion of each test, provide to the Authority a report setting out:

- (a) the outcome of the test;
- (b) any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and
- (c) the Supplier's proposals for remedying any such failures (as well as any lessons learned and plans for general improvements).

8.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the Service Continuity Plan) to remedy any failures in the Service Continuity Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.

- 8.7 The plans prepared by the Supplier pursuant to Paragraph 8.6 of this Part A shall include clearly assigned roles and responsibilities for action points, clear timescales and deadlines for completion and regular progress checks and updates.
- 8.8 For the avoidance of doubt, the carrying out of a test of the Service Continuity Plan (including a test of the Service Continuity Plan's procedures) shall not relieve the Supplier of any of its obligations under this Agreement.
- 8.9 The Supplier shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

## **9 INVOCATION OF THE SERVICE CONTINUITY PLAN**

- 9.1 In the event of a loss of any critical part of the Service or a Disaster, the Supplier shall immediately invoke the business continuity and disaster recovery provisions in the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan, and shall inform the Authority promptly of such invocation. In all other instances the Supplier shall invoke the business continuity and disaster recovery plan elements only with the prior consent of the Authority.
- 9.2 The Insolvency Continuity Plan element of the Service Continuity Plans, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Supplier:
  - (a) where an Insolvency Event of a Key Sub-contractor and/or Supplier Group member (other than the Supplier) could reasonably be expected to adversely affect delivery of the Services; and/or
  - (b) where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan.

**PART B: CORPORATE RESOLUTION PLANNING**

**1 SERVICE STATUS AND SUPPLIER STATUS**

- 1.1 This Agreement is a Critical Service Contract.
- 1.2 The Supplier shall notify the Authority and the Cabinet Office Markets and Suppliers Team (Resolution.planning@cabinetoffice.gov.uk) in writing within 5 Working Days of the Implementation Services Commencement Date and throughout the Term within 120 days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier.

**2 PROVISION OF CORPORATE RESOLUTION PLANNING INFORMATION**

- 2.1 Paragraphs 2 to 4 of this Part B shall apply if this Agreement has been specified as a Critical Service Contract under Paragraph 1.1 of this Part B or the Supplier is or becomes a Public Sector Dependent Supplier.
- 2.2 Subject to Paragraphs 2.6, 2.10 and 2.11 of this Part B:
  - (a) where this Agreement is a Critical Service Contract, the Supplier shall provide the Relevant Authority or Relevant Authorities with the CRP Information within 60 days of the Implementation Services Commencement Date; and
  - (b) except where it has already been provided in accordance with Paragraph 2.2(a) of this Part B, where the Supplier is a Public Sector Dependent Supplier, it shall provide the Relevant Authority or Relevant Authorities with the CRP Information within 60 days of the date of the Relevant Authority's or Relevant Authorities' request.
- 2.3 The Supplier shall ensure that the CRP Information provided pursuant to Paragraphs 2.2, 2.8 and 2.9 of this Part B:
  - (a) is full, comprehensive, accurate and up to date;
  - (b) is split into three parts:
    - (i) Exposure Information (Contracts List);
    - (ii) Corporate Resolvability Assessment (Structural Review);
    - (iii) Financial Information and Commentaryand is structured and presented in accordance with the requirements and explanatory notes set out at the relevant annex of the latest published versions of the Resolution Planning Guidance Notes published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-sourcing-and-consultancy-playbooks> and contains the level of detail required (adapted as necessary to the Supplier's circumstances);
  - (c) incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Authority or Relevant Authorities to understand and consider the information for approval;

- (d) provides a clear description and explanation of the Supplier Group members that have agreements for goods, services or works provision in respect of UK Public Sector Business and/or CNI and the nature of those agreements; and
- (e) complies with the requirements set out at Annex 1 (*Exposure Information (Contracts List)*), Annex 2 (*Corporate Resolvability Assessment (Structural Review)*) and Annex 3 (*Financial Information And Commentary*) respectively.

2.4 Following receipt by the Relevant Authority or Relevant Authorities of the CRP Information pursuant to Paragraphs 2.2, 2.8 and 2.9 of this Part B, the Authority shall procure that the Relevant Authority or Relevant Authorities discuss in good faith the contents of the CRP Information with the Supplier and no later than 60 days after the date on which the CRP Information was delivered by the Supplier either provide an Assurance to the Supplier that Relevant Authority or Relevant Authorities approve the CRP Information or that Relevant Authority or Relevant Authorities reject the CRP Information.

2.5 If the Relevant Authority or Relevant Authorities reject the CRP Information:

- (a) the Authority shall (and shall procure that the Cabinet Office Markets and Suppliers Team shall) inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall revise the CRP Information, taking reasonable account of the Relevant Authority's or Relevant Authorities' comments, and shall re-submit the CRP Information to the Relevant Authority or Relevant Authorities for approval within 30 days of the date of the Relevant Authority's or Relevant Authorities' rejection. The provisions of Paragraphs 2.3 to 2.5 of this Part B shall apply again to any resubmitted CRP Information provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

2.6 Where the Supplier or a member of the Supplier Group has already provided CRP Information to a Department or the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely to the Cabinet Office Markets and Suppliers Team) and has received an Assurance of its CRP Information from that Department and the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely from the Cabinet Office Markets and Suppliers Team), then provided that the Assurance remains Valid on the date by which the CRP Information would otherwise be required, the Supplier shall not be required to provide the CRP Information under Paragraph 2.2 of this Part B if it provides a copy of the Valid Assurance to the Relevant Authority or Relevant Authorities on or before the date on which the CRP Information would otherwise have been required.

2.7 An Assurance shall be deemed Valid for the purposes of Paragraph 2.6 of this Part B if:

- (a) the Assurance is within the validity period stated in the Assurance (or, if no validity period is stated, no more than 12 months has elapsed since it was issued and no more than 18 months has elapsed since the Accounting Reference Date on which the CRP Information was based); and
- (b) no Corporate Change Events or Financial Distress Events (or events which would be deemed to be Corporate Change Events or Financial

Distress Events if this Agreement had then been in force) have occurred since the date of issue of the Assurance.

2.8 If this Agreement is a Critical Service Contract, the Supplier shall provide an updated version of the CRP Information (or, in the case of Paragraph 2.8(c) of this Part B its initial CRP Information) to the Relevant Authority or Relevant Authorities:

- (a) within 14 days of the occurrence of a Financial Distress Event (along with any additional highly confidential information no longer exempted from disclosure under Paragraph 2.11 of this Part B);
- (b) within 30 days of a Corporate Change Event unless:
  - (i) the Supplier requests and the Relevant Authority (acting reasonably) agrees to a grace period, in the event of which the time period for the Supplier to comply with this Paragraph 2.8 shall be extended as determined by the Relevant Authority (acting reasonably) (the “**Grace Period**”), such Grace Period to be no longer than six months after the Corporate Change Event. During a Grace Period the Supplier shall regularly and fully engage with the Relevant Authority to enable it to understand the nature of the Corporate Change Event and the Relevant Authority shall reserve the right to terminate a Grace Period at any time if the Supplier fails to comply with this Paragraph 2.8; or
  - (ii) not required pursuant to Paragraph 2.10 of this Part B;
- (c) within 30 days of the date that:
  - (i) the credit rating(s) of each of the Supplier and its Parent Undertakings fail to meet any of the criteria specified in Paragraph 2.10 of this Part B; or
  - (ii) none of the credit rating agencies specified at Paragraph 2.10 of this Part B hold a public credit rating for the Supplier or any of its Parent Undertakings; and
- (d) in any event, within 6 months after each Accounting Reference Date or within 15 months of the date of the previous Assurance received from the Relevant Authority (whichever is the earlier), unless:
  - (i) updated CRP Information has been provided under any of Paragraphs 2.8(a) 2.8(b) or 2.8(c) of this Part B since the most recent Accounting Reference Date (being no more than 12 months previously) within the timescales that would ordinarily be required for the provision of that information under this Paragraph 2.8(d); or
  - (ii) unless not required pursuant to Paragraph 2.10 of this Part B.

2.9 Where the Supplier is a Public Sector Dependent Supplier and this Agreement is not a Critical Service Contract, then on the occurrence of any of the events specified in Paragraphs 2.8(a) to (d) of this Part B, the Supplier shall provide at the request of the Relevant Authority or Relevant Authorities and within the applicable timescales for each event as set out in Paragraph 2.8 of this Part B (or such longer timescales as may be notified to the Supplier by the Authority), the CRP Information to the Relevant Authority or Relevant Authorities.

2.10 Where the Supplier or a Parent Undertaking of the Supplier has a credit rating of either:

- (a) Aa3 or better from Moody's;
- (b) AA- or better from Standard and Poors; or
- (c) AA- or better from Fitch,

the Supplier will not be required to provide any CRP Information unless or until either (i) a Financial Distress Event occurs or (ii) the Supplier and its Parent Undertakings cease to fulfil the criteria set out in this Paragraph 2.10, in which cases the Supplier shall provide the updated version of the CRP Information in accordance with Paragraph 2.8 of this Part B.

2.11 Subject to Paragraph 4 of this Part B, where the Supplier demonstrates to the reasonable satisfaction of the Relevant Authority or Relevant Authorities that a particular item of CRP Information is highly confidential, the Supplier may, having orally disclosed and discussed that information with the Relevant Authority or Relevant Authorities, redact or omit that information from the CRP Information provided that if a Financial Distress Event occurs, this exemption shall no longer apply and the Supplier shall promptly provide the relevant information to the Relevant Authority or Relevant Authorities to the extent required under Paragraph 2.8 of this Part B.

### **3 TERMINATION RIGHTS**

3.1 The Authority shall be entitled to terminate this Agreement under Clause 35.1(b) (*Termination by the Authority*) if the Supplier is required to provide CRP Information under Paragraph 2 of this Part B and either:

- (a) the Supplier fails to provide the CRP Information within 4 months of the Implementation Services Commencement Date if this is a Critical Service Contract or otherwise within 4 months of the Relevant Authority's or Relevant Authorities' request; or
- (b) the Supplier fails to obtain an Assurance from the Relevant Authority or Relevant Authorities within 4 months of the date that it was first required to provide the CRP Information under this Agreement.

### **4 CONFIDENTIALITY AND USAGE OF CRP INFORMATION**

4.1 The Authority agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the Supplier and/or Supplier Group members on its UK Public Sector Business and/or services in respect of CNI and to enable contingency planning to maintain service continuity for end users and protect CNI in such eventuality.

4.2 Where the Relevant Authority is the Cabinet Office Markets and Suppliers Team, at the Supplier's request, the Authority shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and usage agreement with the Supplier containing terms no less stringent than those placed on the Authority under Paragraph 4.1 of this Part B and Clause 22 (*Confidentiality*).

4.3 The Supplier shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to enable disclosure of that information to the Relevant Authority or Relevant Authorities pursuant to Paragraph 2 of this Part B subject, where necessary, to the Relevant Authority or Relevant

Authorities entering into an appropriate confidentiality agreement in the form required by the third party.

4.4 Where the Supplier is unable to procure consent pursuant to Paragraph 4.3 of this Part B, the Supplier shall use all reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds including by:

- (a) redacting only those parts of the information which are subject to such obligations of confidentiality; and
- (b) providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:
  - (i) summarising the information;
  - (ii) grouping the information;
  - (iii) anonymising the information; and
  - (iv) presenting the information in general terms.

4.5 The Supplier shall provide the Relevant Authority or Relevant Authorities with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Supplier is legally permitted to do so.

**ANNEX 1: EXPOSURE INFORMATION (CONTRACTS LIST)**

1. The Supplier shall:
  - 1.1 provide details of all agreements held by members of the Supplier Group where those agreements are for goods, services or works provision and:
    - (a) are with any UK public sector bodies including: central Government departments and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police fire and rescue, education bodies and the devolved administrations;
    - (b) are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in Paragraph 1.1(a) of this Annex 1 and where the member of the Supplier Group is acting as a key sub-contractor under the agreement with the end recipient; or
    - (c) involve or could reasonably be considered to involve CNI;
  - 1.2 provide the Relevant Authority with a copy of the latest version of each underlying contract worth more than £5m per contract year and their related key sub-contracts, which shall be included as embedded documents within the CRP Information or via a directly accessible link.

**ANNEX 2: CORPORATE RESOLVABILITY ASSESSMENT (STRUCTURAL REVIEW)**

1. The Supplier shall:
  - 1.1 provide sufficient information to allow the Relevant Authority to understand the implications on the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex 1 if the Supplier or another member of the Supplier Group is subject to an Insolvency Event.
  - 1.2 ensure that the information is presented so as to provide a simple, effective and easily understood overview of the Supplier Group; and
  - 1.3 provide full details of the importance of each member of the Supplier Group to the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex 1 and the dependencies between each.

**ANNEX 3: FINANCIAL INFORMATION AND COMMENTARY**

- 1 The Supplier shall:
  - 1.1 provide sufficient financial information for the Supplier Group level, contracting operating entities level, and shared services entities' level to allow the Relevant Authority to understand the current financial interconnectedness of the Supplier Group and the current performance of the Supplier as a standalone entity; and
  - 1.2 ensure that the information is presented in a simple, effective and easily understood manner.
- 2 For the avoidance of doubt the financial information to be provided pursuant to Paragraph 1 of this Annex 3 should be based on the most recent audited accounts for the relevant entities (or interim accounts where available) updated for any material changes since the Accounting Reference Date provided that such accounts are available in a reasonable timeframe to allow the Supplier to comply with its obligations under this Schedule 8.6. If such accounts are not available in that timeframe, financial information should be based on unpublished unaudited accounts or management accounts (disclosure of which to the Cabinet Office Markets and Suppliers Team remains protected by confidentiality).

**SCHEDULE 8.7**

**CONDUCT OF CLAIMS**

**PART A: CONDUCT OF CLAIMS (OTHER THAN AUTHORITY SENSITIVE CLAIMS)****1 INDEMNITIES**

1.1 This Part A shall apply to the conduct, by a Party from whom an indemnity is sought under this Agreement (the “**Indemnifier**”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”), provided always that this Part A shall not apply (and Part B shall apply) in respect of any Authority Sensitive Claim.

1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within ten (10) Working Days of receipt of the same.

1.3 Subject to Paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.

1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:

- (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
- (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute;
- (c) the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
- (d) the Indemnifier shall conduct the Claim with all due diligence.

1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:

- (a) the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
- (b) the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within ten (10) Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or
- (c) the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

**2 SENSITIVE CLAIMS**

- 2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "**Sensitive Claim**"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

**PART B: CONDUCT OF AUTHORITY SENSITIVE CLAIMS****1 NOTICE OF AUTHORITY SENSITIVE CLAIMS**

1.1 If the Supplier receives any notice of (or otherwise reasonably becomes aware of) any Authority Sensitive Claim, the Supplier shall give notice in writing to the Authority as soon as reasonably practicable and in any event within five (5) Working Days of receipt of such notice (or of otherwise reasonably becoming aware of such Authority Sensitive Claim) and where the Supplier fails to provide such notice (and without prejudice to the Authority's other rights and remedies under this Agreement arising in respect of such failure), such failure may be taken into account in determining the extent of legal costs that the Supplier may be entitled to claim (if any) as Allowable Costs pursuant to Annex 3 to Schedule 7.1 (*Charges and Invoicing*).

1.2 On the giving of a notice by the Supplier pursuant to Paragraph 1.1, the Authority shall be entitled to take over conduct of the Authority Sensitive Claim (where applicable) in the name of the Supplier at the Authority's own expense (including the conduct of any discussions, negotiations, settlement, defence, dispute, compromise and/or appeal in connection with or relating to such Authority Sensitive Claim), provided always that, subject to the provisions of Annex 3, Appendix 1 (*Legal Costs – Claimant Cases*) to Schedule 7.1 (*Charges and Invoicing*) and to the Authority's compliance with Paragraph 1.4, nothing in this Paragraph 1.2 shall reduce the Supplier's liability under the indemnity in Clause 26.13 (*Limitations on Liability and Liquidated Damages*) as a result of the Authority taking over conduct of such Authority Sensitive Claim pursuant to this Part B.

1.3 If the Authority does elect to take over conduct of the Authority Sensitive Claim, the Supplier shall give the Authority (and its representatives and advisers) all reasonable cooperation and assistance (including access to Supplier Personnel and/or to any relevant information, data and/or records (including advice received from third parties)) for the purposes of such Authority Sensitive Claim and the Supplier shall not make any comment and/or admission and/or take any further action in connection with such Authority Sensitive Claim which could be prejudicial to the conduct of such Authority Sensitive Claim and/or which could reasonably be prejudicial to the interests and/or reputation of the Authority (having regard to, amongst other things, the grounds upon which the Authority is exercising its right to take conduct of such Authority Sensitive Claim, as referred to in limbs (a) to (d) (inclusive) of the definition of Authority Sensitive Claim) without the prior written consent of the Authority.

1.4 With respect to any Authority Sensitive Claim conducted by the Authority pursuant to Paragraph 1.3:

- (a) the Authority shall keep the Supplier fully informed and consult with it about material elements of the conduct of such Authority Sensitive Claim;
- (b) the Authority shall not bring the name of the Supplier into disrepute, provided always that the Authority shall not be in breach of this obligation to the extent that the nature of and/or circumstances giving rise to the Authority Sensitive Claim in question arise as a result of any act, omission or default by the Supplier and:
  - (i) the nature of and/or circumstances giving rise to such Authority Sensitive Claim of themselves operate (or may reasonably be expected to operate) to bring the name of the Supplier into disrepute; and

- (ii) the Authority (in conducting such Authority Sensitive Claim in the manner referred to in Paragraph 1.4(d)) has taken such steps as may reasonably be expected to be taken by the Authority (having regard to all relevant circumstances) to limit the Supplier's name being brought into further disrepute;
- (c) the Authority shall not pay or settle such Authority Sensitive Claim without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed) to the extent only that the Supplier shall be responsible for the whole (or such relevant part) of any such payment and/or settlement; and
- (d) the Authority shall conduct the Claim with all due diligence.

1.5 The Supplier shall be entitled to have conduct of an Authority Sensitive Claim and shall be free to pay or settle such Authority Sensitive Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:

- (a) the Authority is not entitled to take conduct of the Authority Sensitive Claim in accordance with Paragraph 1.3;
- (b) the Authority fails to notify the Supplier in writing of its intention to take conduct of the relevant Authority Sensitive Claim within ten (10) Working Days of the notice from the Supplier or if the Authority notifies the Supplier in writing that it does not intend to take conduct of the Authority Sensitive Claim; or
- (c) the Authority fails to comply in any material respect with the provisions of Paragraph 1.4.

## **2 AUTHORITY SENSITIVE CLAIMS**

2.1 For the purposes of this Part B, an "**Authority Sensitive Claim**" shall mean a claim, potential claim, dispute or legal proceedings initiated against or directed at (as the case may be) the Supplier (whether alone or with the Authority) by a Claimant and/or their representatives (including any representative in relation to the Claimant's estate) in connection with the performance of the Services by the Supplier pursuant to this Agreement, the value of which claim, potential claim, dispute or legal proceedings:

- (a) (in respect of any single claim, potential claim, dispute or legal proceedings not contemplated in Paragraph 2.1(b)) exceeds (or may reasonably be expected to exceed) five thousand pounds (£5,000); or
- (b) (in respect of any claim, potential claim, dispute or legal proceedings arising (at any time) out of the same or similar circumstances as any current and/or previous claim, potential claim, dispute or legal proceedings) is of any value,

and which:

- (c) arises out of or in connection with Authority policy;
- (d) may adversely affect the reputation of the Authority;
- (e) could reasonably be expected to attract third party interest, attention and/or scrutiny and/or may reasonably be expected to render the Authority subject to third party interest, attention and/or scrutiny; and/or

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(f) is caused by the negligence or breach of this Agreement by the Authority.

**PART C: GENERAL PROVISIONS**

**1      RECOVERY OF SUMS**

1.1    If:

- 1.1.1    the Indemnifier pays to the Beneficiary an amount in respect of an indemnity to which Part A of this Schedule 8.7 applies and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier; or
- 1.1.2    the Authority pays to the Supplier in accordance with Annex 3, Appendix 1 (*Legal Costs – Claimant Cases*) to Schedule 7.1 (*Charges and Invoicing*) an amount in respect of legal costs that the Supplier is entitled to claim as Allowable Costs and the Supplier subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to such legal costs, the Supplier shall forthwith repay to the Authority,

whichever is the lesser of:

- (a)    an amount equal to the sum recovered by the Beneficiary or the Supplier (as the case may be) or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained (less any out-of-pocket costs and expenses properly incurred by the Beneficiary or the Supplier (as the case may be) in recovering or obtaining the same); and
- (b)    the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity or the amount paid to the Supplier by the Authority in respect of such legal costs pursuant to Annex 3, Appendix 1 (*Legal Costs – Claimant Cases*) to Schedule 7.1 (*Charges and Invoicing*).

**2      MITIGATION**

2.1    Without prejudice to Annex 3, Appendix 1 (*Legal Costs – Claimant Cases*) to Schedule 7.1 (*Charges and Invoicing*), each of the Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to an indemnity to which this Schedule 8.7 applies.

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**SCHEDULE 9.1**

**STAFF TRANSFER**

## WCA

1 **DEFINITIONS**

1.1 In this Schedule, the following definitions shall apply:

**“Admission Agreement”** has the meaning given in Part D;

**“Fair Deal Employees”** has the meaning given in Part D;

**“Former Supplier”** means a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);

**“New Fair Deal”** means the revised Fair Deal position set out in the HM Treasury guidance: *“Fair Deal for staff pensions: staff transfer from central government”* issued in October 2013 including:

- (a) any amendments to that document immediately prior to the Relevant Transfer Date; and
- (b) any similar pension protection in accordance with the Annexes D1-D3 inclusive to Part D of this Schedule as notified to the Supplier by the Authority;

**“Notified Sub-contractor”** means a Sub-contractor identified in the Annex E2 to this Schedule 9.1 to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;

**“Old Fair Deal”** means HM Treasury Guidance *“Staff Transfers from Central Government: A Fair Deal for Staff Pensions”* issued in June 1999 including the supplementary guidance *“Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues”* issued in June 2004;

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

**“Relevant Transfer Date”** means in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. For the purposes of Part D and its Annexes, where the Supplier or a Sub-contractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor), references to the Relevant Transfer Date shall become

	references to the Operational Service Commencement Date;
<b>“Service Transfer”</b>	means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
<b>“Service Transfer Date”</b>	means the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
<b>“Staffing Information”</b>	means in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, all information required in Annex E2 in the format specified and with the identities of Data Subjects anonymised where possible. The Authority may reasonably make changes to the format or information requested in Annex E2 from time to time;
<b>“Statutory Schemes”</b>	means the CSPS, NHSPS or LGPS as defined in the Annexes to Part D of this Schedule;
<b>“Supplier's Final Supplier Personnel List”</b>	means a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
<b>“Supplier's Provisional Supplier Personnel List”</b>	means a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
<b>“Transferring Authority Employees”</b>	means those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;
<b>“Transferring Former Supplier Employees”</b>	means in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and
<b>“Transferring Supplier Employees”</b>	means those employees of the Supplier and/or the Supplier's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

## 2 INTERPRETATION

2.1 Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity,

undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

**3 APPLICABLE PARTS OF THIS SCHEDULE**

3.1 Only the following parts of this Schedule shall apply to this Agreement:

- (a) Part B (*Staff Transfer At Start Date – Transfer From Former Supplier*)
- (b) Part D (*Pensions*)
  - (i) - Annex D1 (CSPS)
  - (ii) - Annex D2 (NHSPS)
  - (iii) - Annex D3 (LGPS)
  - (iv) - Annex D4 (Other Schemes)
- (c) Part E (*Staff Transfer on Exit*)
  - (i) Annex E1 (List Of Notified Sub-Contractors)
  - (ii) Annex E2 (Staffing Information)

For the avoidance of doubt, Part A and Part C are not applicable to the Agreement.

**PART A: TRANSFERRING AUTHORITY EMPLOYEES AT COMMENCEMENT OF SERVICES – NOT USED**

**1 RELEVANT TRANSFERS**

1.1 The Authority and the Supplier agree that:

- (a) the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Authority Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between the Authority and the Transferring Authority Employees (except in relation to any terms disappiled through operation of regulation 10 of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-contractor and each such Transferring Authority Employee.

1.2 The Authority shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Authority Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Authority; and (ii) the Supplier and/or any Notified Sub-contractor (as appropriate).

**2 AUTHORITY INDEMNITIES**

2.1 Subject to Paragraph 2.2, the Authority shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Authority in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee occurring before the Relevant Transfer Date;
- (b) the breach or non-observance by the Authority before the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Authority Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Authority Employees which the Authority is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing the Transferring Authority Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions;

- (i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
- (ii) in relation to any employee who is not a Transferring Authority Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.

(e) a failure of the Authority to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees arising before the Relevant Transfer Date;

(f) any claim made by or in respect of any person employed or formerly employed by the Authority other than a Transferring Authority Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of the Employment Regulations; and

(g) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Authority in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Authority Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Supplier or any Sub-contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Authority as a Transferring Authority Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Authority Employee, that his/her contract of employment has been transferred from the Authority to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations then:

- (a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority; and

(b) the Authority may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-contractor, or take such other reasonable steps as the Authority considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Authority shall indemnify the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

- (a) shall not apply to:
  - (i) any claim for:
    - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
    - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
  - in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
  - (ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority within 6 months of the Relevant Transfer Date.

2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Authority nor dismissed by the Supplier and/or any Notified Sub-contractor within the

time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

### **3 SUPPLIER INDEMNITIES AND OBLIGATIONS**

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Authority Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Authority Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Authority Employees arising from or connected with any failure by the Supplier or any Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Supplier or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Authority Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Authority Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Supplier or any Sub-contractor to, or in respect of, any Transferring Authority Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory

authority relates to financial obligations arising on or after the Relevant Transfer Date; and

- (ii) in relation to any employee who is not a Transferring Authority Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees in respect of the period from (and including) the Relevant Transfer Date;
- (h) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Authority's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- (i) a failure by the Supplier or any Sub-contractor to comply with its obligations under Paragraph 2.8 above.

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

3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Authority Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Authority and the Supplier.

## **4 INFORMATION**

4.1 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority in writing such information as is necessary to enable the Authority to carry out its duties under regulation 13 of the Employment Regulations. The Authority shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

**5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Authority Employee as set down in:
  - (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
  - (b) Old Fair Deal; and/or
  - (c) the New Fair Deal.
- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Change Control Procedure.

**6 PENSIONS**

- 6.1 The Supplier shall, and/or shall procure that each of its Sub-contractors shall, comply with:
  - (a) the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and
  - (b) Part D (and its Annexes) to this Schedule 9.1.

**PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES**

**1 RELEVANT TRANSFERS**

1.1 The Authority and the Supplier agree that:

- (a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10 of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-contractor and each such Transferring Former Supplier Employee.

1.2 The Authority shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Authority shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

**2 FORMER SUPPLIER INDEMNITIES**

2.1 Subject to Paragraph 2.2, the Authority shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
- (b) the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
- (c) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other

statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

- (ii) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- (d) a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- (e) any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Agreement and/or the Employment Regulations; and
- (f) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Supplier and/or any Sub-contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Authority as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations then:

- (a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Supplier; and

- (b) the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

- (a) shall not apply to:
  - (i) any claim for:
    - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
    - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
  - in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
  - (ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority and, if applicable, the Former Supplier, within 6 months of the Relevant Transfer Date.

2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

### **3 SUPPLIER INDEMNITIES AND OBLIGATIONS**

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
  - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Supplier or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions;

- (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
- (ii) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

(g) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;

(h) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13(4) of the Employment Regulations; and

(i) a failure by the Supplier or any Sub-contractor to comply with its obligations under Paragraph 2.8 above.

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

3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

#### **4 INFORMATION**

4.1 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and/or at the Authority's direction, the Former Supplier, in writing such information as is necessary to enable the Authority and/or the Former Supplier to

carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

## **5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

5.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in:

- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
- (b) Old Fair Deal; and/or
- (c) the New Fair Deal.

5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

## **6 PROCUREMENT OBLIGATIONS**

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

## **7 PENSIONS**

7.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with:

- (a) the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and
- (b) Part D (and its Annexes) to this Schedule 9.1.

**PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES – NOT USED**

**1 PROCEDURE IN THE EVENT OF TRANSFER**

- 1.1 The Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.
- 1.2 If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations then:
  - (a) the Supplier shall, and shall procure that the relevant Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and
  - (b) the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2(b) is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the 15 Working Day period specified in Paragraph 1.2(b):
  - (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved,the Supplier and/or the Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

**2 INDEMNITIES**

- 2.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:
  - (a) indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

(b) procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.

2.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.

2.4 The indemnities in Paragraph 2.1:

(a) shall not apply to:

(i) any claim for:

(A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Supplier and/or any Sub-contractor to the Authority and, if applicable, Former Supplier within 6 months of the Relevant Transfer Date.

### **3 PROCUREMENT OBLIGATIONS**

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

**PART D: PENSIONS****1 DEFINITIONS**

1.1 In this Part D and Part E, the following words have the following meanings and they shall supplement Schedule 1 (Definitions), and shall be deemed to include the definitions set out in the Annexes to this Part D:

<b>"Actuary"</b>	means a Fellow of the Institute and Faculty of Actuaries;
<b>"Administering Authority"</b>	has the meaning given in Annex D3 to this Part D;
<b>"Admission Agreement"</b>	means either or both of the CSPS Admission Agreement (as defined in Annex D1: CSPS) or the LGPS Admission Agreement (as defined in Annex D3: LGPS), as the context requires;
<b>"Best Value Direction"</b>	means the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate);
<b>"Broadly Comparable"</b>	<p>means:</p> <p class="list-item-l1">(a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and/or</p> <p class="list-item-l1">(b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,</p> <p>and "<b>Broad Comparability</b>" shall be construed accordingly;</p>
<b>"CSPS"</b>	means the schemes as defined in Annex D1 to this Part D;
<b>"CSPS Eligible Employees"</b>	has the meaning given in Annex D1 to this Part D;
<b>"Direction Letter/Determination"</b>	has the meaning given in Annex D2 to this Part D;

<b>“Fair Deal Eligible Employees”</b>	means each of the CSPS Eligible Employees (as defined in Annex D1 to this Part D), the NHSPS Eligible Employees (as defined in Annex D2 to this Part D) and/or the LGPS Eligible Employees (as defined in Annex D3 to this Part D) (as applicable) (and shall include any such employee who has been admitted to and/or remains eligible to join a Broadly Comparable pension scheme at the relevant time in accordance with Paragraph 10 or 11 of this Part D);
<b>“Fair Deal Employees”</b>	means any of: <ul style="list-style-type: none"> <li>(a) Transferring Authority Employees;</li> <li>(b) Transferring Former Supplier Employees; and/or</li> <li>(c) employees who are not Transferring Authority Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Sub-contractor, and whose employment is not terminated in accordance with the provisions of Paragraph 2.5 of Part A or Part B or Paragraph 1.4 of Part C;</li> <li>(d) where the Supplier or a Sub-contractor was the Former Supplier, the employees of the Supplier (or Sub-contractor) who at the Relevant Transfer Date are or become entitled to New Fair Deal or Best Value Direction protection in respect of any of the Statutory Schemes or a Broadly Comparable pension scheme provided in accordance with Paragraph 10 of this Part D as notified by the Authority;</li> </ul>
<b>“Fund Actuary”</b>	means a Fund Actuary as defined in Annex D3 to this Part D;
<b>“LGPS”</b>	means the scheme as defined in Annex D3 to this Part D;
<b>“LGPS Eligible Employees”</b>	has the meaning given in Annex D3 to this Part D;
<b>“NHS Pensions”</b>	has the meaning given in Annex D2 to this Part D;
<b>“NHSPS”</b>	means the schemes as defined in Annex D2 to this Part D; and
<b>“NHSPS Eligible Employees”</b>	has the meaning given in Annex D2 to this Part D.

**2 PARTICIPATION**

2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPS, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.

2.2 The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter/Determination, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.

2.3 The Supplier undertakes:

- (a) to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter/Determination or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
- (b) subject to Paragraph 5 of Annex D3: LGPS to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.

2.4 Where the Supplier is the Former Supplier (or a Sub-contractor is a sub-contractor of the Former Supplier) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor) at the Operational Service Commencement Date, this Part D and its Annexes shall be modified accordingly so that the Supplier (or Sub-contractor) shall comply with its requirements from the Operational Service Commencement Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The Supplier (or Sub-contractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the Authority.

**3 PROVISION OF INFORMATION**

3.1 The Supplier undertakes to the Authority:

- (a) to provide all information which the Authority may reasonably request concerning matters referred to in this Part D as expeditiously as possible;
- (b) not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Authority (such consent not to be unreasonably withheld or delayed); and
- (c) retain such records as would be necessary to manage the pension aspects in relation to any current or former Fair Deal Eligible Employees arising on expiry or termination of this Agreement.

**4 INDEMNITIES**

4.1 The Supplier shall indemnify and keep indemnified the Authority, NHS Pensions, any Replacement Supplier and/or any Replacement Sub-contractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:

- (a) arise out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any breach by the Supplier of this Part D, and/or the CSPS Admission Agreement and/or the Direction Letter/Determination and/or the LGPS Admission Agreement;
- (b) relate to the payment of benefits under and/or participation in a pension scheme (as defined in section 150(1) Finance Act 2004) provided by the Supplier or a Sub-contractor on and after the Relevant Transfer Date until the date of termination or expiry of this Agreement, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with Paragraphs 10 or 11 of this Part D;
- (c) relate to claims by Fair Deal Employees of the Supplier and/or of any Sub-contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
  - (i) relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Agreement;
  - (ii) arise out of the failure of the Supplier and/or any relevant Sub-contractor to comply with the provisions of this Part D before the date of termination or expiry of this Agreement; and/or
- (d) arise out of or in connection with the Supplier (or its Sub-contractor) allowing anyone who is not an NHSPS Fair Deal Employee to join or claim membership of the NHSPS at any time during the Term.

4.2 The indemnities in this Part D and its Annexes:

- (a) shall survive termination of this Agreement; and
- (b) shall not be affected by the caps on liability contained in Clause 26 (*Limitations on Liability and Liquidated Damages*).

**5 DISPUTES**

5.1 The Dispute Resolution Procedure will not apply to any dispute (i) between the Authority and/or the Supplier or (ii) between their respective actuaries and/or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the Authority and/or the Supplier be referred to an independent Actuary:

- (a) who will act as an expert and not as an arbitrator;
- (b) whose decision will be final and binding on the Authority and/or the Supplier; and
- (c) whose expenses shall be borne equally by the Authority and/or the Supplier unless the independent Actuary shall otherwise direct.

5.2 The independent Actuary shall be agreed by the Parties or, failing such agreement the independent Actuary shall be appointed by the President for the time being of the Institute and Faculty of Actuaries on the application by the Parties.

**6 THIRD PARTY RIGHTS**

- 6.1 The Parties agree Clause 45 (*Third Party Rights*) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation in respect of to him or her by the Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.
- 6.2 Further, the Supplier must ensure that the CRTPA will apply to any Sub-contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Sub-contractor in his or her own right under section 1(1) of the CRTPA.

**7 BREACH**

- 7.1 The Supplier agrees to notify the Authority should it breach any obligations it has under this Part D and agrees that the Authority shall be entitled to terminate its Agreement for material Default in the event that the Supplier:
  - (a) commits an irremediable breach of any provision or obligation it has under this Part D; or
  - (b) commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Authority giving particulars of the breach and requiring the Supplier to remedy it.

**8 TRANSFER TO ANOTHER EMPLOYER/SUB-CONTRACTORS**

- 8.1 Save on expiry or termination of this Agreement, if the employment of any Fair Deal Eligible Employee transfers to another employer (by way of a transfer under the Employment Regulations or other form of compulsory transfer of employment), the Supplier shall or shall procure that any relevant Sub-contractor shall:
  - (a) notify the Authority as far as reasonably practicable in advance of the transfer to allow the Authority to make the necessary arrangements for participation with the relevant Statutory Scheme(s);
  - (b) consult with about, and inform those Fair Deal Eligible Employees of, the pension provisions relating to that transfer; and
  - (c) procure that the employer to which the Fair Deal Eligible Employees are transferred (the "**New Employer**") complies with the provisions of this Part D and its Annexes provided that references to the "Supplier" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Eligible Employees so transferred to the New Employer.

**9 PENSION ISSUES ON EXPIRY OR TERMINATION**

- 9.1 The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Agreement.
- 9.2 The Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Agreement provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme's

Actuary) as the Replacement Supplier and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or the Authority may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection following a Service Transfer.

## **10 BROADLY COMPARABLE PENSION SCHEME ON RELEVANT TRANSFER DATE**

10.1 If the terms of any of Paragraphs 4 of Annex D2: NHSPS or 3.1 of Annex D3: LGPS applies, the Supplier must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Authority.

10.2 Such Broadly Comparable pension scheme must be:

- (a) established by the Relevant Transfer Date;
- (b) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
- (c) capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former Supplier's Broadly Comparable pension scheme (unless otherwise instructed by the Authority);
- (d) capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Authority); and
- (e) maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Authority).

10.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Sub-contractors shall):

- (a) supply to the Authority details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the Relevant Transfer Date) covering all relevant Fair Deal Employees, as soon as it is able to do so before the Relevant Transfer Date (where possible) and in any event no later than 7 days after receipt of the certificate;
- (b) be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
- (c) instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing the bulk transfer process with the Actuary to the Former Supplier's Broadly Comparable pension scheme or the Actuary to the relevant Statutory Scheme (as appropriate) and to provide all such co-operation and assistance with any other Actuary appointed by the Authority (where applicable). This will be

with a view to the bulk transfer terms providing day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme in respect of any Fair Deal Eligible Employee who consents to such a transfer; and

- (d) provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 10 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-contractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

10.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Agreement:

- (a) allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be on a past service reserve basis which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits). The actuarial basis for this past service reserve basis should be aligned to the funding requirements of the Broadly Comparable pension scheme in place at the time the bulk transfer terms are offered. The bulk transfer terms shall be subject to an underpin in relation to any service credits awarded in the Broadly Comparable pension scheme in accordance with Paragraph 10.3(c) such that the element of the past service reserve amount which relates to such service credits shall be no lower than that required by the bulk transfer terms that were agreed in accordance with Paragraph 10.3(c) but using the last day of the Fair Deal Eligible Employees' employment with the Supplier or Sub-contractor (as appropriate) as the date used to determine the actuarial assumptions; and
- (b) if the transfer payment paid by the trustees of the Broadly Comparable pension scheme is less (in the opinion of the Actuary to the Replacement Supplier's Broadly Comparable pension scheme (or to the relevant Statutory Scheme if applicable)) than the transfer payment which would have been paid had Paragraph 10.4(a) been complied with, the Supplier shall (or shall procure that the Sub-contractor shall) pay the amount of the difference to the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the Authority shall otherwise direct. The Supplier shall indemnify the Authority or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Authority directs) for any failure to pay the difference as required under this Paragraph.

## 11 BROADLY COMPARABLE PENSION SCHEME IN OTHER CIRCUMSTANCES

11.1 If the terms of any of Paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and/or 3.2 of Annex D3: LGPS apply, the Supplier must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the Authority.

11.2 Such Broadly Comparable pension scheme must be:

- (a) established by the date of cessation of participation in the Statutory Scheme;
- (b) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
- (c) capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Authority);
- (d) capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Authority); and
- (e) maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Authority).

11.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 11, the Supplier shall (and shall procure that any of its Sub-contractors shall):

- (a) supply to the Authority details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than 7 days after receipt of the certificate;
- (b) be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995; and
- (c) where required to do so by the Authority, instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with the Actuary to the relevant Statutory Scheme and to provide all such co-operation and assistance with any other Actuary appointed by the Authority (where applicable). The Supplier must ensure that day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the Statutory Scheme and the Supplier shall be fully responsible for any costs of providing those credits in excess

of the bulk transfer payment received by the Broadly Comparable pension scheme; and

(d) provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 11 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-contractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

11.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 11, the Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Agreement allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits ("the Shortfall"), the Supplier or the Sub-contractor (as agreed between them) must pay the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the Supplier and any Sub-contractor, the Shortfall shall be paid by the Supplier. The Supplier shall indemnify the Authority or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Authority directs) for any failure to pay the Shortfall under this Paragraph.

**12 RIGHT OF SET-OFF**

12.1 The Authority shall have a right to set off against any payments due to the Supplier under this Agreement an amount equal to:

(a) any unpaid employer's contributions or employee's contributions or any other financial obligations under the CSPS or any CSPS Admission Agreement in respect of the CSPS Eligible Employees whether due from the Supplier or from any relevant Sub-contractor or due from any third party under any indemnity, bond or guarantee;

(b) any unpaid employer's contributions or employee's contributions or any other financial obligations under the NHSPS or any Direction Letter/Determination in respect of the NHSPS Eligible Employees whether due from the Supplier or from any relevant Sub-contractor or due from any third party under any indemnity, bond or guarantee; or

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(c) any unpaid employer's contributions or employee's contributions or any other financial obligations under the LGPS or any LGPS Admission Agreement in respect of the LGPS Eligible Employees whether due from the Supplier or from any relevant Sub-contractor or due from any third party under any indemnity, bond or guarantee;

and shall pay such set off amount to the relevant Statutory Scheme.

12.2 The Authority shall also have a right to set off against any payments due to the Supplier under this Agreement all reasonable costs and expenses incurred by the Authority as result of Paragraphs 12.1 above.

**ANNEX D1: CSPS****1 DEFINITIONS**

1.1 In this Annex D1: CSPS to Part D: Pensions, the following words have the following meanings:

<b>"CSPS Admission Agreement"</b>	an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the Services;
<b>"CSPS Eligible Employee"</b>	any CSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the CSPS under a CSPS Admission Agreement;
<b>"CSPS Fair Deal Employee"</b>	a Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the CSPS in accordance with the provisions of New Fair Deal;
<b>"CSPS"</b>	the "Alpha" pension scheme introduced under the Public Service (Civil Servants and Others) Pensions Regulations 2014 available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme.

**2 FUTURE SERVICE BENEFITS**

2.1 In accordance with New Fair Deal, the Supplier and/or any of its Sub-contractors to which the employment of any CSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Agreement or a Relevant Transfer, if not an employer which participates automatically in the CSPS, shall each secure a CSPS Admission Agreement to ensure that CSPS Fair Deal Employees or CSPS Eligible Employees as appropriate shall be either admitted into, or offered continued membership of, the relevant section of the CSPS that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date. The Supplier and/or any of its Sub-contractors shall procure that the CSPS Fair Deal Employees continue to accrue benefits in the CSPS in accordance with the provisions governing the relevant section of the CSPS for service from (and including) the Relevant Transfer Date.

2.2 If the Supplier and/or any of its Sub-contractors enters into a CSPS Admission Agreement in accordance with Paragraph 2.1 but the CSPS Admission Agreement is terminated during the term of this Agreement for any reason at a time when the Supplier or Sub-contractor still employs any CSPS Eligible Employees, the Supplier shall (and procure that its Sub-contractors shall) at no extra cost to the Authority, offer the remaining CSPS Eligible Employees membership of a pension scheme which is

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Broadly Comparable to the CSPS on the date those CSPS Eligible Employees ceased to participate in the CSPS in accordance with the provisions of Paragraph 11 of Part D.

**ANNEX D2: NHSPS****1 DEFINITIONS**

1.1 In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings:

<b>"Direction Letter/Determination"</b>	means an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Sub-contractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Sub-contractor in the NHSPS in respect of the NHSPS Fair Deal Employees;
<b>"NHS Broadly Comparable Employees"</b>	<p>means each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:</p> <ul style="list-style-type: none"> <li>(a) their employment with the Authority, an NHS Body or other employer which participates automatically in the NHSPS; or</li> <li>(b) their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Authority, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),</li> </ul> <p>but who is now ineligible to participate in the NHSPS under the rules of the NHSPS and in respect of whom the Authority has agreed are to be provided with a Broadly Comparable pension scheme to provide Pension Benefits that are Broadly Comparable to those provided under the NHSPS.</p>
<b>"NHSPS Eligible Employees"</b>	means any NHSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the NHSPS under a Direction Letter/Determination Letter.

**"NHSPS Fair Deal Employees"**

means other than the NHS Broadly Comparable Employees, each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:

- (a) their employment with the Authority, an NHS Body or other employer which participates automatically in the NHSPS; or
- (b) their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Authority, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),

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

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

**"NHS Body"**

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

**"NHS Pensions"**

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

**"NHSPS"**

means the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and the Public Service Pensions Act 2013 governed by subsequent regulations

under those Acts including the NHS Pension Scheme Regulations;

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

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

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

## **2 MEMBERSHIP OF THE NHSPS**

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Sub-contractors to which the employment of any NHSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Agreement or a Relevant Transfer, if not an NHS Body or other employer which participates automatically in the NHSPS, shall each secure a Direction Letter/Determination to enable the NHSPS Fair Deal Employees to retain either continuous active membership of or eligibility for the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Agreement.
- 2.2 Where it is not possible for the Supplier and/or any of its Sub-contractors to secure a Direction Letter/Determination on or before the Relevant Transfer Date, the Supplier must secure a Direction Letter/Determination as soon as possible after the Relevant Transfer Date, and in the period between the Relevant Transfer Date and the date the Direction Letter/Determination is secure, the Supplier must ensure that:
  - (a) all employer's and NHSPS Fair Deal Employees' contributions intended to go to the NHSPS are kept in a separate bank account; and
  - (b) the Pension Benefits and NHS Premature Retirement Rights of NHSPS Fair Deal Employees are not adversely affected.

- 2.3 The Supplier must supply to the Authority a complete copy of each Direction Letter/Determination within 5 Working Days of receipt of the Direction Letter/Determination.
- 2.4 The Supplier must ensure (and procure that each of its Sub-contractors (if any) ensures) that all of its NHSPS Fair Deal Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter/Determination.
- 2.5 The Supplier will (and will procure that its Sub-contractors (if any) will) comply with the terms of the Direction Letter/Determination, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health and Social Care in respect of the NHSPS Fair Deal Employees for so long as it remains bound by the terms of any such Direction Letter/Determination.
- 2.6 Where any employee omitted from the Direction Letter/Determination supplied in accordance with Paragraph 2 of this Annex are subsequently found to be an NHSPS Fair Deal Employee, the Supplier will (and will procure that its Sub-contractors (if any) will) treat that person as if they had been an NHSPS Fair Deal Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
- 2.7 The Supplier will (and will procure that its Sub-contractors (if any) will) provide any indemnity, bond or guarantee required by NHS Pensions in relation to a Direction Letter/Determination.

### **3 NHS PREMATURE RETIREMENT RIGHTS**

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

### **4 NHS BROADLY COMPARABLE EMPLOYEES**

- 4.1 The Supplier shall (and procure that its Sub-contractors shall), with effect from the Relevant Transfer Date, offer the NHSPS Broadly Comparable Employees membership of a pension scheme which is Broadly Comparable to NHSPS on the Relevant Transfer Date in accordance with Paragraph 10 of Part D. For the avoidance of doubt, this requirement is separate from any requirement to offer a Broadly Comparable pension scheme in accordance with Paragraph 5.2 below.

### **5 BREACH AND CANCELLATION OF ANY DIRECTION LETTER/DETERMINATION(S)**

- 5.1 The Supplier agrees that the Authority is entitled to make arrangements with NHS Pensions for the Authority to be notified if the Supplier (or its Sub-contractors) breaches the terms of its Direction Letter/Determination. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Authority in the event that it (or its Sub-contractor) breaches the terms of its Direction Letter/Determination.
- 5.2 If the Supplier (or its Sub-contractors, if relevant) ceases to participate in the NHSPS for whatever reason, the Supplier (or any such Sub-contractor, as appropriate) shall offer the NHSPS Eligible Employees membership of a pension scheme which is

Broadly Comparable to the NHSPS on the date the NHSPS Eligible Employees ceased to participate in the NHSPS in accordance with the provisions of Paragraph 11 of Part D.

**6 COMPENSATION**

6.1 If the Supplier (or its Sub-contractor, if relevant) is unable to provide the NHSPS Fair Deal Employees with either membership of:

- (a) the NHSPS (having used its best endeavours to secure a Direction Letter/Determination); or
- (b) a Broadly Comparable pension scheme,

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

6.2 This flexibility for the Authority to allow compensation in place of Pension Benefits is in addition to and not instead of the Authority's right to terminate the Agreement under Paragraph 7 (*Breach*) of Part D of this Schedule.

**7 SUPPLIER INDEMNITIES**

7.1 The Supplier must indemnify and keep indemnified the Authority and any Replacement Supplier against all Losses arising out of any claim by any NHSPS Fair Deal Employee or any NHS Broadly Comparable Employees that the provision of (or failure to provide) Pension Benefits and NHS Premature Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.

**ANNEX D3: LGPS****1 DEFINITIONS**

1.1 In this Annex D3 LGPS to Part D: Pensions, the following words have the following meanings:

<b>"2013 Regulations"</b>	means the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) (as amended from time to time);
<b>"Administering Authority"</b>	means in relation to the Fund [insert name], the relevant administering authority of that Fund for the purposes of the 2013 Regulations;
<b>"Fund Actuary"</b>	means the actuary to a Fund appointed by the Administering Authority of the Fund;
<b>"Fund"</b>	[insert name], a pension fund within the LGPS;
<b>[“Initial Contribution Rate”]</b>	[XX %] of pensionable pay (as defined in the 2013 Regulations);]
<b>"LGPS"</b>	means the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;
<b>"LGPS Admission Agreement"</b>	means an admission agreement within the meaning in Schedule 1 of the 2013 Regulations;
<b>"LGPS Admission Body"</b>	means an admission body (within the meaning of Part 3 of Schedule 2 of the 2013 Regulations);
<b>"LGPS Eligible Employees"</b>	means any LGPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the LGPS under an LGPS Admission Agreement;
<b>"LGPS Fair Deal Employees"</b>	means any Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the LGPS or a pension scheme that is Broadly Comparable to the LGPS in accordance with the provisions of New Fair Deal and/or the Best Value Direction; and
<b>"LGPS Regulations"</b>	means the 2013 Regulations and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI 2014/525), and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS.

**2 SUPPLIER TO BECOME AN LGPS ADMISSION BODY**

2.1 In accordance with the principles of New Fair Deal and/or the Best Value Direction, the Supplier and/or any of its Sub-contractors to which the employment of any LGPS Fair Deal Employee compulsorily transfers as a result of either the award of this Agreement or a Relevant Transfer, if not a scheme employer which participates automatically in the LGPS, shall each become an LGPS Admission Body by entering into an LGPS Admission Agreement with effect from the Relevant Transfer Date to enable the LGPS Fair Deal Employees to retain either continuous active membership of or eligibility for the LGPS on and from the Relevant Transfer Date for so long as they remain employed in connection with the delivery of the Services under this Agreement.

**OPTION 1**

2.2 [Any LGPS Fair Deal Employees who:

- (a) were active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall be admitted to the LGPS with effect on and from the Relevant Transfer Date; and
- (b) were eligible to join the LGPS (or a Broadly Comparable pension scheme) but were not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall retain the ability to join the LGPS on or after the Relevant Transfer Date if they wish to do so.]

**OPTION 2**

[Any LGPS Fair Deal Employees whether:

- (c) active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date; or
- (d) eligible to join the LGPS (or a Broadly Comparable pension scheme) but not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date

shall be admitted to the LGPS with effect on and from the Relevant Transfer Date. The Supplier shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Fair Deal Employees in any pension scheme other than the LGPS unless they cease to be eligible for membership of the LGPS.]

2.3 The Supplier will (and will procure that its Sub-contractors (if any) will) provide at its own cost any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.

**3 BROADLY COMPARABLE SCHEME**

3.1 If the Supplier and/or any of its Sub-contractors is unable to obtain an LGPS Admission Agreement in accordance with Paragraph 2.1 because the Administering Authority will not allow it to participate in the Fund, the Supplier shall (and procure that its Sub-contractors shall), with effect from the Relevant Transfer Date, offer the LGPS Fair Deal Employees membership of a pension scheme which is Broadly Comparable to LGPS on the Relevant Transfer Date in accordance with the provisions of Paragraph 10 of Part D.

3.2 If the Supplier and/or any of its Sub-contractors becomes an LGPS Admission Body in accordance with Paragraph 2.1 but the LGPS Admission Agreement is terminated during the term of this Agreement for any reason at a time when the Supplier or Sub-contractors still employs any LGPS Eligible Employees, the Supplier shall (and procure that its Sub-contractors shall) at no extra cost to the Authority, offer the remaining LGPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the LGPS on the date the LGPS Eligible Employees ceased to participate in the LGPS in accordance with the provisions of Paragraph 11 of Part D.

**4 DISCRETIONARY BENEFITS**

4.1 Where the Supplier and/or any of its Sub-contractors is an LGPS Admission Body, the Supplier shall (and procure that its Sub-contractors shall) comply with its obligations under regulation 60 of the 2013 Regulations in relation to the preparation of a discretionary policy statement.

**5 LGPS RISK SHARING**

5.1 Subject to Paragraphs 5.4 to 5.10, if at any time during the term of this Agreement the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Sub-contractor to pay employer contributions or other payments to the Fund in aggregate in excess of the Initial Contribution Rate, the excess of employer contributions above the Initial Contribution Rate for a Service Delivery Year (the “**Excess Amount**”) shall be paid by the Supplier or the Sub-contractor, as the case may be, and the Supplier shall be reimbursed by the Authority.

5.2 Subject to Paragraphs 5.4 to 5.9 and 5.11, if at any time during the term of this Agreement, the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Sub-contractor to pay employer contributions or payments to the Fund in aggregate below the Initial Contribution Rate for a Service Delivery Year, the Supplier shall reimburse the Authority an amount equal to A–B (the “**Refund Amount**”) where:

A = the amount which would have been paid if contributions and payments had been paid equal to the Initial Contribution Rate for that Service Delivery Year; and

B = the amount of contributions or payments actually paid by the Supplier or Sub-contractor for that Service Delivery Year, as the case may be, to the Fund.

5.3 Subject to Paragraphs 5.4 to 5.10, where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Supplier or any Sub-contractor is required to pay any exit payment under Regulation 64(2) of the 2013 Regulations (the “**Exit Payment**”), such Exit Payment shall be paid by the Supplier or any Sub-contractor (as the case may be) and the Supplier shall be reimbursed by the Authority.

5.4 The Supplier and any Sub-contractors shall at all times be responsible for the following costs:

- (a) any employer contributions relating to the costs of early retirement benefits arising on redundancy or as a result of business efficiency under Regulation 30(7) of the 2013 Regulations or otherwise;
- (b) any payment of Fund benefits to active members on the grounds of ill health or infirmity of mind or body under Regulation 35 of the 2013 Regulations or otherwise;
- (c) any payment of Fund benefits to deferred or deferred pensioner members on the grounds of ill health or infirmity of mind or body under Regulation 38 of the 2013 Regulations or otherwise;
- (d) any employer contributions relating to the costs of early or flexible retirement where the actuarial reduction is waived in whole or in part or a cost neutral reduction is not applied with the consent of the Supplier or any relevant Sub-contractor including without limitation any decision made under Regulation 30(8) of the 2013 Regulations or Schedule 2 of The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014;
- (e) any employer contributions relating to the costs of enhanced benefits made at the discretion of the Supplier or any relevant Sub-contractors including without limitation additional pension awarded under Regulation 31 of the 2013 Regulations or otherwise;
- (f) any increase to the employer contribution rate resulting from the award of pay increases by the Supplier or relevant Sub-contractors in respect of all or any of the LGPS Eligible Employees in excess of the pay increases assumed in the Fund's most recent actuarial valuation (unless the Supplier and/or any Sub-contractor is contractually bound to provide such increases on the Relevant Transfer Date);
- (g) to the extent not covered above, any other costs arising out of or in connection with the exercise of any discretion or the grant of any consent under the LGPS Regulations by the Supplier or any relevant Sub-contractors where a member does not have an absolute entitlement to that benefit under the LGPS;
- (h) any cost of the administration of the Fund that are not met through the Supplier's or Sub-contractor's employer contribution rate, including without limitation an amount specified in a notice given by the Administering Authority under Regulation 70 of the 2013 Regulations;
- (i) the costs of any reports and advice requested by or arising from an instruction given by the Supplier or a Sub-contractor from the Fund Actuary; and/or
- (j) any interest payable under the 2013 Regulations or LGPS Administration Agreement.

5.5 For the purposes of calculating any Exit Payment, Excess Amount or Refund Amount, any part of such an amount which is attributable to any costs which the Supplier or Sub-contractors are responsible for in accordance with Paragraph 5.4 above shall be disregarded and excluded from the calculation. In the event of any dispute as to level of any cost that should be excluded from the calculation, the opinion of the Fund Actuary shall be final and binding.

5.6 Where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Supplier or any Sub-contractor receives payment of an exit credit payment under Regulation 64(2) of the 2013 Regulations (the “**Exit Credit**”), the Supplier shall (or procure that any Sub-contractor shall) reimburse the Authority an amount equal to the Exit Credit within 20 Working Days of receipt of the Exit Credit.

5.7 The Supplier shall (or procure that the Sub-contractor shall) notify the Authority in writing within 20 Working Days:

- (a) of the end of each Service Delivery Year of any Excess Amount or Refund Amount due in respect of the Service Delivery Year that has just ended and provide a reasonable summary of how the Excess Amount or Refund Amount was calculated; and
- (b) of being informed by the Administering Authority of any Exit Payment or Exit Credit that is determined by as being due from or to the Supplier or a Sub-contractor and provide a copy of any revised rates and adjustments certificate detailing the Exit Payment or Exit Credit and its calculation.

5.8 Within 20 Working Days of receiving the notification under Paragraph 5.7 above, the Authority shall either:

- (a) notify the Supplier in writing of its acceptance of the Excess Amount, Refund Amount or Exit Payment;
- (b) request further information or evidence about the Excess Amount, Refund Amount or Exit Payment from the Supplier; and/or
- (c) request a meeting with the Supplier to discuss or clarify the information or evidence provided.

5.9 Where the Excess Amount, Refund Amount or Exit Payment is agreed following the receipt of further information or evidence or following a meeting in accordance with Paragraph 5.8 above, the Authority shall notify the Supplier in writing. In the event that the Supplier and the Authority are unable to agree the amount of the Excess Amount, Refund Amount or Exit Payment then they shall follow the Dispute Resolution Procedure.

5.10 Any Excess Amount or Exit Payment agreed by the Authority or in accordance with the Dispute Resolution Procedure shall be paid by the Authority within timescales as agreed between Authority and Supplier. The amount to be paid by the Authority shall be an amount equal to the Excess Amount or Exit Payment less an amount equal to any corporation tax relief which has been claimed in respect of the Excess Amount or Exit Payment by the Supplier or a Sub-contractor.

5.11 Any Refund Amount agreed by the Authority or in accordance with the Dispute Resolution Procedure as payable by the Supplier or any Sub-contractor to the Authority, shall be paid by the Supplier or any Sub-contractor forthwith as the liability has been agreed. In the event the Supplier or any Sub-contractor fails to pay any agreed Refund Amount, the Authority shall demand in writing the immediate payment of the agreed Refund Amount by the Supplier and the Supplier shall make payment within 7 Working Days of such demand.

5.12 This Paragraph 5 shall survive termination of this Agreement.

**ANNEX D4: OTHER SCHEMES**

*[Guidance: Placeholder for Pension Schemes other than LGPS, CSPS & NHSPS]*

**PART E: EMPLOYMENT EXIT PROVISIONS**

[Guidance: Please note, the reference at Paragraphs 1.6.(a), 1.6(b) and 1.6(d) is to Supplier Personnel to capture all individuals working on the Services. Only employees can participate in public sector pension schemes or pension schemes which are broadly comparable and therefore the information in Paragraph 1.6(c) is limited to employees]

**1 PRE-SERVICE TRANSFER OBLIGATIONS**

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

- (a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
- (b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
- (c) the date which is 12 months before the end of the Term; or
- (d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),

it shall provide in a suitably anonymised format so as to comply with the DPA 2018, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.

1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:

- (a) the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
- (b) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

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

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

1.5 From the date of the earliest event referred to in Paragraph 1.1(a), 1.1(b) and 1.1(c), the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of

equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

- (b) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including pensions and any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, within 20 Working Days to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of Supplier Personnel engaged in providing the Services;
- (b) the percentage of time spent by each Supplier Personnel engaged in providing the Services;
- (c) the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to Part D (*Pensions*) to this Schedule 9.1 (Staff Transfer) (as appropriate); and
- (d) a description of the nature of the work undertaken by each Supplier Personnel by location.

1.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier

shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) a copy of any personnel file and/or any other records regarding the service of the Transferring Supplier Employee;
- (g) a complete copy of the information required to meet the minimum recording keeping requirements under the Working Time Regulations 1998 and the National Minimum Wages Regulations 1998; and
- (h) bank/building society account details for payroll purposes.

1.8 Following the date of the earliest event referred to in Paragraph 1.1 (a), (b) and (c), the Supplier agrees that within 20 Working Days of a request from the Authority it shall and shall procure that each Sub-contractor shall use reasonable endeavours to comply with any reasonable request to align and assign Supplier Personnel to any future delivery model proposed by the Authority for Replacement Services within 30 Working Days or such longer timescale as may be agreed.

1.9 Any changes necessary to this Contract as a result of alignment referred to in Paragraph 1.8 shall be agreed in accordance with the Change Control Procedure.

## **2 EMPLOYMENT REGULATIONS EXIT PROVISIONS**

2.1 The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10 of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

2.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations under the Employment Regulations and in particular obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (but excluding) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel List all the Transferring Supplier Employees arising in

respect of the period up to (but excluding) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Statutory Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part to the period ending on (but excluding) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.

2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
- (b) the breach or non-observance by the Supplier or any Sub-contractor occurring before but excluding the Service Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
  - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising before but excluding the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before but excluding the Service Transfer Date; and
  - (ii) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before but excluding the Service Transfer Date;
- (e) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax

deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (but excluding) the Service Transfer Date);

(f) any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations; and

(g) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

(a) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or

(b) arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

2.5 If any person who is not identified in the Supplier's Final Supplier Personnel List claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel List, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations, then:

(a) the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

(b) the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

2.7 If after the 15 Working Day period specified in Paragraph 2.5(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved

the Authority shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

- (a) shall not apply to:
  - (i) any claim for:
    - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
    - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
  - (ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date.

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.

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

2.12 Subject to Paragraph 2.13, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:

- (a) any act or omission of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
- (b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
  - (ii) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- (d) any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority

relates to financial obligations arising on and after the Service Transfer Date; and

(ii) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and after the Service Transfer Date;

(g) a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and

(h) any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

2.13 The indemnities in Paragraph 2.12 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

**ANNEX E1: LIST OF NOTIFIED SUB-CONTRACTORS**

Name of Supply Chain Partner	Nature of the Services being Sub-Contracted	Percentage % Delivery of the Contract
Ascenti Health Limited	Provision of approved functional assessors to deliver in-person (face to face, telephone and video) WCA (excluding home consultations) and/or PIP consultations and resulting reports within set postcodes in Lot 4	[REDACTED]
Personal Functional Assessment Services Limited (PFAS)	Provision of approved functional assessors to deliver in-person (face to face, telephone and video) WCA (excluding home consultations) and/or PIP consultations and resulting reports within set postcodes in Lot 4	[REDACTED]

**ANNEX E2: STAFFING INFORMATION**

**EMPLOYEE INFORMATION (ANONYMISED)**

Name of Transferor:

Number of Employees in-scope to transfer:

Completion notes

- 1 *If you have any Key Sub-contractors, please complete all the above information for any staff employed by such Key Sub-contractor(s) in a separate spreadsheet.*
- 2 *This spreadsheet is used to collect information from the current employer (transferor) about employees performing the relevant services to help plan for a potential TUPE transfer. Some or all of this information may be disclosed to bidders as part of a procurement process. The information should not reveal the employees' identities.*
- 3 *If the information cannot be included on this form, attach the additional information, such as relevant policies, and cross reference to the item number and employee number where appropriate.*

EMPLOYEE DETAILS & KEY TERMS							
Details	Job Title	Grade / band	Work Location	Age	Employment status (for example, employee, fixed-term employee, self-employed, agency worker)?	Continuous service date (dd/mm/yy)	Date employment started with existing employer
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

EMPLOYEE DETAILS & KEY TERMS							
Details	Contract end date (if fixed term contract or temporary contract)	Contractual notice period	Contractual weekly hours	Regular overtime hours per week	Mobility or flexibility clause in contract?	Previously TUPE transferred to organisation? If so, please specify (i) date of transfer, (ii) name of transferor, and (iii) whether ex public sector	Any collective agreements?
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

	<b>ASSIGNMENT</b>	<b>CONTRACTUAL PAY AND BENEFITS</b>						
<b>Details</b>	<b>% of working time dedicated to the provision of services under the contract</b>	<b>Salary (or hourly rate of pay)</b>	<b>Payment interval (weekly / fortnightly / monthly)</b>	<b>Bonus payment for previous 12 months (please specify whether contractual or discretionary entitlement)</b>	<b>Pay review method</b>	<b>Frequency of pay reviews</b>	<b>Agreed pay increases</b>	<b>Next pay review date</b>
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

CONTRACTUAL PAY AND BENEFITS								
Details	Any existing or future commitment to training that has a time-off or financial implication	Car allowance (£ per year)	Lease or company car details	Any other allowances paid (e.g. shift allowance, standby allowance, travel allowance)	Private medical insurance (please specify whether single or family cover)	Life assurance (xSalary)	Long Term Disability / PHI (% of Salary)	Any other benefits in kind
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

CONTRACTUAL PAY AND BENEFITS						
Details	Annual leave entitlement (excluding bank holidays)	Bank holiday entitlement	Method of calculating holiday pay (i.e. based on fixed salary only or incl. entitlements to variable remuneration such as bonuses, allowances, commission or overtime pay?)	Maternity or paternity or shared parental leave entitlement and pay	Sick leave entitlement and pay	Redundancy pay entitlement (statutory / enhanced / contractual / discretionary)
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

PENSIONS						
Details	Employee pension contribution rate	Employer pension contribution rate	Please provide the name of the pension scheme and a link to the pension scheme website	Is the scheme an occupational pension scheme as defined in the Pension Schemes Act 1993?	If the scheme is not an occupational pension scheme, what type of scheme is it? E.g. personal pension scheme?	Type of pension provision e.g. defined benefit (CARE or final salary, and whether a public sector scheme e.g. CSPS, NHSPS, LGPS etc. or a broadly comparable scheme) or a defined contribution scheme or an auto enrolment master trust?
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

PENSIONS						
Details	If the Employee is in the Local Government Pension Scheme, please supply details of Fund and Administering Authority.	If the Employee is in the Civil Service Pension Scheme, please provide details of the Admission Agreement.	If the Employee is in the NHSPS, please provide details of the Direction Letter.	If the Employee is in a broadly comparable pension scheme, please supply a copy of the GAD certificate of Broad Comparability.	Did Fair Deal or any other similar pension protection for ex-public sector employees apply to the employee when they TUPE transferred into your employment? If so, what was the nature of that protection (e.g. right to participate in a public sector pension scheme, or a broadly comparable scheme, or to bulk transfer past pension service into their current scheme)?	If Fair Deal, Best Value or other pension protection applied, which public sector employer did they originally transfer out of and when?
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

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<b>OTHER</b>			
<b>Details</b>	<b>Security Check Level</b>	<b>Security Clearance Expiry date</b>	<b>Additional info or comments</b>
Emp No 1			
Emp No 2			
Emp No			

**SCHEDULE 9.2**

**KEY PERSONNEL**

**Key Personnel**

Key Role	Name of Key Personnel	Responsibilities/Authorities (non-exhaustive list)	Minimum phase of the project during which they will be a member of Key Personnel	Minimum period in Key Role
Programme Director / Senior Responsible Officer	Alex Hayes	Executive oversight, strategic engagement and client relationship.	Implementation and live delivery	11 months Implementation 5yrs + extension
Clinical Director / Lead	[REDACTE D]	Clinical quality standards, audit, and compliance. Clinical governance and Training and Guidance Board member.	Implementation and live delivery	11 months Implementation 5yrs + extension
Chief Medical Officer	[REDACTE D]	Accountable for professional standards of Health Professionals.	Live delivery	5yrs + extension
Finance Director / Officer	[REDACTE D]	Accountable for financial reporting, control, standards, and audit.	Implementation and live delivery	11 months Implementation 5yrs + extension
Operations Director	[REDACTE D]	Accountable for service delivery performance and quality (including MI Reports and Social Value Reports).	Implementation and live delivery	11 months Implementation 5yrs + extension
IT Lead	[REDACTE D]	Accountable for Service stability and operation of IT.	Implementation and live delivery	11 months Implementation 5yrs + extension

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HR Lead	[REDACTED]	Accountable for people, capability and place.	Implementation and live delivery	11 months Implementation 5yrs + extension
Supply Chain & Procurement Lead	[REDACTED]	Responsible for the management of supply chain partners.	Implementation and live delivery	11 months Implementation 5yrs + extension
Communications Lead	[REDACTED]	Responsible for internal and external communications.	Implementation and live delivery	11 months Implementation 5yrs + extension
Recruitment Lead	[REDACTED]	Responsible for recruitment of clinical and non-clinical recruitment for FAS.	Implementation and live delivery	11 months Implementation 5yrs + extension
Customer Experience Lead	[REDACTED]	Responsible for end-to-end customer journey, responding to customer feedback, identifying service delivery improvement opportunities and engagement with third parties such as charities and lobby groups.	Implementation and live delivery	11 months Implementation 5yrs + extension
Administrative Lead	[REDACTED]	Responsible for delivery of training and guidance and supporting TAG.	Implementation and live delivery	11 months Implementation 5yrs + extension
Implementation and Transition Lead	[REDACTED]	Responsible for the implementation	Implementation + stabilisation	11 months Implementation +3 months BAU

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		and transition of the Service.		
Security Manager / Data Protection Officer	[REDACTE D]	Responsible for compliance with the security requirements of FAS, including the confidentiality, integrity and availability of Authority Assets, Authority System and Supplier System.	Implementation and live delivery	11 months Implementation 5yrs + extension
Transition Manager	[REDACTE D]	Responsible for the delivery of the Implementation Plan and actions from Effective Date to Operational Service Commencement .	Implementation + stabilisation	11 months Implementation
Supplier Change Manager	[REDACTE D]	Responsible for the compliance with the Supplier's obligations under the Change Control Procedure.	Implementation and live delivery	11 months Implementation 5yrs + extension
Exit Manager	[REDACTE D]	Responsible for the compliance with the Supplier's Exit Management obligations.	6 months at exit and as required	Live delivery
Performance Manager	[REDACTE D]	Responsible for service delivery performance and quality (including MI Reports and	Implementation and live delivery	11 months Implementation 5yrs + extension

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		Social Value Reports).		
Quality Manager	[REDACTED]	Responsible for standards, audit and compliance.	Implementation and live delivery	11 months Implementation 5yrs + extension
Estates Manager	[REDACTED]	Responsible for management of estates portfolio (including Health and Safety).	Implementation and live delivery	11 months Implementation 5yrs + extension
Training Manager	[REDACTED]	Responsible for working with the Authority in the development of training requirements.	Implementation and Live Delivery	9 month Implementation 5 yrs + extension

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**SCHEDULE 10**

**GUARANTEE**

**APM HUMAN SERVICES INTERNATIONAL LIMITED**

**- and -**

**THE SECRETARY OF STATE FOR WORK AND PENSIONS**

**DEED OF GUARANTEE**

**DEED OF GUARANTEE**

**THIS DEED** is executed as a deed and dated

2023 (the “**Deed**”)

**BETWEEN:**

(1) **APM HUMAN SERVICES INTERNATIONAL LIMITED** a company incorporated under the laws of Australia, registered in Australia with company number 639621766 whose registered office is at 58 Ord Street, West Perth, WA 6005, Australia (the “**Guarantor**”); and

(2) **THE SECRETARY OF STATE FOR WORK AND PENSIONS** of Caxton House, Tothill Street, London, SW1H 9DA (the “**Authority**”).

together the “**Parties**” and each a “**Party**”.

**BACKGROUND:**

(A) The Authority has awarded a contract dated 2023 to Ingeus UK Ltd (the “**Supplier**”) for the delivery of a range of ‘Functional Assessment Services’ (the “**Guaranteed Agreement**”).

(B) It is a condition of the Authority entering into the Guaranteed Agreement that the Supplier procures the execution and delivery to the Authority of a parent company guarantee substantially in the form of this Deed.

(C) The Guarantor has agreed to guarantee the due performance of the Guaranteed Agreement.

**IT IS AGREED** as follows:

**1 DEFINITIONS AND INTERPRETATION**

**Definitions**

1.1 The **following** definitions apply in this Deed:

**"Business Day"** means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;

**"Control"** means the power of a person to secure that the affairs of a body corporate are conducted in accordance with the wishes of that person:

(a) by means of the holding of shares or the possession of voting power in relation to that body or any other body corporate; or

(b) as a result of any powers conferred by the constitutional or corporate documents, or any other document regulating that body or any other body corporate;

**"Guaranteed Agreement"** has the meaning given to it in Recital (A);

**"Guaranteed Obligations"** has the meaning given to it in Clause 2.1(a);

**"Supplier"** has the meaning given to it in Recital (A);

**"VAT"** means value added tax or any equivalent tax chargeable in the UK or elsewhere.

### **Interpretation**

1.2 Unless otherwise stated, any reference in this Deed to:

- (a) the "Guarantor", the "Authority", the "Supplier" or any other person shall be construed so as to include their successors in title, permitted assigns and permitted transferees, whether direct or indirect;
- (b) "assets" includes present and future properties, revenues and rights of every description;
- (c) this "Deed", or any other agreement or instrument is a reference to, this deed or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (d) "indebtedness" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (e) a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (f) the words "including", "includes", "in particular", "for example" or similar shall be construed as illustrative and without limitation to the generality of the related general words; and
- (g) a time of day is a reference to London time.

## **2 GUARANTEE AND INDEMNITY**

2.1 The Guarantor:

- (a) guarantees to the Authority the due and punctual performance of all of the Supplier's present and future obligations under and in connection with the Guaranteed Agreement if and when they become due and performable in accordance with the terms of the Guaranteed Agreement (the "Guaranteed Obligations");
- (b) shall pay to the Authority from time to time on demand all monies (together with interest on such sum accrued before and after the date of demand until the date of payment) that have become payable by the Supplier to the Authority under or in connection with the Guaranteed Agreement but which has not been paid at the time the demand is made; and

(c) shall, if the Supplier fails to perform in full and on time any of the Guaranteed Obligations and upon written notice from the Authority, immediately on demand perform or procure performance of the same at the Guarantor's own expense.

2.2 The Guarantor, as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under Clause 2.1, shall indemnify and keep indemnified the Authority in full and on demand from and against all and any losses, damages, costs and expenses suffered or incurred by the Authority arising out of, or in connection with:

- (a) any failure by the Supplier to perform or discharge the Guaranteed Obligations; or
- (b) any of the Guaranteed Obligations being or becoming wholly or partially unenforceable for any reason,

provided that the Guarantor's liability under this Clause 2.2 shall be no greater than the Supplier's liability under the Guaranteed Agreement was (or would have been had the relevant Guaranteed Obligation been fully enforceable).

### **3 AUTHORITY PROTECTIONS**

#### **Continuing Guarantee**

3.1 This Deed is, and shall at all times be, a continuing and irrevocable security until the Guaranteed Obligations have been satisfied or performed in full, 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 the Guaranteed Obligations and may be enforced without first having recourse to any such security.

#### **Preservation of the Guarantor's liability**

3.2 The Guarantor's liability under this Deed shall not be reduced, discharged or otherwise adversely affected by:

- (a) any arrangement made between the Supplier and the Authority;
- (b) any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations;
- (c) any alteration in the obligations undertaken by the Supplier whether by way of any variation referred to in Clause 4 or otherwise;
- (d) any waiver or forbearance by the Authority whether as to payment, time, performance or otherwise;
- (e) 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 Supplier or any other person;
- (f) any unenforceability, illegality or invalidity of any of the provisions of the Guaranteed Agreement or any of the Supplier's obligations under the Guaranteed Agreement, so that this Deed shall be construed as if there were no such unenforceability, illegality or invalidity;

- (g) any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, Control or ownership, insolvency, liquidation, administration, voluntary arrangement, or appointment of a receiver, of the Supplier or any other person.

**No limit on the Authority's exercise of rights**

3.3 The Authority shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach by the Supplier of any Guaranteed Obligation shall not preclude the Authority from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.

**Immediate demand**

3.4 The Guarantor waives any right it may have to require the Authority to proceed against, enforce any other right or claim for payment against, or take any other action against, the Supplier or any other person before claiming from the Guarantor under this Guarantee.

**Deferral of rights**

3.5 Until all amounts which may be or become payable under the Guaranteed Agreement or this Deed have been irrevocably paid in full, the Guarantor shall not, as a result of this Deed or any payment performance under this Deed:

- (a) be subrogated to any right or security of the Authority;
- (b) claim or prove in competition with the Authority against the Supplier or any other person;
- (c) demand or accept repayment in whole or in part of any indebtedness due from the Supplier;
- (d) take the benefit of, share in or enforce any security or other guarantee or indemnity against the Supplier; or
- (e) claim any right of contribution, set-off or indemnity from the Supplier,

without the prior written consent of the Authority (and in such case only in accordance with any written instructions of the Authority).

3.6 If the Guarantor receives any payment or other benefit in breach of Clause 3.5, or as a result of any action taken in accordance with a written instruction of the Authority given pursuant to Clause 3.5, such payment or other benefit, and any benefit derived directly or indirectly by the Guarantor therefrom, shall be held by the Guarantor on trust for the Authority applied towards the discharge of the Guarantor's obligations to the Authority under this Deed.

**Cumulative rights**

3.7 The Authority's rights under this Deed are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Authority deems expedient.

**4 VARIATION OF THE GUARANTEED AGREEMENT**

4.1 The Guarantor confirms that it intends that this Deed shall extend and apply from time to time to any variation, increase, extension or addition of the Guaranteed Agreement, however, fundamental, and any associated fees, costs and/or expenses.

**5 PAYMENT AND COSTS**

5.1 All sums payable by the Guarantor under this Deed shall be paid in full to the Authority in pounds sterling:

- (a) without any set-off, condition or counterclaim whatsoever; and
- (b) free and clear of any deductions or withholdings whatsoever except as may be required by applicable law which is binding on the Guarantor.

5.2 If any deduction or withholding is required by any applicable law to be made by the Guarantor:

- (a) the amount of the payment due from the Guarantor shall be increased to an amount which (after making any deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required; and
- (b) the Guarantor shall promptly deliver to the Authority all receipts issued to it evidencing each deduction or withholding which it has made.

5.3 The Guarantor shall not and may not direct the application by the Authority of any sums received by the Authority from the Guarantor under any of the terms in this Deed.

5.4 The Guarantor shall pay interest on any amount due under this Deed at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

5.5 The Guarantor shall, on a full indemnity basis, pay to the Authority on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any VAT on those costs and expenses) which the Authority incurs in connection with:

- (a) the preservation, or exercise and enforcement, of any rights under or in connection with this Deed or any attempt to do so; and
- (b) any discharge or release of this Deed.

**6 CONDITIONAL DISCHARGE**

6.1 Any release, discharge or settlement between the Guarantor and the Authority in relation to this Deed shall be conditional on no right, security, disposition or payment to the Authority by the Guarantor, the Supplier or any other person being avoided, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency for any other reason.

6.2 If any such right, security, disposition or payment as referred to in Clause 6.1 is avoided, set aside or ordered to be refunded, the Authority shall be entitled subsequently to enforce this Deed against the Guarantor as if such release,

discharge or settlement had not occurred and any such security, disposition or payment has not been made.

**7 REPRESENTATIONS AND WARRANTIES**

7.1 The Guarantor represents and warrants to the Authority that:

- (a) it is duly incorporated with limited liability and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name, and has power to carry on its business as now being conducted and to own its property and other assets;
- (b) it has full power under its constitution or equivalent constitutional documents in the jurisdiction in which it is established to enter into this Deed;
- (c) it has full power to perform the obligations expressed to be assumed by it or contemplated by this Deed;
- (d) it has been duly authorised to enter into this Deed;
- (e) it has taken all necessary corporate action to authorise the execution, delivery and performance of this Deed;
- (f) this Deed when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;
- (g) all necessary consents and authorisations for the giving and implementation of this Deed have been obtained;
- (h) that its entry into and performance of its obligations under this Deed will not constitute any breach of or default under any contractual, government or public obligation binding on it; and
- (i) that it is not engaged in any litigation or arbitration proceedings that might affect its capacity or ability to perform its obligations under this Deed and to the best of its knowledge no such legal or arbitration proceedings have been threatened or are pending against it.

**8 ASSIGNMENT**

- 8.1 The Authority shall be entitled by notice in writing to the Guarantor to assign the benefit of this Deed 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 Deed.
- 8.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed without the prior written consent of the Authority.

**9 VARIATION**

- 9.1 No variation of this Deed shall be effective unless it is in writing and signed by the parties.

**10 DEMANDS AND NOTICES**

- 10.1 Any demand or notice served by the Authority on the Guarantor under this Deed shall be in writing, addressed to:

(a) For the Attention of the Company Secretary  
Ingeus UK Ltd  
Second Floor  
66-68 East Smithfield  
Royal Pharmaceutical Building  
London  
E1W 1AW

(b) Copied to:  
The Company Secretary  
APM Human Services International Limited  
58 Ord Street  
West Perth  
WA 6005  
Australia

10.2 or such other address in England and Wales as the Guarantor has from time to time notified to the Authority in writing in accordance with the terms of this Deed as being an address or facsimile number for the receipt of such demands or notices.

10.3 Any notice or demand served on the Guarantor or the Authority under this Deed shall be deemed to have been served:

- (a) if delivered by hand, at the time of delivery; or
- (b) if posted, at 10.00 a.m. on the second Business Day after it was put into the post.

10.4 In proving service of a notice or demand on the Guarantor it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter.

10.5 Any notice purported to be served on the Authority under this Deed shall only be valid when received in writing by the Authority.

## **11 ENTIRE AGREEMENT**

11.1 This Deed constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

11.2 The Guarantor acknowledges that it has not entered into this Deed in reliance upon, nor has it been induced to enter into this Deed 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 Deed.

## **12 WAIVER**

12.1 No failure or delay by the Authority to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.2 Any waiver by the Authority of any terms of this Deed, or of any Guaranteed Obligations, shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

**13 SEVERANCE**

13.1 If any provision or part-provision of this Deed is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Deed.

**14 THIRD PARTY RIGHTS**

14.1 A person who is not a Party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any of its terms but this does not affect any third party right which exists or is available independently of that Act.

**15 GOVERNING LAW AND JURISDICTION**

15.1 This Deed and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

15.2 The Guarantor irrevocably agrees for the benefit of the Authority that the courts of England shall have jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Deed or its subject matter or formation.

15.3 Nothing contained in Clause 15.2 shall limit the rights of the Authority to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

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

15.5 The Guarantor irrevocably appoints Ingeus UK Ltd of Second Floor, 66-68 East Smithfield, Royal Pharmaceutical Building, London E1W 1AW as its agent to receive on its behalf in England or Wales service of any proceedings under this Clause 15. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Guarantor) and shall be valid until such time as the Authority has received prior written notice that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Guarantor shall appoint a substitute acceptable to the Authority and deliver to the Authority the new agent's name and address within England and Wales.

<b>Executed as a deed by APM HUMAN SERVICES INTERNATIONAL LIMITED acting by two directors:</b>	) )
.....	Michael Anghie
Signature of Director	Director's name
.....	Megan Kyla Wynne
Signature of Director	Director's name

<b>The corporate seal of the Secretary of State for Work and Pensions is hereunto affixed and authenticated by:</b>	<b>SEAL OF THE SECRETARY OF STATE FOR WORK AND PENSIONS</b>
David Clark	
.....	
.....	
.....	
Authorised Signatory	

**OFFICIAL – COMMERCIAL**

**SCHEDULE 11**

**PROCESSING PERSONAL DATA**

**1 PROCESSING PERSONAL DATA**

- 1.1 Where the Authority is acting as a Controller and the Supplier as a Processor the applicable sections of this Schedule shall be completed by the Authority, who may take account of the view of the Supplier, however the final decision as to the content shall be with the Authority at its absolute discretion.
- 1.2 Where the Supplier and Authority are acting as Independent Controllers, they shall agree the content of the applicable sections of this Schedule.
- 1.3 The contact details of the Authority's Data Protection Officer are:

[REDACTED]  
[data.protectionofficer@dwp.gsi.gov.uk](mailto:data.protectionofficer@dwp.gsi.gov.uk) or write to:

DWP Data Protection Officer's Team  
Benton Park View 6  
Room BP6001  
Mail Handling Site A  
Wolverhampton  
WV98 1ZX

- 1.4 The contact details of the Supplier's Data Protection Officer are:

[REDACTED]  
[dataprotectionofficer@ingeus.co.uk](mailto:dataprotectionofficer@ingeus.co.uk) or write to:

Ingeus UK Ltd  
Second Floor  
66-68 East Smithfield  
Royal Pharmaceutical Building  
London  
E1W 1AW

- 1.5 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 1.6 Any such further instructions shall be incorporated into this Schedule.

## 1.7 Authority is Controller and Supplier is Processor

Description	Details
Identity of Controller for each category of Personal Data	<p>The Parties acknowledge that the Authority is the Controller and the Supplier is the Processor in respect of all Processing identified in this paragraph 1.7, including relating to the:</p> <ul style="list-style-type: none"> <li>• management of appointments for medical assessments, including Processing of Claimant personal details, reasonable adjustments, Claimant expenses etc;</li> <li>• Processing of Claimant's medical conditions, personal care, mobility needs and work capabilities; and</li> <li>• medical assessments being undertaken, and reports generated for PIP, WCA and Specialist Benefits.</li> </ul> <p>In respect of Personal Data where the Authority is the Controller and the Supplier is the Processor, Clause 24 of the Agreement will apply.</p>
Subject matter of the Processing	<p>An element of PIP, Universal Credit ("UC"), Employment Support Allowance ("ESA") and Specialist Benefits is the need for a Supplier to consider a Claimant's ability to carry out key daily living and mobility activities and/or their capability for work.</p> <p>The Supplier will therefore Process the Personal Data of Claimants to perform the:</p> <ul style="list-style-type: none"> <li>• PIP Assessments;</li> <li>• Assessments in relation to UC or ESA; and</li> <li>• Specialist Benefit Assessments,</li> </ul> <p>for Claimants referred by the Authority.</p>
Duration of the Processing	<p>The duration of the Processing of the Personal Data will be either:</p> <ul style="list-style-type: none"> <li>• For the duration of this Agreement; or</li> <li>• Until an individual exercises their right to deletion of Personal Data.</li> </ul>
Nature and purposes of the Processing	<ul style="list-style-type: none"> <li>• Information is obtained from the Claimant's initial claim (new claims) or from the Authority's systems (re assessments). This information includes but is not limited to information such as: <ul style="list-style-type: none"> <li>○ name and address of Claimant;</li> <li>○ contact details;</li> <li>○ date of birth;</li> <li>○ national insurance number;</li> <li>○ name and contact details of GP's or other healthcare professionals (the Authority will ask and record if consent is granted to contact the GP or other health professionals); or</li> <li>○ details of any time spent abroad, or in a care home or hospital.</li> </ul> </li> <li>• Claimants may be required to complete questionnaires to explain how their condition affects their daily life and/or work.</li> </ul>

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<b>Description</b>	<b>Details</b>
	<ul style="list-style-type: none"> <li>• If the Claimant has granted consent to contact the GP or other health professionals, the Supplier may request further evidence to support the Claimants claim.</li> </ul> <p>Personal Data will be used to:</p> <ul style="list-style-type: none"> <li>• Triage the Claimant's case and allocate it to the appropriate assessment channel: PBR; face to face; Home Consultations; Video Consultations; Telephone Consultations;</li> <li>• Arrange Assessment appointments;</li> <li>• Perform Assessments, which may involve a face-to-face; telephone or video meetings with the Claimant (including audio recording of the Assessment if requested);</li> <li>• Assess Claimants against Service Guidance;</li> <li>• Conduct terminal illness assessments;</li> <li>• Create a report of the Assessment;</li> <li>• Pay Claimants for travelling expenses; and</li> <li>• Pay GPs/Health Professionals for provision of Further Medical Evidence.</li> </ul> <p>Personal Data will also be:</p> <ul style="list-style-type: none"> <li>• Transmitted between the Authority and Supplier where the Assessment is sent back to Authority to make a decision on Claimant's benefit eligibility; and</li> <li>• Reviewed for the purposes of managing the quality (audits, reviews etc) of reports.</li> </ul> <p>The Supplier may anonymise Personal Data (including Sensitive Data) for statistical analysis in order to comply with its obligations under this Agreement but shall ensure that the anonymised data cannot be de-anonymised.</p>
Type of Personal Data being Processed	<p>Personal Data being Processed:</p> <ul style="list-style-type: none"> <li>• National insurance numbers;</li> <li>• Contact details including: <ul style="list-style-type: none"> <li>◦ Name(s);</li> <li>◦ Addresses;</li> <li>◦ Telephone numbers;</li> <li>◦ E-mail addresses;</li> <li>◦ GP/Health Professional details;</li> </ul> </li> <li>• Dates of birth;</li> <li>• Genders;</li> <li>• Further evidence provided by Claimants;</li> <li>• Assessment Reports;</li> <li>• Medical information;</li> <li>• Financial information; and</li> <li>• Prison history of Claimants.</li> </ul>
Categories of Data Subjects	<ul style="list-style-type: none"> <li>• Claimants;</li> <li>• GPs/Health Professionals;</li> <li>• Supplier Personnel;</li> <li>• Authority personnel; and</li> <li>• Claimant representatives (e.g. Appointee).</li> </ul>

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Description	Details
<p>Plan for return and destruction of the Personal Data once the Processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<ul style="list-style-type: none"> <li>Personal Data is retained in line with the Authority's Data Retention Policy agreed between the Supplier and the Authority.</li> <li>At the end of the Term or if this Agreement is terminated, a copy of all data, (including Personal Data) will be returned to the Authority by the Supplier through a secure media, per Schedule 8.5 (<i>Exit Management</i>).</li> <li>The Supplier agrees to erase the original data (including Personal Data) from any computers, storage devices and storage media per Schedule 8.5 (<i>Exit Management</i>).</li> </ul>
<p>Locations at which the Supplier and/or its Sub contractors process Personal Data under this Agreement</p>	<p>Personal Data will be processed at delivery sites, as detailed in the below attachment:</p> <p> FAS Schedule 11 (personal data) (Lot.</p> <p>Where HPs are working from home, Personal Data will be processed from their homes.</p>
<p>Technical and organisational measures including technical and organisational measures to ensure the security of the data</p>	<p>The technical and organisational measures for data security will be in accordance with Annex 1 and Annex 2 of Schedule 2.4 (<i>Security Management</i>) of this Agreement.</p>

**1.8 The Parties are Independent Controllers of Personal Data**

Description	Details
<p>Identity of Controller for each category of Personal Data</p>	<p>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of the Processing of:</p> <ul style="list-style-type: none"> <li>Business contact details of Supplier Personnel;</li> <li>Business contact details of anyone acting on behalf of the Authority including any directors, officers, employees, agents, consultants and contractors of the Authority (excluding the Supplier Personnel) engaged in the performance of the Authority's duties under this Agreement;</li> <li>The Personal Data of Supplier Personnel where such Personal Data is required for reporting, providing management information or which is contained in any documentation provided as part of performing the Agreement.</li> </ul> <p>The Parties shall, where required to fulfil the purposes stated below, supply the above Personal Data to the other Party as an Independent Controller.</p>

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Description	Details
Purpose	<p>Each Party may use the Personal Data shared in accordance with this Agreement for the purposes of managing and administering the respective Party's commercial and legal relationship under the Agreement and for the purposes of using any Personal Data (provided as part of performing the Agreement) to fulfil any claims and ancillary requirements. Each Party may store Personal Data, as set out below, following termination of the Agreement, for the purposes of record keeping and to defend any claims.</p> <p>Staff information may be processed for other purposes e.g. payment pensions, performance management.</p>
Retention	<p>In respect of any Personal Data held by DWP to manage and administer the Agreement the information will be retained for seven years from the end of the Agreement.</p> <p>WCA Services: For all Personal Data contained within the ESA55 (which contains all of the information relating to an individual's claim), Personal Data will be held for 14 months after closure of a claim.</p> <p>PIP Services: Personal Data is held for 24 months from closure of the claim.</p> <p>Supplier retention period: 7 years.</p>

**SCHEDULE 12**

**WELSH LANGUAGE REQUIREMENTS**

**This Schedule sets out the Supplier's obligations which are applicable to the provision of the Services in Wales.**

**1 GENERAL**

- 1.1 The Supplier acknowledges that in relation to the operation of its Services which are delivered in Wales, the Authority has an obligation to actively promote the equality of the English and Welsh languages, in accordance with the Welsh Language Act 1993.
- 1.2 In the performance of the Agreement, the Supplier shall ensure that it cooperates with the Authority in satisfying this duty, by fully complying with the requirements of this Schedule.

**2 THE DWP WELSH LANGUAGE SCHEME**

- 2.1 The DWP Welsh Language Scheme can be found at:

<https://www.gov.uk/government/organisations/department-for-work-pensions/about/welsh-language-scheme>

- 2.2 The Supplier 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 IN WELSH**

- 3.1 The Supplier undertakes that members of the public who have dealings with them are able to do so in English or Welsh, whichever is their preference.

- 3.2 The Supplier will ensure that:

- 3.2.1 those who want, or are required, to correspond with the Supplier will be able to do so in English or Welsh;
- 3.2.2 those who are known to prefer corresponding through the medium of Welsh will have correspondence initiated in Welsh;
- 3.2.3 any correspondence received in Welsh will be answered in Welsh within the same timescales and standards as those written in English;
- 3.2.4 staff who are in Wales will greet any telephone callers in English and Welsh once the caller's preferred language can be ascertained;
- 3.2.5 any help lines set up to deliver the Services must offer a Welsh or English option and sufficient Welsh language speakers must be available to deal with callers through the medium of Welsh, if they select the Welsh option;
- 3.2.6 any answer phones in the Supplier's offices in Wales will have a pre-recorded bilingual message;
- 3.2.7 all people who participate in the Services are able to contribute through the medium of English or Welsh;
- 3.2.8 all material published and printed for use in Wales shall be available in English and Welsh, and available for use within the same timescales. The standard of bilingual or Welsh material shall be of equal quality to those produced solely in English;

- 3.2.9 all forms and explanatory material be available in both English and Welsh and available for use within the same timescales; and
- 3.2.10 any complaints or grievance procedure should be provided in both English and Welsh;
- 3.2.11 any websites, including any interactive pages, set up to support the delivery of the Services must be available in both Welsh and English; and
- 3.2.12 where the Authority has notified the Supplier or the Claimant has identified that Welsh is their preferred language this should be recorded, ensuring all future dealings with that Claimant will be in Welsh.

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**SCHEDULE 13**

**CODE OF CONDUCT**

**1 OVERARCHING STANDARDS OF BEHAVIOUR**

- 1.1 The overarching standards of behaviour the Supplier shall adhere to are:
- 1.2 **Ethical behaviour** – the Supplier shall act with the highest standards of ethical behaviour and professionalism when it deals with the Authority, the Claimants, Sub-contractors and any other stakeholders. The Supplier shall also act within the spirit of the Agreement. Where there is a conflict between the spirit and Agreement terms, the Supplier shall bring this to the attention of the Authority.
- 1.3 **Counter fraud and corruption** – the Supplier shall comply with anti-corruption laws, anti-money laundering laws and have robust control systems to prevent and detect fraudulent or potentially fraudulent activity.
- 1.4 **Transparency** – the Supplier shall act at all times with respect and integrity. The Supplier shall be transparent with accounting and when dealing with the Authority, the Claimants, Sub-contractors, and any other stakeholders.
- 1.5 **Treatment of Sub-contractors** – the Supplier shall treat Sub-contractors fairly when dealing with prompt payment, risk management and charging for services provided to them by the Sub-contractor.
- 1.6 **Corporate Social Responsibility** – the Supplier shall be a good corporate citizen by upholding the values of this Code and support key government corporate social responsibility policy areas, such as: diversity and inclusion, sustainability, prompt payment, small and medium sized enterprise engagement, support for economic growth, support of the Armed Forces Covenant, Apprenticeships and skills development. The Authority supports constructive and collaborative partnership working, and so the Supplier shall invest in the relationship between the Authority and the Supplier.
- 1.7 The Supplier shall adhere to, and the Authority reserves the right to monitor, the following:

**2 RELATIONSHIP MANAGEMENT / ETHICAL BEHAVIOUR**

- 2.1 The Supplier shall act openly, honestly and with integrity in delivering Services, working with the Authority, the Claimants and stakeholders and when claiming payment for Services. The Supplier shall maintain accurate systems and complete records of business transactions with appropriate and proportionate controls and control environments that maintain the integrity of the information and data and protect it from potential abuse, falsification or error.
- 2.2 The Supplier shall not force unfair contract terms on Sub-contractors, nor allow unfair exploitation of a dominant market or customer position.
- 2.3 The Supplier shall ensure that risk is managed by the party best able to do so and be prepared to share intelligence with the Authority in relation to Sub-contractor risks, so that end to end risks can be managed and that material commercial and operational risks, for example Sub-contractor failure, can be managed and mitigated.

**3 TREAT EMPLOYEES AND SUB-CONTRACTORS FAIRLY**

- 3.1 The Supplier and Sub-contractors shall ensure that robust procedures are adopted and maintained to ensure the protection of human rights at all times.
- 3.2 The Supplier shall adopt a zero tolerance policy towards unethical and illegal employment practices, such as modern slavery, forced labour and child labour, and other forms of exploitative and unethical treatment of workers and Claimants.
- 3.3 The Supplier and Sub-contractors shall pay employees (and seek employment opportunities for customers at or above) the National Living Wage.

- 3.4 The Supplier and Sub-contractors shall have policies and processes in place for recording and eliminating the occurrence of health and safety related incidents.
- 3.5 The Supplier shall engage Sub-contractors in a manner consistent with the Authority's treatment of the Supplier. This includes, but is not limited to, appropriate pricing, volume management, service fee flow, charging for central and corporate services, fiduciary and financial risk management, and applying transparent and appropriate contractual measures where the Sub-contractor underperforms against its contracts and the spirit of those contracts.
- 3.6 The Authority will not tolerate bribery, corruption or fraud in any form and the Supplier shall conduct its business honestly, fairly and free from such behaviours. The Supplier and Sub-contractors shall protect against these behaviours and report any instances or concerns to the Authority immediately. The Authority takes a zero tolerance approach to bribery, corruption and fraud, and will investigate any instance of suspected bribery, corruption or fraud.
- 3.7 The Authority's employees, Supplier Personnel, and Claimants have the right to be treated with respect in all circumstances. The Authority will not tolerate discrimination, harassment, victimisation, bullying, intimidation or disrespect to the Authority's staff, stakeholders or Claimants.

#### **4 VALUE**

- 4.1 Value for money and financial transparency are essential requirements to the Authority's commissioned work. The Supplier and Sub-contractors shall seek to maximise value including by improving performance and quality of Services throughout the life of the Agreement.
- 4.2 The Supplier shall demonstrate that it is pursuing continuous improvement throughout the Agreement and Sub-contracts, and apply stringent and robust financial controls, management and governance to reduce waste and improve efficiency in its internal operations and within the Sub-contracts. The Supplier and Sub-contractors shall demonstrate openness and honesty and be realistic about their performance, in all circumstances.
- 4.3 The Supplier shall obtain value for money and be able to demonstrate long-term value for money to the UK taxpayer. This means that the Agreement and Sub-contracts should be priced to offer sustainable value throughout their life, including when changes are made to the Agreement and/or Sub-contract.
- 4.4 The Authority's minimum expectation is that the Agreement is delivered to meet targets and so the Supplier shall continually improve value and quality through continuous improvement, improved performance and improved quality.
- 4.5 The Supplier shall not exploit an incumbent, monopoly position, Sub-contractor(s), urgent situation(s), or an imbalance of capability or information to impose opportunistic pricing.
- 4.6 The Supplier shall work in good faith to resolve any disputes promptly and fairly during the life of the Agreement through good relationship management and, where appropriate, use the Dispute Resolution Procedure, recognising that taxpayer and Supplier interests are rarely best served by litigation.
- 4.7 The Supplier shall seek opportunities to improve value and social value in the Agreement and share best practice with the Authority and other FAS Lot Suppliers.

**5 REPUTATION AND CONFLICT**

- 5.1 The Supplier and Sub-contractors shall behave ethically, comply with legal and industry requirements and seek to implement best practice.
- 5.2 The Supplier shall be honest when representing its Services for the Authority, its performance of the Agreement and its relationship with the Authority. The Supplier shall protect the HM Government's reputation and ensure that neither it nor any of its partners or Sub-contractors bring the government into disrepute, for example by engaging in any act or omission which may diminish public trust in HM Government.
- 5.3 The Supplier shall take action as is reasonably necessary, or as the Authority may require, in order to mitigate any Losses upon and after becoming aware of any event which would reasonably be expected to give rise to any such Losses.
- 5.4 The Supplier shall mitigate against any real or perceived conflict of interest through its work with HM Government. A Supplier with a position of influence gained through the Agreement must not use that position to disadvantage any other FAS Lot Supplier or reduce the potential for future competition, for example by creating a technical solution that locks in the Supplier's own goods or services.
- 5.5 The Supplier and the Sub-contractors shall conduct business in compliance with competition (anti-trust) laws and shall not seek to co-ordinate the market with other FAS Lot Suppliers or Sub-contractors in a way that restricts competition.

**6 COUNTER FRAUD AND CORRUPTION**

- 6.1 The Supplier shall adhere to anti-corruption laws, including but not limited to the Bribery Act 2010, and money laundering regulations. The Supplier shall have robust processes to ensure that the Sub-contractors in its supply chain also comply with these laws.
- 6.2 The Authority has a zero tolerance to any form of corrupt practices including extortion and fraud, and will investigate any suspected instances. The Supplier shall be vigilant and to proactively identify fraud, and the risk of fraud, in its business. The Supplier shall have robust systems, controls and/or control environments to protect against the potential for fraud, including, but not limited to, prohibiting perverse employee reward systems.
- 6.3 The Supplier and Sub-contractors shall declare to the Authority any instances or allegations of unethical behaviour by an existing or previous member of Supplier Personnel, or where there is a known or suspected conflict of interest. The Supplier shall immediately notify the Authority where fraudulent practice and/or financial irregularity is suspected or discovered and disclose any interests that might affect its decision-making or the advice that it gives to HM Government.

**7 FINANCIAL TRANSPARENCY OBJECTIVES**

- 7.1 The Supplier will cooperate with the Authority so that:
  - (a) the Authority can understand any financial information that the Supplier submits to the Authority;
  - (b) both Parties have confidence that the Charges are clearly and wholly attributed to the Agreement;
  - (c) both Parties can understand the potential impact of any changes to the Agreement on the payments that the Authority makes to the Supplier;
  - (d) both Parties can review, address issues with, and re-forecast progress in relation to the provision of the Services;

- (e) the Authority can demonstrate that it is achieving value for money/economic value through the Agreement;
- (f) all financial documents and models prepared by the Supplier shall be consistent with each other in the use of terminology, presentation, and underlying structure; and
- (g) the Authority is in a position to validate any payments it makes to the Supplier.

**8 COVID-19 GUIDANCE**

- 8.1 The Supplier shall, in delivering the Services, adhere to any guidance issued by HM Government on working safely during instances of COVID-19. This includes, but is not limited to, any guidance published at the following address:

<https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19>

**9 EVIDENCE OF COMPLIANCE**

- 9.1 The Supplier shall provide to the Authority copies of any of the policies, training manuals and any other documentation or evidence requested by the Authority to demonstrate compliance with this Schedule to the Authority's reasonable satisfaction.

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**SCHEDULE 14**

**LIFE CHANCES**

## 1 DEFINITIONS

1.1 In this Schedule 14, the following definitions shall apply:

<b>“Diversity and Equality Delivery Plan”</b>	has the meaning given to it in Paragraph 3.2;
<b>“DWP Priority Groups”</b>	has the meaning given to it in Paragraph 2.3;
<b>“Life Chances through Procurement Guidance for DWP Contractors”</b>	means a guidance document held on GOV.UK explaining how the Authority shall help to promote and encourage opportunities for certain DWP Priority Groups within their workforce.

## 2 GENERAL

2.1 The Supplier acknowledges that UK Government is committed to assisting people to move from welfare to employment and driving forward improvements in economic, social and environmental well-being.

2.2 The Supplier: (a) acknowledges that the Authority has a responsibility to support and promote wider social sustainability objectives for the benefit of society; and (b) agrees to cooperate with the Authority to improve life chances for those most disadvantaged and furthest from the labour market.

2.3 The Supplier acknowledges that the Authority is supporting the UK Government's life chances and social value agendas by aiming to promote opportunities for groups of persons (“**DWP Priority Groups**”) which the Authority regards as meriting priority assistance including but not limited to Apprentices, Disabled People, Young People, Older Workers, Ex-Offenders and Black and Minority Ethnic people.

## 3 DIVERSITY AND EQUALITY DELIVERY PLAN

3.1 In addition to complying with its obligations set out in Clause 37.4 (*Equality and Diversity*) and this Schedule 14, the Authority requires the Supplier to provide such information as the Authority may request on: (a) the action(s) the Supplier is taking in the course of supplying the Services to comply with its obligations set out in Clause 37.4 (*Equality and Diversity*) and in this Schedule 14; and (b) the effect such action(s) have on the Supplier Personnel used in the performance of its obligations under the Agreement.

3.2 As part of the information to be provided by the Supplier under Paragraph 3.1, the Authority requires the Supplier to provide to the Authority a diversity and equality delivery plan (“**Diversity and Equality Delivery Plan**”) 6 months after the Operational Service Commencement Date, and annually thereafter. The Diversity and Equality Delivery Plan must be specific to the Agreement and include details:

- 3.2.1 of all Supplier Personnel including but not limited to all Sub-contractors involved in the performance of the Supplier's obligations under the Agreement; and
- 3.2.2 details of the action(s) the Supplier is taking to support Government's social value agenda including but not limited to the action(s) the Supplier is taking to meet its obligations under Paragraph 3.3.

3.3 The Supplier shall, and shall ensure that its Sub-contractors, take the following action(s) in respect of DWP Priority Groups:

**3.3.1 Disabled People**

- (a) To sign up to the “**Disability Confident scheme**”, which supports employers to attract, recruit and retain Disabled People, and to declare support for Disabled People in work by displaying the values and behaviours set out therein. Detailed information about the Disability Confident Scheme can be accessed via Gov.UK.
- (b) Make appropriate use of the grant from the Authority’s “**Access to Work scheme**”, given to an employer to pay for practical support to help a Disabled Person start work, stay in work or move into self-employment.
- (c) When recruiting Supplier Personnel, offer Disabled People interviews under the “Guaranteed Interview scheme” for vacancies for Supplier Personnel where the Disabled People meet the minimum criteria for such vacancies.
- (d) Offer Work Trials to Disabled People.
- (e) Provide Employment Experience to Disabled People.

**3.3.2 Young People, Older Workers, Ex-Offenders and Black and Minority Ethnic people**

- (a) Offer Work Trials.
- (b) Provide Employment Experience.

**3.3.3 Job Seekers**

- (a) Advertise all vacancies for Supplier Personnel via Find a Job in addition to any other recruitment agencies with whom the Supplier advertises such vacancies and any other actions the Supplier takes to recruit Supplier Personnel.

3.4 The Diversity and Equality Delivery Plan must also include:

3.4.1 an overview of the Supplier’s and any Sub-contractor’s policies and procedures for preventing unlawful discrimination and promoting equality of opportunity in respect of:

- (a) age;
- (b) disability;
- (c) gender reassignment;
- (d) marriage and civil partnership;
- (e) pregnancy and maternity;
- (f) race;
- (g) religion or belief;

- (h) sex; and
- (i) sexual orientation;

3.4.2 an overview of the Supplier's and any Sub-contractor's policies and procedures covering:

- (a) harassment;
- (b) bullying;
- (c) victimisation; and
- (d) Supplier Personnel training and development;

3.4.3 details of the way in which the above policies and procedures are, or will be (and by when), communicated to Supplier Personnel;

3.4.4 details of what general diversity and equality related training has been, or will be delivered (and by when), to Supplier Personnel; and

3.4.5 details of what structure and resources are currently directed towards active promotion of diversity and equality within the Supplier Personnel used in the performance of the Supplier's obligations under this Agreement, or if not currently in place, what will be put in place and by when.

3.5 The Authority will consider and must agree the contents of Diversity and Equality Delivery Plan. Any issues will be raised with the Supplier by the Authority Representative. If an issue relates to a Sub-contractor, the Supplier must raise and resolve the issue with that Sub-contractor

**Life Chances Workforce Monitoring Template**

3.6 The Supplier shall provide the Life Chances Workforce Monitoring Template (in the format set out in Annex 1), duly completed in full by the Supplier in respect of all Supplier Personnel (including but not limited to personnel of all Sub-contractors used in the performance of the Supplier's obligations under the Agreement), 6 months after the Operational Service Commencement Date and annually thereafter.

3.7 The Supplier shall complete the Life Chances Workforce Monitoring Template in line with the Life Chances through Procurement Guidance for DWP Contractors.

3.8 The Supplier will compare figures in all categories listed in the Life Chances Workforce Monitoring Template and provide (where possible) comparisons against any official national/regional statistics that are publicly available as notified by the Authority to the Supplier from time to time.

3.9 The official national/regional statistics notified by the Authority to the Supplier in accordance with Paragraph 3.8 may not be an exhaustive list and other sources may be available. The Authority recognises that there may be regional variations in terms of population demographics and some data categories and coverage may not be complete or fully aligned. However, the Supplier agrees to provide high level analysis and identification of trends as and when requested by the Authority.

3.10 The Supplier shall provide and shall ensure that its Sub-contractors provide such evidence as the Authority may require of action(s) undertaken or planned by the

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Supplier and/or any Sub-contractor to improve the numbers in the Life Chances Workforce Monitoring Template to the satisfaction of the Authority.

3.11 Diversity and equality, and DWP Priority Groups will be discussed jointly by the Authority and the Supplier as an on-going item at Agreement review meetings. Such meetings will discuss the information provided by the Supplier in accordance with this Schedule 14.

**ANNEX 1: LIFE CHANCES WORKFORCE MONITORING TEMPLATE**

**Important – the figures the Supplier provides must relate specifically to the Supplier Personnel used in the performance of the Supplier's obligations under the Agreement only, which for the avoidance of doubt includes any Sub-contractor.**

<b>Name of Agreement:</b>	
<b>Agreement Number:</b>	
<b>Name of Supplier:</b>	
<b>Operational Service Commencement Date:</b>	
<b>Total number of Supplier Personnel, which for the avoidance of doubt includes personnel of any Sub-contractors</b>	

**1 – Number of new Supplier Personnel posts created in the performance of the Supplier's obligations under the Agreement**

<b>New Supplier Personnel posts</b>	<b>Number of new Supplier Personnel posts created in period</b>	
	<b>1-34 hr per week posts</b>	<b>35 hr + per week posts</b>
Baseline return (at 6 months for months 0-6)		
1 <sup>st</sup> annual return (at 18 months for months 7-18)		
2 <sup>nd</sup> annual return (at 30 months for months 19 - 30)		
3 <sup>rd</sup> annual return (at 42 months for months 31-42)		

**2 – Number of Disabled People in Supplier Personnel used in the performance of the Supplier's obligations under the Agreement.**

<b>DWP Priority Group - Disabled People</b>	<b>Number of Disabled People in Supplier Personnel which have been employed for 26 weeks or longer in period</b>	<b>% of Disabled People in Supplier Personnel at end of period</b>	<b>Number of Disabled People who began employment as part of the Supplier Personnel during the period</b>
Baseline return (at 6 months for months 0-6)			
1 <sup>st</sup> annual return (at 18 months for months 7-18)			
2 <sup>nd</sup> annual return (at 30 months for months 19 - 30)			

3 <sup>rd</sup> annual return (at 42 months for months 31-42)			
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**3 – Number of Disabled People, who had been interviewed by the Supplier under the Guaranteed Interview Scheme (GIS) for Supplier Personnel posts used in the performance of the Supplier's obligations under the Agreement.**

<b>DWP Priority Group – Disabled People in the Supplier Personnel who had been interviewed by the Supplier under the GIS</b>	<b>Number of Disabled People who have been interviewed for Supplier Personnel posts by the Supplier under the GIS during the period</b>
Baseline return (at 6 months for months 0-6)	
1 <sup>st</sup> annual return (at 18 months for months 7-18)	
2 <sup>nd</sup> annual return (at 30 months for months 19 - 30)	
3 <sup>rd</sup> annual return (at 42 months for months 31-42)	

**4 – Number of Young People in Supplier Personnel used in the performance of the Supplier's obligations under the Agreement**

<b>DWP Priority Group - Young People</b>	<b>Number of Young People in Supplier Personnel which have been employed for 26 weeks or longer in period</b>	<b>% Young People in Supplier Personnel at end of period</b>	<b>Number of Young People who began employment as part of the Supplier Personnel during the period</b>
Baseline return (at 6 months for months 0-6)			
1 <sup>st</sup> annual return (at 18 months for months 7-18)			
2 <sup>nd</sup> annual return (at 30 months for months 19 - 30)			
3 <sup>rd</sup> annual return (at 42 months for months 31-42)			

**5 – Number of Older Workers in Supplier Personnel used in the performance of the Supplier's obligations under the Agreement**

<b>DWP Priority Group - Older Workers</b>	<b>Number of Older Workers in Supplier Personnel which have been employed for 26 weeks or longer in period</b>	<b>% Older Workers in Supplier Personnel at end of period</b>	<b>Number of Older Workers who began employment as part of the Supplier Personnel during the period</b>
Baseline return (at 6 months for months 0-6)			
1 <sup>st</sup> annual return (at 18 months for months 7-18)			
2 <sup>nd</sup> annual return (at 30 months for months 19 - 30)			
3 <sup>rd</sup> annual return (at 42 months for months 31-42)			

**6 – Number of Ex-Offenders in Supplier Personnel used in the performance of the Supplier's obligations under the Agreement.**

<b>DWP Priority Group - Ex-Offenders</b>	<b>Number of ex-offenders in Supplier Personnel which have been employed for 26 weeks or longer in period</b>	<b>% ex-offenders in Supplier Personnel at end of period</b>	<b>Number of ex-offenders who began employment as part of the Supplier Personnel during the period</b>
Baseline return (at 6 months for months 0-6)			
1 <sup>st</sup> annual return (at 18 months for months 7-18)			
2 <sup>nd</sup> annual return (at 30 months for months 19 - 30)			
3 <sup>rd</sup> annual return (at 42 months for months 31-42)			

**7 – Number of Black or Minority Ethnic (BME) in Supplier Personnel used in the performance of the Supplier's obligations under the Agreement.**

<b>DWP Priority Group - Ex-Offenders</b>	<b>Number BME in Supplier Personnel which have been employed for 26 weeks or longer in period</b>	<b>% BME in Supplier Personnel at end of period</b>	<b>Number of BME who began employment as part of the Supplier Personnel during the period</b>
Baseline return (at 6 months for months 0-6)			
1 <sup>st</sup> annual return (at 18 months for months 7-18)			
2 <sup>nd</sup> annual return (at 30 months for months 19 - 30)			
3 <sup>rd</sup> annual return (at 42 months for months 31-42)			

**8 – Number of Employment Experience placements conducted in the performance of the Supplier's obligations under the Agreement**

<b>Employment Experience placements</b>	<b>Number of Employment Experience placements conducted during the period</b>
Baseline return (at 6 months for months 0-6)	
1 <sup>st</sup> annual return (at 18 months for months 7-18)	
2 <sup>nd</sup> annual return (at 30 months for months 19 - 30)	
3 <sup>rd</sup> annual return (at 42 months for months 31-42)	

**9 – Number of Work Trials conducted as part of the recruitment of Supplier Personnel used in the performance of the Supplier's obligations under the Agreement.**

<b>Work Trials</b>	<b>Number of Work Trials conducted during the period</b>
Baseline return (at 6 months for months 0-6)	
1 <sup>st</sup> annual return (at 18 months for months 7-18)	
2 <sup>nd</sup> annual return (at 30 months for months 19 - 30)	
3 <sup>rd</sup> annual return (at 42 months for months 31-42)	

**10 – Number of vacancies for Supplier Personnel advertised via Find a Job.**

<b>Supplier Personnel vacancies advertised via Find a Job</b>	<b>Number of vacancies for Supplier Personnel advertised via Find a Job during the period</b>	<b>% of all vacancies for Supplier Personnel advertised via Find a Job during the period.</b>
Baseline return (at 6 months for months 0-6)		
1 <sup>st</sup> annual return (at 18 months for months 7-18)		
2 <sup>nd</sup> annual return (at 30 months for months 19 - 30)		
3 <sup>rd</sup> annual return (at 42 months for months 31-42)		

OFFICIAL – COMMERCIAL

**SCHEDULE 15.1**  
**ESTATES SCHEDULE (LOT 4)**

**PART A – DEFINITIONS AND ESTATE SPECIFICATION****1. DEFINITIONS AND INTERPRETATION**

In this Schedule unless the context otherwise requires the following expressions shall have the following meanings:

<b>“Acquisition”</b>	means the acquisition after the date of this Agreement by the Supplier of any leasehold or licenced property that at the point of Acquisition is not a Licensed Property or a Leasehold Property by way of Licence or Lease to be used wholly or substantially for the purpose of providing the Services under this Agreement (and “Acquired” shall be construed accordingly);
<b>“Authority’s Solicitors”</b>	means Mills & Reeve LLP, 7 & 8 <sup>th</sup> Floors, King William Street, London, EC4R 9AT (Ref: 4035842/0011);
<b>“Disposal”</b>	means any sale, assignment, lease or underlease of the whole or any part of the Supplier’s interest in any Licensed Property, Leasehold Property or New Property but shall not include the creation of a charge in relation to any such Leasehold Property or New Property, nor the Supplier exercising its tenant break option in any Lease;
<b>“Expiry Date”</b>	means the end date of the Initial Term or the Extension Period;
<b>“Implementation Estates Plan”</b>	means the plan to be agreed between the Authority and the Supplier in accordance with the provisions of Part A of this Schedule detailing the Operating Sites to be occupied by the Supplier to deliver the Services on and from the Operational Service Commencement Date;
<b>“Implementation Period”</b>	means the period commencing on the Implementation Services Commencement Date and ending at midnight at the end of the day immediately preceding the Operational Service Commencement Date;
<b>“Lease”</b>	means a lease of any Leasehold Property or New Property granted by a Third Party Landlord to the Supplier (or any predecessor to the Supplier) to be used wholly or substantially for the purpose of providing the Services;
<b>“Leasehold Property”</b>	means the leasehold properties detailed in the Implementation Estates Plan together with any New Property that is leasehold;
<b>“Licence”</b>	means a licence of any Licensed Property or New Property granted by a Third Party Landlord to the Supplier (or any predecessor to the Supplier);
<b>“Licensed Property”</b>	means the licensed properties detailed in the Implementation Estates Plan together with any New Property;
<b>“New Property”</b>	means any freehold, leasehold or licensed property which is the subject of an Acquisition;

<b>“Operating Site(s)”</b>	means the Authority Premises, the Leasehold Property, the Licenced Property and any New Property;
<b>“Outgoing Suppliers”</b>	means Maximus UK Services Limited (Company Registration Number: 09072343) whose registered office is at 18c Meridian East, Meridian Business Park, Leicester, England, LE19 1WZ and Atos IT Services UK Limited (Company Registration Number: 01245534) whose registered office is at Second Floor, Mid City Place, 71 High Holborn, London, WC1V 6EA ;
<b>“Third Party Landlord”</b>	means the owner of the reversion of a Licenced Property, a Leasehold Property or a New Property immediately expectant on the term of a Licence or Lease in respect of such Licenced, Leasehold or New Property who shall in each case be unconnected to the Supplier and as the Authority shall have previously approved (such approval not to be unreasonably withheld or delayed) except in such case where the Licence or Lease is already in existence at the date of this Agreement.

**2. ESTATE SPECIFICATION (Lots 1-4 only)**

- 2.1 The use of Authority Premises to deliver WCA Services and Specialist Benefits Services is mandatory. The Supplier may not deliver WCA Services and Specialist Benefits Services from other locations without prior consent from the Authority.
- 2.2 Some or all PIP Services may be delivered alongside WCA Services and/or Specialist Benefits Services from Authority Premises. Details of the Authority Premises to be used for this purpose shall be agreed between the Parties during the Implementation Period (provided always that the Implementation Estates Plan shall be agreed by the date set out in Paragraph 2.7 of this Part A) and/or, in relation to Authority Premises which the Authority confirms after the Operation Service Commencement Date can be made available, following the Operational Service Commencement Date. The Supplier shall identify and source any Operating Sites other than Authority Premises required in order to deliver PIP Services.
- 2.3 The Authority shall provide any relevant updated information about estate being used by the Outgoing Suppliers to the Supplier where such information is available.
- 2.4 The Supplier shall within 20 Working Days after the Implementation Services Commencement Date, inform the Authority of the locations and functions of all Operating Sites to be used for the delivery of PIP Services on and from the Operational Service Commencement Date (including but not limited to details of which Leases the Outgoing Suppliers should transfer to the Supplier) by providing a draft Implementation Estates Plan and confirming any changes to the plan set out in the Supplier Solution.
- 2.5 The Authority shall review the Implementation Estates Plan provided by the Supplier and shall provide any comments or suggestions it may have, including any concerns around the Supplier's ability to deliver the Services in accordance with the provisions of this Agreement from the Operating Sites detailed in the Implementation Estates Plan.
- 2.6 Once (and if) the Authority provides comments on the proposed Implementation Estates Plan, the Parties shall meet to discuss and agree the Implementation Estates Plan.
- 2.7 The Parties will use all reasonable endeavours to agree the Implementation Estates Plan within 30 Working Days of receipt by the Authority in order to minimise any potential wasted costs if the break rights of any Leases or Licences granted to the Outgoing Suppliers and which will not be required for the delivery of the Services cannot be exercised and to ensure that the Operating Sites as detailed in the Implementation Estates Plan can be fit for the purpose of providing the Services on or before the Operational Service Commencement Date.
- 2.8 Following agreement by the Parties of the Implementation Estates Plan, the Supplier shall provide written confirmation to the Authority that, subject to the successful delivery of the Implementation Estates Plan, the Operating Sites described in the Implementation Estates Plan will support the effective delivery of the Services in accordance with the provisions of this Agreement.
- 2.9 The Supplier shall update the Implementation Estates Plan and associated information at the end of the Implementation Period and each Service Delivery Year or upon

reasonable request by the Authority to reflect the Operating Sites actually being used by the Supplier.

- 2.10 The Supplier shall use all reasonable endeavours to ensure that the Operating Sites as set out in the Implementation Estates Plan are ready for the delivery of the Services on or before the Operational Service Commencement Date (including but not limited to ensuring that all assignments take place and any New Property is Acquired on or before the Operational Service Commencement Date) and will keep the Authority regularly updated with progress on the novation or assignment of Operating Sites currently used to deliver PIP Services, or the Acquisition of any New Property and other arrangements necessary for occupation during the Implementation Period. The Supplier acknowledges that the Operating Sites (as set out in the Implementation Estates Plan) being ready for the delivery of the Services on or before the Operational Service Commencement Date is critical to the delivery of the Services.
- 2.11 The Supplier shall occupy Authority Premises on a non-exclusive licence basis. There shall be no rental or facilities charge to the Supplier for use of the Authority Premises during the period of its occupation for delivery of PIP Services, WCA Services and/or Specialist Benefits Services.
- 2.12 The Supplier's costs for Leasehold Property and Licenced Property shall be reimbursed to the extent that they are Allowable Costs for the purposes of Schedule 7.1 (*Charges and Invoicing*). Where the Supplier is in breach of any Lease or Licence terms and conditions, the Authority shall not be liable for any costs associated with the breach, non-observance or non-performance of such terms and conditions, provided that the Authority will act reasonably in determining whether it shall cover any such costs.
- 2.13 Supplier Personnel and Sub-contractors shall comply with all relevant Authority procedures regarding Health and Safety Policy, access to Authority Premises and security.
- 2.14 Where the Supplier has indicated that New Property is required to deliver Services, the Authority intends to prioritise the following options when reviewing the relevant business case:
  - (a) use of Authority Premises – highest priority;
  - (b) use of Sites currently leased by Outgoing Suppliers or their supply chain partners – provided the leases can be assigned to the Supplier;
  - (c) use of One Public Estate, meaning wider public sector property – the Authority will assist the Supplier in identifying opportunities; and
  - (d) Acquisition of property on the open market – lowest priority.
- 2.15 The Supplier shall not enter into any arrangements for New Property or for the extension of existing Leases or Licences during the Implementation Period or during the Term without first obtaining the Authority's prior written consent (not to be unreasonably withheld or delayed). The following will be required as conditions of that consent, unless the Authority in its discretion determines otherwise:
  - (a) Leases contain provisions permitting the Supplier to assign the Leasehold Property to the Authority or a Replacement Supplier without Third Party

Landlord consent but subject to any reasonable and market standard financial tests applying on any future assignment;;

- (b) Leases and Licences are drafted in accordance with Good Industry Practice;
- (c) site costs represent reasonable value having regard to the Authority's duty to demonstrate value for money;
- (d) Leases, Licences or other occupancy agreements do not legally or commercially commit the Authority, or in any way confer any commitment, guarantee, liability or obligation on the Authority;
- (e) Leases, Licences or any occupational agreements do not extend beyond the Term or contain a provision to break (with no cost to the Authority) at the end of the Term; and
- (f) such accommodation shall be fit for the purpose of providing the Services in accordance with this Agreement.

2.16 Where a Lease, Licence or other such occupation agreement extends beyond the Term, the Authority will not be liable for any costs or expenses associated with any such Lease, Licence or occupational agreement beyond the end of the Term, including any costs associated with termination (whether at the expiry of a term or via earlier break right) of any Lease, Licence or occupational arrangement except to the extent approved by the Authority in accordance with Paragraph 2.15 of this Part A.

2.17 The Supplier shall work collaboratively with the Authority throughout the Term to develop and implement opportunities to achieve the Authority's strategic aim for a reduction in the total number of Operating Sites, balancing efficiencies with service optimisation.

2.18 The Supplier shall develop and make available to the Authority on request, detailed plans showing the timescales, including key milestones and review points, for the management, acquisition, fit out and refurbishment of all Leasehold Property and Licenced Property, including New Property (if any).

2.19 All Operating Sites shall provide a safe, accessible and professional environment for Claimants consistently throughout the Term. All Operating Sites shall comply with the mandatory standards as detailed in Annex 1 to this Schedule. The Supplier shall consider the specific design standards set out in Annex 2 to this Schedule when refurbishing Leasehold Property and Licenced Property and fitting out New Property.

**PART B – ASSIGNMENT / NOVATION OF LEASEHOLD PROPERTY****1. INTERPRETATION**

In this Part B only the following expressions shall have the following meanings:

***Existing Site*** means a Leasehold Property which the Outgoing Supplier or its supply chain partners are leasing and in respect of which the Lease has not been assigned or otherwise transferred to the Supplier before or on the Operational Service Commencement Date.

***Existing Site Event*** means the occurrence of either of the following in relation to an Existing Site on or after the Operational Service Commencement Date:

- a. the relevant Third Party Landlord requires the Supplier to vacate an Existing Site, until the legal assignment is completed; or
- b. the relevant Third Party Landlord does not consent to assign the Existing Site to the Supplier.

***Landlord*** means in respect of the Leasehold Property, the person or persons entitled to the reversion (whether immediate or not) expectant upon the termination of the Lease and whose consent is required for the lawful transfer of the Lease by the Outgoing Suppliers to the Supplier;

***Lease*** means a lease of each Leasehold Property vested in the Outgoing Suppliers and “***Leases***” shall be construed accordingly;

***Licence to Assign*** means the consent of a Landlord authorising a transfer of the residue of the term of a Lease to the Supplier in accordance with and pursuant to the terms of a Lease (such consent being evidenced in a written and dated formal licence to assign signed or executed by all of the parties to it).

**2. LICENCE TO ASSIGN**

- 2.1 The Supplier shall request the transfer of all Leasehold Property that it requires for the provision of the Services to it from the Outgoing Suppliers in accordance with its obligations under this Agreement and use all reasonable endeavours to ensure that the transfers are completed on or before the Operational Service Commencement Date. The Supplier shall provide to the Outgoing Suppliers all necessary information for the Landlord to make a decision on providing consent.
- 2.2 Subject to this Paragraph 2 of this Part B, completion of the transfer of the Leasehold Property (except where the provisions of a Lease do not require the Landlord's consent) is conditional on the Licence to Assign required under the Lease being obtained free from unreasonable conditions.
- 2.3 Within a period to be agreed between the Authority and the Supplier (each acting reasonably) following the date of this Agreement the Authority shall use all reasonable endeavours to ensure that the Outgoing Suppliers will (where applicable) progress the application for and use their reasonable endeavours to obtain a Licence to Assign in respect of each Lease.
- 2.4 The Supplier shall without delay:

- 2.4.1 supply all information, accounts and references as the Landlord, the Outgoing Suppliers or the Authority may reasonably require in connection with an application for any Licence to Assign (so far as the same are available to the Supplier);
- 2.4.2 ensure that any amendments that the Supplier proposes to make to any form of Licence to Assign that has been submitted to the Supplier are communicated promptly to the Outgoing Suppliers, the Authority or the Authority's Solicitors;
- 2.4.3 take such other steps as the Authority may reasonably require to ensure compliance with the reasonable and proper requirements of the Landlord in relation to the grant of a Licence to Assign pursuant to the terms of the Lease;
- 2.4.4 execute a Licence to Assign without unreasonable delay as soon as it is received from the Authority, Authority's Solicitors or the Outgoing Suppliers and return the Licence duly executed as directed to either the Authority, the Authority's Solicitors or the Outgoing Suppliers within five (5) Working Days after each engrossment has been submitted to the Supplier.

2.5 The Supplier may not object to a Licence to Assign subject to a condition which is:

- 2.5.1 lawfully imposed under section 19(1A) Landlord and Tenant Act 1927 where the Lease is a “new tenancy” as defined in the Landlord and Tenant (Covenants) Act 1995;
- 2.5.2 reasonably required pursuant to the terms of the Lease.

2.6 The Authority shall be responsible for the payment of the Landlord's proper and reasonable costs of granting the Licence to Assign.

**3. DELAY IN OBTAINING THE LANDLORD'S LICENCE**

3.1 For the purposes of this paragraph 3 any reference to:

- 3.1.1 **“Outgoing Supplier”** shall include any of the Outgoing Suppliers' sub-contractors; and
- 3.1.2 **“Licence Period”** means the period from the Operational Service Commencement Date<sup>1</sup> to and including the earlier of:
  - i. completion of the assignment of the relevant Lease; and

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<sup>1</sup> The Estate Occupancy Arrangements CV (06.09.2024) uses the term “Operation Commencement Services Date” which is incorrect. The correct term is “Operational Service Commencement Date” and that has been used in this conformed contract.

- ii. the date on<sup>2</sup> which the Authority notifies the Supplier that the Authority or any Third Party Landlord of the relevant Leasehold Property requires the Supplier to vacate.

3.2 Subject to the terms of Paragraph 2 of Part B of this Schedule if the Licence to Assign has not been obtained by the Operational Service Commencement Date:

- 3.2.1 this agreement is to continue in respect of the assignment of the Leases;
- 3.2.2 the assignment of a Lease shall not be completed:
  - (i) unless and until the Licence to Assign has been granted; or
  - (ii) the operation of Paragraph 2 of this Part B of this Schedule otherwise requires completion of the assignment of the Lease;
- 3.2.3 the Supplier shall give the Authority as much advance notice as is reasonably possible where there is a risk that the assignment of the Lease will not be completed by the Operational Service Commencement Date and in such instances the Supplier shall use all reasonable endeavours to:
  - (a) make arrangements to occupy the Leasehold Property from the Operational Service Commencement Date on the terms of the licence to occupy set out in Paragraph 4 of this Part B of this Schedule; or
  - (b) ensure that suitable contingency arrangements are in place for the occupation of the Leasehold Property for the delivery of the Services from the Operational Service Commencement Date.

3.3 If the Supplier has made arrangements to occupy the Leasehold Property pursuant to paragraph 3.2.3 of this Part B, the Supplier acknowledges that such occupation of the relevant Leasehold Property will be on the following basis:

- 3.3.1 a non-exclusive bare licence which shall end immediately upon the expiry of the Licence Period;
- 3.3.2 the Outgoing Supplier will continue to pay the rents and all other outgoings due under the relevant Lease;
- 3.3.3 the Supplier will use the relevant Leasehold Property for the delivery of the Services;
- 3.3.4 the Supplier will not alter the relevant Leasehold Property nor the use of it during the Licence Period;

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<sup>2</sup> The Estate Occupancy Arrangements CV (06.06.2024) reads “in which” but this is a mistake, and it should read “on which”. This conformed contract has therefore adopted the intended wording.

- 3.3.5 the Supplier will observe and perform all the tenant covenants contained in the Lease (other than the covenants relating to payment of the rents and alienation);
- 3.3.6 the Supplier will keep the relevant Leasehold Property in as good<sup>3</sup> a state of repair and condition as at the date when occupation is first taken; and
- 3.3.7 the licence created between the Supplier and the Outgoing Supplier in accordance with this paragraph will not create and it is not intended to create a demise and it is personal to the Outgoing Supplier and cannot be assigned or sub-licensed.

3.4 The Supplier undertakes to the Authority that, whilst in occupation of the Leasehold Property, the Supplier will:

- 3.4.1 comply with the basis of occupation set out at paragraph 3.3;
- 3.4.2 observe and perform all the tenant covenants in the relevant Lease (other than the covenants relating to payment of the rents and alienation).

3.5 The Supplier undertakes to the Authority that, whilst the Supplier is in occupation of the relevant Leasehold Property, the Supplier will indemnify the Authority against all costs, expenses, damages, proceedings, losses and other liabilities suffered or incurred by the Authority arising from any breach, non-observance or non-performance of:

- 3.5.1 the tenant covenants in the Lease (other than the covenants relating to payment of the rents and alienation); and
- 3.5.2 the obligations placed upon the Supplier as referred to in paragraph 3.3.

3.6 If during the Licence Period any Third Party Landlord requires the Outgoing Supplier to remove the Supplier from occupation of the relevant Leasehold Property for whatever reason, the Supplier must on request of the Authority forthwith give up occupation of the relevant Leasehold Property such that the Outgoing Supplier does not have any liability to the relevant Third Party Landlord in respect of the Supplier's occupation after the date of that request and the Supplier must indemnify the Authority against any liability resulting from the Supplier's failure to vacate.

3.7 The Authority confirms that it has procured obligations for the benefit of the Authority from the Outgoing Supplier to permit the occupation of the Leasehold Property by the Supplier set out in paragraph 3.3 mutatis mutandis.

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<sup>3</sup> The Estates CV (06.09.2024) reads 'as good as a state of repair'. The second 'as' in that phrase is not required and so it has been removed.

**4. EXISTING SITE EVENT**

4.1 If the Parties agree that the Supplier is not able to achieve the Monthly Volume Clearance Targets as a result of the occurrence of an Existing Site Event, the Authority shall not penalise the Supplier for such failure to the extent that the Supplier can evidence that such failure is a direct result of the occurrence of an Existing Site Event and the Authority agrees that this is the case.

**5. TRANSFER**

5.1 In the event that the transfer of any Leasehold Property does not require the Landlord's consent, the transfer of any Leasehold Property (as applicable) between the Outgoing Suppliers and the Supplier will take effect on or before the Operational Service Commencement Date (as appropriate).

5.2 Where Landlord's consent is required pursuant to the terms of the Lease of any Leasehold Property and the Licence to Assign is completed in accordance with the terms of this Schedule, the Outgoing Suppliers and the Supplier will complete the assignment on or before the Operational Service Commencement Date.

**6. NON-MERGER**

The provisions of this Agreement shall not merge in the assignments referred to in this Schedule above so far as they then remain to be observed or performed or are intended to continue or remain in effect.

**PART C – LICENCED PROPERTY**

**1. CONSENT TO ASSIGN**

1.1 Where, in accordance with the Implementation Estates Plan, the Supplier is to occupy any of the Operating Sites under a Licence, the Supplier shall use all reasonable endeavours to ensure that a Licence is completed on or before the Operational Service Commencement Date.

**PART D – AUTHORITY PREMISES****1. LICENCE TO OCCUPY AUTHORITY PREMISES**

1.1 Except where expressly agreed otherwise by the Authority and the Supplier and subject to the remaining provisions of this Schedule, where the Authority permits the Supplier to occupy Authority Premises, the Authority shall permit the Supplier to occupy the Authority Premises at no charge provided always that:

- (a) such occupation shall be on a non-exclusive licence basis (save in certain circumstances where occupation shall be on a sublease basis);
- (b) the Authority Premises shall be used by the Supplier solely for the purpose of performing its obligations in respect of the Services under this Agreement;
- (c) the Supplier shall vacate the Authority Premises on the expiry or termination of this Agreement or earlier if requested to do so by the Authority;
- (d) the Supplier shall limit access to the Authority Premises to such Supplier Personnel as is necessary to enable it to perform its obligations under this Agreement and the Supplier shall co-operate (and ensure that the Supplier Personnel co-operate) with such other persons working concurrently on such Authority Premises as the Authority may reasonably request; and
- (e) the Supplier shall (and shall ensure that the Supplier Personnel shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Authority Premises as determined by the Authority, and the Supplier shall pay for the cost of making good any damage caused by the Supplier or the Supplier Personnel 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.

1.2 Except where expressly agreed otherwise in writing by the Parties, 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 Supplier or the Supplier Personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Agreement, the Authority retains the right at any time to use any Authority Premises owned or occupied by it in any manner it sees fit.

**2. CHANGES TO ESTATES**

2.1 The Supplier shall be responsible for notifying the Authority of any work necessary to render the Authority Premises adequate for the provision of the Services.

2.2 Where the Supplier has identified that:

- (a) any Authority Premises requires modification; or
- (b) different property is required,

the Supplier shall provide the Authority with a business case identifying the benefits of any such proposal.

2.3 The Authority may reject, accept, modify or require a pilot of any business case provided by the Supplier. In the case of a pilot, the Parties shall agree the modifications and success

criteria relating to the pilot and the Parties shall review the results of the pilot following its completion and agree the next course of action (if any).

2.4 In the case of the Supplier requesting any different property as part of any business case and subject always to the terms of Schedule 8.1 (*Governance*), the Supplier shall provide at least six (6) months' prior written notice to the Authority. The Authority shall be entitled to source any relevant property itself. The Authority shall be entitled to require the Supplier to source such property itself or on the Authority's behalf provided that it notifies the Supplier with as much notice as is reasonably practicable following receipt of the notice provided and the Supplier will assist by entering into any documents required to secure any relevant property.

### **3. RELOCATION IN SPECIAL CIRCUMSTANCES**

3.1 If, other than as a result of an act or default of the Supplier, any right of the Supplier to use any Authority Premises has terminated, the Supplier shall (without prejudice to its obligations contained in this Agreement relating to the provision of the Services) immediately consider whether it is able to provide the relevant Services from any other property which it then occupies (and shall use reasonable endeavours to do so) and shall inform the Authority as soon as reasonably practicable whether it is able to provide the relevant Services from such property together with any additional costs of providing such estate.

3.2 The Authority shall consider any such proposal from the Supplier and shall either:

- (a) request that the Supplier provides the relevant Services from the other properties specified in its proposal; or
- (b) use reasonable endeavours to provide alternative premises (known as the "**Alternative Premises**" for the purposes of this Paragraph 3) for occupation by the Supplier for the purpose of carrying out the relevant Services.

3.3 In the event that the Authority requires the Supplier to source any Alternative Premises itself or on the Authority's behalf, the Authority will provide the Supplier with as much notice as is reasonably practicable, and the Supplier will assist by entering into the documents in respect of the Alternative Premises.

### **4. SUPPLIER DEFAULT**

4.1 Upon the termination of a Lease and/or a Licence resulting from the act or default of the Supplier then:

- (a) the Authority shall: (i) have no further liability to the Supplier in relation to such property; and (ii) be under no obligation to provide alternative estate for the Supplier; and
- (b) the Supplier shall be responsible at its own cost and expense for finding alternative estate to enable it to perform the relevant Services in accordance with the terms of this Agreement and shall not be permitted to recover the cost of such alternative estate from the Authority.

### **5. SERVICE DISRUPTION DUE TO RELOCATION**

5.1 The Authority may require the Supplier to relocate at any time to alternative premises. If the Supplier is unable to meet the Performance Levels as a direct result of such relocation, the

Authority shall waive the application of Service Credits to the extent that it deems fair in its reasonable discretion for the period of disruption caused by the relocation.

## **6. WARRANTIES BY THE AUTHORITY**

- 6.1 Subject to Paragraph 6.2, the Authority does not provide any warranties or representations in relation to the Authority Premises and except as expressly stated in this Agreement, all warranties, representations, assurances, undertakings and conditions by the Authority in relation to the Authority Premises or other properties (including without limitation, warranties and conditions as to title, quiet enjoyment, fitness for purpose and description) whether express or implied by statute, common law or otherwise, are hereby excluded to the extent permitted by law.
- 6.2 The Authority shall comply with its responsibilities set out in Schedule 3 (*Authority Responsibilities*) in relation to the Authority Premises.

## **7. SERVICES TO AUTHORITY PREMISES**

- 7.1 In relation to the Authority Premises the Authority shall provide or procure the provision of suitable soft and hard facilities management used for the relevant Services in accordance with the service specification and service level agreements set out in its third party agreements and in line with Good Industry Practice. Where a Supplier occupies Authority Premises alongside other Authority business areas, the facilities management services provided to the Supplier will be equivalent to those provided to the other users of the Authority Premises.
- 7.2 The Authority will discharge its professional responsibilities to ensure that the Authority Premises used for the relevant Services are compliant with statutory legislation and regulations via regular inspections, planned preventative maintenance plans, up to date certification and prompt implementation of remedial actions. The Authority will provide the Supplier with an annual statement of assurance on statutory and regulatory compliance for each Authority Premises. If the Supplier wishes to undertake its own inspections of Authority Premises, the Supplier shall obtain the Authority's approval (not to be unreasonably withheld or delayed) in advance and the Authority will only be required to undertake any remedial action identified in a Supplier inspection where the remedial action is required as a matter of urgency due to the severity of the issue and the potential impact on the safety of any Claimants or other person located or visiting the Authority Premises.
- 7.3 Where a Supplier occupies Authority Premises, the Authority will provide the Supplier with access to the facilities management services for the reporting and processing of remedial/reactive work, planned maintenance and incident management.
- 7.4 In relation to the Authority Premises, the Authority shall provide or procure the provision of security measures that the Authority considers are necessary (including by reference to Authority standards) and which are required pursuant to its obligations under this Agreement. In the event that the Authority is unable to satisfy its obligation to provide the appropriate security measures to the Authority Premises, the Supplier and the Authority will promptly agree contingency arrangements and the Supplier will use reasonable endeavours to prioritise the ongoing delivery of Services during any period of disruption.

**PART E – DISPOSALS**

- 1.** The Supplier covenants that during the period between the Effective Date and the Operational Service Commencement Date it shall not without the prior written consent of the Authority (which may be given or refused or subject to any conditions in its absolute discretion) make any Disposals or exercise a break option in any Lease or Licence and shall continue to provide the Services from the Licensed Property, the Leasehold Property and from any New Property.
- 2.** Subject always to Paragraph 1 above in the case of Disposals and exercising of a break option and to the terms of Schedule 8.1 (*Governance*) in all cases, from the Operational Service Commencement Date until the Expiry Date (or earlier termination) the Supplier further covenants that it shall not make any Disposal, exercise any break option in any Lease or Licence, or cease to provide the Services from any Authority Premises, Licensed Property, Leasehold Property or New Property without in each case the prior written consent of the Authority provided that such consent shall not be unreasonably withheld or delayed. The Authority acknowledges that due to the flexible arrangements associated with such occupation, the contractual terms of the Licences of a number of the Licensed Properties and the Leases of a number of the Leasehold Properties (subject also to earlier tenant's break rights) may expire and that therefore the Services may not be provided from these Licensed Properties or Leasehold Properties for the duration of this Agreement.

**PART F – ARRANGEMENTS ON EXPIRY**

- 1.** In relation to any Lease which continues beyond the Expiry Date or (in the event this Agreement is terminated before the Expiry Date in accordance with the provisions of Clause 35 of the Terms and Conditions) the Termination Date, the Supplier shall, if requested by the Authority to assign the Lease to the Authority or any Replacement Supplier (as the Authority shall direct) use all reasonable endeavours to assign the Lease to the Authority or any Replacement Supplier, such obligation shall include using all reasonable endeavours to procure Third Party Landlord or lessor consent to the assignment where required.
- 2.** In the event of termination (or if permitted partial termination by operation of Clause 35.2(b) of the Terms and Conditions) of this Agreement pursuant to Clause 35.1(a) (Termination by the Authority) or Clause 35.3(a) of the Terms and Conditions (Termination by the Supplier) the Parties shall comply with the relevant provisions of Clause 36 and Schedule 7.2 (*Payments on Termination*) (as applicable).
- 3.** In the event of termination (or if permitted partial termination by operation of Clause 35.2(b) of the Terms and Conditions) of this Agreement pursuant to Clause 35.1(b) (Termination by the Authority), 35.1(c) (Termination by the Authority), 35.1(d) (Termination by the Authority) or 35.3(b) (Termination by the Supplier) of the Terms and Conditions the Parties shall comply with the relevant provisions of Clause 36.

**PART G – PROVISIONS APPLICABLE FROM THE OPERATIONAL SERVICE COMMENCEMENT DATE**

The provisions in this Part G shall apply with effect from the Operational Service Commencement Date.

**1. PROPERTY STRATEGY**

- 1.1 The Parties shall use their reasonable endeavours to agree, within twelve months of the Operational Service Commencement Date, a property strategy (“**Property Strategy**”), the objective of which is to ensure that the Operating Sites and/or any alternative and equally appropriate premises are available to deliver sufficient operational premises capacity for the effective delivery of the PIP Services (or equivalent services) and the WCA Services and Specialist Benefits Services (or equivalent services) up to and including the Expiry Date.
- 1.2 The Property Strategy shall include (but not be limited to):
  - (a) in the case of those Operating Sites where the existing Lease as at the Operational Service Commencement Date expires during the Term, the Supplier remaining in occupation pursuant to the Landlord and Tenant Act 1954 or renewing the relevant Lease;
  - (b) in the case of those Operating Sites where the existing Lease as at the Operational Service Commencement Date expires on its terms later than the Expiry Date, varying the Leases so that (by way of an acceptable form of break clause or otherwise) the relevant Lease can be terminated on or as soon as possible after the Expiry Date;
  - (c) in the case of those Operating Sites where the existing Lease at the Operational Services Commencement Date has a tenant break right during the Term, the Supplier exercising any such break rights where PIP Services and/or WCA Services and/or Specialist Benefits Services can be effectively delivered without the on-going occupation of that specific Operating Site;
  - (d) ensuring that any Leases of Operating Sites that are renewed incorporate assignment provisions in accordance with the terms of Paragraph 2.15(a) of Part A of this Schedule;
  - (e) in the case of New Property, ensuring that such terms of any Lease or Licence shall only extend to the Expiry Date or shall allow earlier termination on the Expiry Date in accordance with the provisions of this Schedule;
  - (f) maximising the use of Authority Premises for the purpose of delivery of the PIP Services and/or the WCA Services and/or the Specialist Benefits Services and where viable utilising wider public sector property ahead of the acquisition of property on the open market;
  - (g) looking holistically across both the Licensed Property and the Leasehold Property to test opportunities and develop proposals for the realisation of the Authority's strategic aim for a reduction in the total number of Operating Sites, including opportunities for the possible delivery of additional PIP Services from Authority Premises.

**2. RENEGOTIATION OF EXISTING LEASES**

- 2.1 Following agreement of the Property Strategy, the Supplier will enter into negotiations in pursuance of the Property Strategy (and ensure the Authority is kept up-to date at

reasonable intervals or upon request by the Authority) with the relevant Third Party Landlords of the Operating Sites in good faith (“**Lease Negotiations**”) and will use its reasonable endeavours to promptly achieve an outcome which gives effect to the Property Strategy.

- 2.2 No changes to the Leases or Licences of the Operating Sites shall be agreed (whether during or outside the Lease Negotiations) without the consent in writing of the Authority (such consent not to be unreasonably withheld or delayed).
- 2.3 The reasonable and proper costs of the Supplier participating in the Lease Negotiations on or following the Operational Service Commencement Date (including any reasonable and proper legal fees incurred by the Supplier in such Lease Negotiations), together with any additional sums which are agreed to be paid in respect of any leases of Operating Sites during the Term as a result of the Lease Negotiations as Costs, shall form part of the Costs under this Agreement subject to the Supplier obtaining the agreement of the Authority to any such Costs before incurring the same.
- 2.4 If a relevant Third Party Landlord is unwilling or unable to agree to licence or lease terms which are acceptable to both the Authority and the Supplier, then the Parties shall promptly agree any required changes to the Property Strategy and any impact on and changes to this Agreement.

**PART H – ONGOING ASSISTANCE, EXIT ASSISTANCE GENERAL CONTRACT MANAGEMENT AND ESTATE DISRUPTION PROVISIONS**

**1. ONGOING ASSISTANCE**

- 1.1 The Supplier shall create and maintain:
  - (a) a list of all Leases and Licences; and
  - (b) a list of all fixtures and fittings located at any of the Operating Sites including the state of condition and dates acquired of such fixtures and fittings noting any particular wants of repair and shall in a timely manner provide an up to date copy of such list to the Authority with fourteen (14) days of request, together with such information as the Authority may reasonably request, including any information required pursuant to Schedule 8.5 (*Exit Management*).
- 1.2 The Supplier shall ensure that it maintains up-to-date quickly and easily accessible information regarding the terms (together with any break and extension options, details of any facilities management included within the Lease or Licence and early termination consequences and assignability of any Leases) of all Leases and Licences, and a copy of the schedule of condition for those Operating Sites.

**2. EXIT ASSISTANCE**

- 2.1 The Supplier shall comply with Paragraphs 3.1 and 7 of Schedule 8.5 (*Exit Management*).

**3. CONTRACT MANAGEMENT**

- 3.1 The Authority and Supplier shall, as part of the on-going contract management arrangements, agree a process for regular stakeholder engagement on building performance and compliance issues and for the provision of key service level information including breakdown response times for business critical elements to include but not be limited to lifts, heating, ventilation and air-conditioning.
- 3.2 The Supplier shall provide an annual statement of assurance confirming that all Operating Sites are compliant with all relevant statutory legislation as detailed in the mandatory standards in Annex 1 to this Schedule.

**4. ESTATE DISRUPTION**

- 4.1 In the event of disruption to the Operating Sites due to circumstances beyond either of the Authority or Supplier's control which could cause or has caused disruption to the provision of Services, the Supplier shall advise the Authority as soon as reasonably practicable of such disruption. The Authority and Supplier shall work together to promptly agree contingency arrangements to prioritise the ongoing delivery of Services and the Supplier will use all reasonable endeavours to ensure that there is no disruption to the delivery of the Services and to perform the Services to the Performance Levels specified in Schedules 2.1 (*Services Description*) and Schedule 2.2 (*Performance Levels*), including putting in place contingency arrangements to be agreed with the Authority (and the Authority will not unreasonably withhold approval). The Supplier shall not temporarily (or permanently) close any Operating Sites (including by instructing staff not to attend or cancelling/changing face to face assessment appointments) without the Authority's consent unless it is not physically possible for the Supplier to keep the Operating Site open. If the Supplier is unable to

meet the Performance Levels as a direct result of such disruption, the Authority shall waive the application of Service Credits to the extent that it deems fair in its reasonable discretion for the period of disruption.

- 4.2 In all circumstances where there is possible or actual disruption to the delivery of the Services due to Supplier relocation or the Acquisition of New Property, the Authority and the Supplier shall work collaboratively to prioritise the ongoing delivery of the Services and the Supplier will use all reasonable endeavours to ensure that there is no disruption to the delivery of the Services, including putting in place contingency arrangements to be agreed with the Authority (and the Authority will not unreasonably withhold approval) and to ensure that the Services continue to be performed to the Performance Levels specified in Schedules 2.1 (Services Description) and Schedule 2.2 (Performance Levels).

**Annex 1****Mandatory Standards****Mandatory Standards – no provision for derogation**

Applicable to all Operating Sites in relation to the delivery of the Services from the date of occupation by the Supplier and for the duration of the Supplier's occupation.

<b>Location</b>	<p>The Supplier must ensure that accommodation is sited so that Claimants can attend a Consultation within 90 minutes by public transport (single journey).</p> <p>The Authority encourages innovation and would like for Consultation areas to be as local and convenient as possible. For example, the Supplier may consider hiring available space in GP Surgeries, Health or Community Centres, etc.</p>
<b>Legal and Statutory Compliance</b>	<p>All accommodation must be compliant with relevant statutory legislation and regulations including but not limited to Equality Act 2010, Disability Discrimination Act 1995, Workplace (Health, Safety and Welfare) Regulations 1992, Minimum Energy Efficiency Standards (MEES) 2020 and Building Regulations 2000. Where alterations or refurbishment work is undertaken to properties, this must be in accordance with prevailing Building Regulations and Statutory standards.</p> <p>Buildings must satisfy Planning Consent criteria and building use provisions within leases.</p> <p>The Authority will provide an annual statement of assurance to this effect to the Supplier for its own sites with a reciprocal arrangement for sites procured by the Supplier.</p>
<b>Security</b>	<p>Risk Assessments must be carried out to ensure that any accommodation provided offers a safe and secure environment for both the Supplier's staff and Claimants. For all Operating Sites excluding Authority Premises the Authority will not prescribe how Risk Assessments are to be undertaken.</p>

	Doors from waiting areas into non-public access areas should be fitted with access control systems.
<b><u>Minimum Standards – with provision for derogation by exception</u></b>	
Applicable to all New Property Acquired for the delivery of the Services. Derogations may be agreed with the Authority pursuant to Paragraph 5.10(c) of Schedule 8.1 ( <i>Governance</i> ).	
<b>Building Accessibility</b>	<p>The Supplier must ensure that accommodation is within a suitable ground floor area in all locations, to enable all Claimants to be dealt with in an environment suitable to their needs.</p> <p>Assessment Centre buildings must be easy for all customers to reach. This should be achieved through any combination of one or more of the following features – disabled parking nearby; drop off points immediately outside the building; public transport stops nearby. The aim is to ensure the minimum distance possible for customers to get from their mode of transport to the Assessment Centre entrance – as guide within 30m.</p> <p>Separate entrances for staff and Claimants must be provided.</p>
<b>Assessment Room Sizes</b>	Rooms that will be used for Face to Face Consultations should measure no less than 12m <sup>2</sup> . There is flexibility for sites to include smaller room types for Telephone Consultations and Video Consultations. Layouts may otherwise be in accordance with the flexible designs set out in Annex 2 to this Schedule 15.1 ( <i>Estates</i> ).
<b>Waiting and Reception areas</b>	The Supplier must ensure they set out how they intend to resource and manage the customer reception area as effectively (and efficiently) as possible (reflecting the governments smarter ways of working strategy and PAS3000), to deliver volume and customer service targets (as set out in Schedule 2.2 ( <i>Performance Level/s</i> )) on an efficient footprint, but there will be an expected maximum of 4 staff members split equally across 2 different reception desks.

OFFICIAL – COMMERCIAL

<b>Furniture</b>	<p>Specialist furniture requirements for Supplier Personnel working in Authority Premises which have been identified through the Supplier's own occupational health assessment should be raised with the Authority to provide.</p> <p>For all Operating Sites excluding Authority Premises furniture must be of a minimum acceptable standard for meeting Claimant needs, including specialist furniture where required.</p>

**Annex 2****Design Standards****Scope of guidance**

This document provides best practice guidance on the design of facilities for delivering Assessment Centres.

It describes the following:

- 1 The range of services that may be delivered from Assessment Centre buildings;
- 2 The types of space needed to deliver these services (many of which are generic);
- 3 The way to quantify these spaces for space calculation purposes;
- 4 The way spaces can be organised into zones to create efficient, flexible, user-friendly environments.

This guide has been written with the provision of new-build facilities in mind. The principles described apply equally to the refurbishment and extension of existing buildings.

**Guiding principles**

Assessment Centre buildings should be:

- 5 Driven by strategic service and estate planning, to avoid overcapacity and under-utilisation;
- 6 Informed by Consultations with providers, stakeholders, and relevant statutory bodies during the planning and design process;
- 7 Underpinned by the use of provider agnostic spaces to support multi-functional use;
- 8 Able to explore the separation of claimant areas from practitioner admin requirements;
- 9 Adaptable to changing service needs and pathways;
- 10 Safe, secure, physically accessible and welcoming to the communities they serve;
- 11 Supportive of staff development, with an emphasis on appropriate training and learning facilities;
- 12 Simply laid out to aid staff/claimant journeys, minimise staff movements and allow for efficient maintenance;
- 13 Designed to deliver appropriate levels of emergency preparedness and resilience.

**Design quality**

The DWP places great importance on design quality, and a conscious effort has been made in recent years to raise the standards of Assessment Centre buildings.

Currently, the Estates Design Standards team review all proposed schemes over a predetermined value. However, all schemes should be considered for review to ensure key design requirements are met.

**Accessibility**

All Designs must be compliant with:

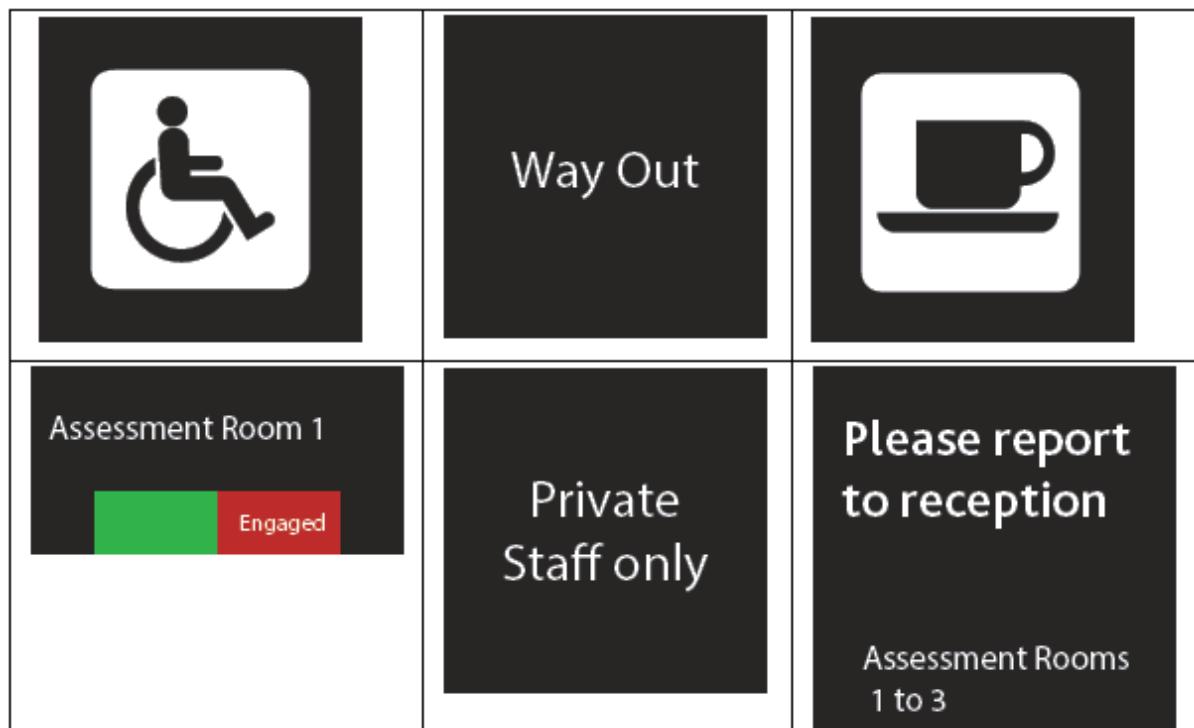
- 14 Disability Discrimination Act 1995 et seq;
- 15 The Building Regulations 2000;
- 16 Approved Document M. Access to and use of buildings;

17 FAQs on Approved Document M under the “Professional User” section of the Planning Portal at [www.planningportal.gov.uk](http://www.planningportal.gov.uk);

18 BS 8300: 2009.

## Wayfinding

Examples of a recent project below. Environment guide to be found on the DWP Communication centre. External partners will be able to access the files. (The website is not open to everyone and will require a registration)



### Standardise room sizes and position of built-in equipment

Room sizes and dimensions should be standardised wherever possible. This may mean sizing up to some extent, but results in rooms that can be adapted (for alternative use) more easily.

The ability to standardise the position of built-in equipment (for example clinical wash-hand basin) will further enhance adaptability.

### Location and positioning

Assessment Centres ideally should be located on the ground floor as it facilitates simpler evacuation of staff and claimants. It also provides better access for those with various disabilities.

Where all or part of an Assessment Centre is located above the ground floor care needs to be taken to provide an effective, workable evacuation plan. This may include the added cost of a lift that can be used for evacuation in the event of a fire.

The property must be fully compliant with the Equality Act 2010/Disability Discrimination Act 1995.

Consideration should be given to claimant disabled bays. The requirement will form part of the contractual discussions, and the same principals DWP have with staff should be applied.

The property should be close to public transport links, achieve ministerial criteria and where possible within a central location.

### **Entrance & security**

- 19 Ideally, only one public entrance to the building should be provided, as this avoids confusion and aids security. A draught lobby is usually required.
- 20 The staff and claimant entrances to Assessment Centres should be kept separate.
  - (a) However, this is not prescriptive and can be merged provided this has been discussed and agreed.
- 21 Assessment Centres can share entrances with other tenants, and waiting areas.
  - (a) Again, this should be discussed with all parties to ensure everyone is content with the approach.
  - (b) Sharing of facilities can complicate matter, however, if this is worked through properly and all key stakeholder are involved this can be resolved.
- 22 Assessment Centres are largely stand alone to avoid problems with working with others and this also helps alleviate H&S concerns. – This can be linked to JCP operating differing hours to the Assessment Centres and potential issues with shared corridors/toilets or waiting areas. However, these issues can be designed out and combining our services to maximise efficiency should be sought where possible.
- 23 Any security risks are to be reviewed by G4S by means of a Security Risk Assessment (STRA).
- 24 The STRA would drive the requirement for intercoms/video link installations and/or security guards to alleviate security concerns.

### **Reception & waiting areas**

- 25 The public zone, made up of the main entrance, reception and associated spaces, should be:
  - (a) open and welcoming;
  - (b) visible from outside the building to aid building legibility; and,
  - (c) naturally lit, with good views of external spaces.
- 26 The main entrance point should be overseen by a desk, which is staffed whenever the building is open. Alternatively, this security function can be fulfilled from the main reception desk. Situations should be avoided where visitors can access areas of the building without having passed a desk.
- 27 All buildings require a main reception desk, monitoring the waiting area and managing appointments. The reception desk should be visible and welcoming and can have more than one reception points that claimants can report.
- 28 Receptionists will inform staff running clinics and/or the relevant practitioner that the claimant has arrived.
- 29 The reception areas currently benefit from a mixture of window hatches/ counters/ glass screened counters. When transferring the preference is to create a professional environment with a reception point that is also fully Equality Act 2010/Disability Discrimination Act 1995 compliant and supported by STRA. A counter without the glass partition is the preference, however, the STRA may dictate otherwise.
- 30 There may be an open-plan office behind the main reception desk for general administration tasks associated with appointments and clinics. Paper records, if used,

may be stored here. Where an office is provided behind reception, it should have direct access to the assessment rooms.

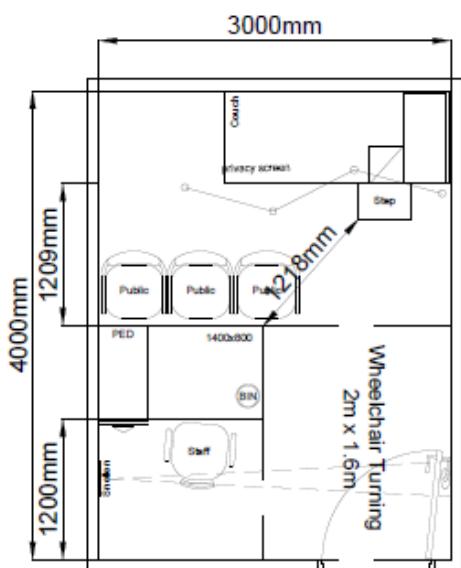
- 31 The current standards allow for the back of house space behind the reception desk to be visible to customers. Moving forward, this should be walled off with a partition whilst providing a door for reception staff to be able to access the space from the back of house space or circulation corridors.
- 32 The post room function may be located behind the main reception desk, in a quiet corner, or in an adjacent office if provided.
- 33 Within the waiting area, claimants will have access to a disabled toilet.
  - (a) The disabled toilets are to be Equality Act 2010/Disability Discrimination Act 1995 compliant, with suitable contrast between the wall finishes and the Doc M packs and also include a baby changing unit.
- 34 Provision of water coolers for Claimants. These are to be plumbed.
- 35 Wayfinding within the waiting area is important, particularly in larger buildings. Colour, pendants or large icons may be useful in helping patients to orientate themselves within the space.
- 36 Large waiting areas will need to be broken down with smaller groups of seats, to make the space less daunting and institutional, and to enable claimants to sit close to the suite to which they will be called. Indoor planting can also be used as well as the introduction of small children's play areas
- 37 Waiting areas should also have wall space for notice boards for claimants.
- 38 Three waiting area chairs for every assessment room.
  - (a) Furniture can be transferred from previous property, or new supplied.
  - (b) A range of different seating, of varying heights and styles should be provided, including sofas and high-backed chairs to make the space more interesting and suitable for a wide variety of people.
  - (c) The furniture catalogue is currently under review and Design Standards hope to be able to provide further guidance in the near future.
  - (d) The seating layout should be considered carefully to prevent confrontational situations (for example, by trying to avoid seats directly opposite each other). Seating should not be located immediately outside clinical rooms.
  - (e) Natural light should be provided. Steps should be taken to prevent solar heat gain.
  - (f) 1.5m<sup>2</sup> per ambulant place (that is, in a general chair); 3m<sup>2</sup> per wheelchair place.
- 39 For briefing purposes, waiting areas may be sized at 1.65m<sup>2</sup> per place, or 4.95m<sup>2</sup> per assessment room (minimum size of 12m<sup>2</sup>)
- 40 One reception point should be allowed for every 6 assessment rooms.
  - (a) A receptionist has a myriad of duties, including but not limited to:
    - (i) Assist claimants with completion of forms including expense claims.
    - (ii) Prepare and maintain rooms and equipment to ensure they are ready for the HP and claimants.
    - (iii) Working with other teams, Team Leaders and HPs to ensure cohesion within unit and work flow progression.
    - (iv) Using in-house computer system to update records accurately.
    - (v) Regular telephone liaison with MSC.
    - (vi) Provide cover at other sites on occasion.
    - (vii) General administrative duties as required.
  - (b) Thus, the receptionist will utilise the back of house space 50% of the time, rotating as required.
- 41 An area behind the reception has historically been used to accommodate the BOH function due to space constraints. However, the Suppliers should be looking at a dedicated private space for this function and maintain a separate reception.

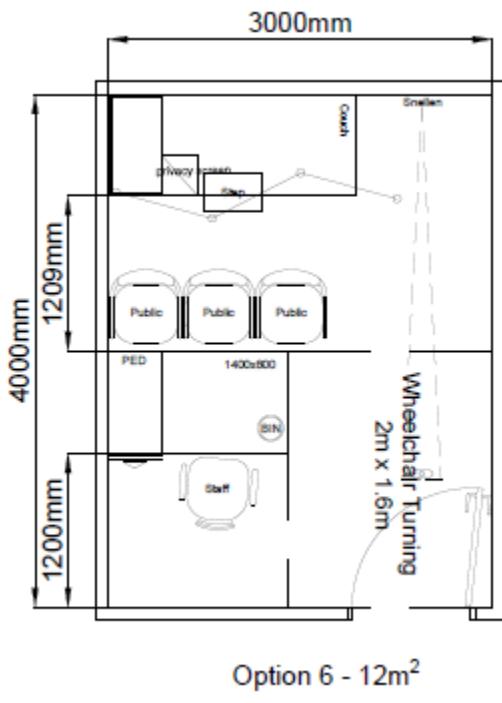
42 Staff within the reception area will need to be able to communicate by telephone, email, letters and fax. All forms are still actively used by an Assessment Centre to communicate with doctors.

Doors from waiting areas into non-public access areas should be fitted with access control systems.

### Assessment room

The most appropriate assessment room size has been calculated and agreed to be 12m<sup>2</sup>. This includes all possible requirements for an assessment room increasing flexibility. Possible layouts shown below:





- 43 12m<sup>2</sup> will ensure that even our smallest rooms are able to accommodate all wheelchair users;
- 44 That every room has the option of having a medical couch. Whilst a couch isn't mandated, in the event that a couch is required, the Supplier shall procure that the HP shall have access to one.
- 45 Will accommodate all of our Suppliers, their equipment and drastically increasing the flexibility of the estate.

Each assessment room will accommodate:

- 46 Operators chair will have five castor wheels to allow the MOS to move about;
- 47 Three claimant chairs will be provided. (Same requirements as those within the waiting area);
- 48 It should be considered that a 3m wide 'Snellen' will need to be present within the room. (Claimant will need to stand 3m from where the 'Snellen' hangs. A Snellen is the visual chart an optician uses that you read the letters from);
- 49 1400 x 800 desks are to be used;
- 50 Pedestal;
- 51 Bin, and;
- 52 Privacy screen where required.
- 53 Rooms benefiting from natural light are preferable, however, this not prescriptive.
- 54 Access controls to be agreed as part of STRA and the waiting areas should be separated from the assessment rooms and controlled via an access control door.
- 55 Assessment rooms are to be specified with an acoustic rating of 50db.

Please note; it is understood that this specification will be able to accommodate the various benefit Assessments that are carried out via various Suppliers. This also allows, with slight tweaks, to smart work assessment rooms. This would require a slightly larger back of house

function, with assessors being rotated into this space following an Assessment creating greater efficiencies. This is yet to be thoroughly tested and agreed.

### **Back of House**

- 56 Expect Suppliers to implement smarter working to make better use of the back of house space. – Authority to provide seating on an 8.2-10 sharing ratio.
- 57 The requirements of these should be captured in an EBR and inform any acquisition process.
- 58 Otherwise, Assessment Centre back of house should fall in line with wider DWP back of house standards, including furniture and finishes.

### **Storage**

- 59 Currently, CHDA utilise a varied amount of storage across their estate depending on how the site manages their workload. Storage is vital as HDAS is a historically paper based system. This should be clearly identified in any plans. The DWP and its providers are moving towards a WCA scanning solution, so the need for storing paper records is likely to diminish over time.
- 60 Each request should be carefully challenged as it believed this storage can be managed in much more lean way.
  - (a) Nb, this can include storage within the back of house space and does not necessarily need to be a dedicated space.
  - (b) Where a dedicated storage room is found to be appropriate, they should be 12m<sup>2</sup>; this makes it possible to repurpose these spaces for additional assessment rooms at a later date once things move to digital.
  - (c) Increments of 2m<sup>2</sup> (1.20m<sup>2</sup> per assessment room) for every 6 assessment rooms should ensure adequate storage.
- 61 PIP providers currently utilise a digital system and require no more storage than our own front of house service. A small storage room for forms and Suppliers is all that is required. FOH/BOH reception area will have some tall storage units that contains supplies used daily (expenses forms, latex gloves, sick bowls etc.).
- 62 A comms room is required. This will be dependent on the occupancy, and should be considered to utilise the same space as per DWP standards. – This can be shared with the DWP within a co-located property.
- 63 The DWP and its providers are moving towards electronic patient records, so the need for storing paper records is likely to diminish over time.
- 64 All records need to be held securely, with carefully controlled access arrangements.
- 65 Routes for taking delivery of incoming boxed files should be considered in deciding where to locate storage space for acute records

### **Welfare facilities**

- 66 Welfare facilities should be in line with DWP JCP standards.

### **Health and Safety Considerations**

#### Fire safety

DWP recognise that good management of fire safety is essential to ensure fires are unlikely to occur but if they do occur they can be controlled or contained or if they grow everyone is

able to escape to a place of safety quickly. Therefore, it is recognised that robust and well-kept procedures must be in place including carrying out a Fire Risk Assessment (FRA).

A FRA will be carried out in all properties that must be suitable and sufficient as required by the current fire safety legislation. This will include an evacuation plan.

The FRA is carried out by a competent person using a Fire Risk Assessment format known as PAS79. This is a Publicly Available Standard published by the British Standards Institution and recognised as an acceptable means for completing and recording fire risk Assessments. It is an organised and methodical look at the property, the activities carried out and the likelihood that a fire could start and cause harm to those in and around the premises.

The assessor will:

- 67 Obtain information on the building, processes carried out and people present or likely to be present.
- 68 Identify fire hazards and means for their elimination or control
- 69 Assess the likelihood of a fire
- 70 Determine the fire protection measures
- 71 Obtain relevant information about fire safety management
- 72 Make an assessment of the likely consequences to people in the event of a fire
- 73 Make an assessment of the fire risk
- 74 Formulate and document an action plan, the aim of which is to ensure the overall assessment of risk is tolerable, a well-managed building with the likelihood of fire occurring and relevant persons being adversely affected by fire as low
- 75 Set a review date.

To evaluate the risk to people it is important to understand the way a fire can spread along with risk reduction methods including:

#### Fire detection and warning systems

- 76 Manually operated electrical fire alarm system
- 77 Automatic fire detection throughout building
- 78 Remote transmission of alarm signals

#### Firefighting equipment

- 79 Portable fire extinguishers
- 80 Hose reels
- 81 Automatic fire extinguishing systems

#### Provision and maintenance of protected fire escape routes and fire resistant compartments

- 82 Adequate design of escape routes leading to final exits. Number and widths of fire exits and escape routes sufficient for number of occupants.
- 83 Fire exit doors easily and immediately openable without use of key and open in direction of escape where necessary.
- 84 Avoidance of sliding or revolving doors as fire exits.

- 85 Satisfactory means of securing exits.
- 86 Reasonable distances of travel either single direction or alternative means of escape.
- 87 Suitable protection of escape routes with fire resisting doors self-closing, kept locked shut or only held open by suitable correctly functioning automatic door release mechanisms.
- 88 Suitable fire precautions for inner rooms ensuring occupants aware of fire in access rooms.
- 89 Compartmentation of reasonable standard.
- 90 Reasonable limitations of linings that might promote fire spread.
- 91 Fire dampers provided to protect critical means of escape against passage of fire, smoke and combustion products in early stages of a fire.

#### Lighting and emergency lighting

- 92 Emergency routes or exits requiring illumination must have emergency lighting of adequate intensity.

#### Signs and notices

- 93 Emergency routes and exits must be indicated by signs.
- 94 Manual extinguishing equipment must be indicated by signs.

#### Maintenance measures

- 95 Weekly testing and periodic servicing of fire detection and alarm system.
- 96 Monthly and annual testing routines for emergency escape lighting.
- 97 Annual maintenance of fire extinguishing appliances.
- 98 Periodic inspection of external escape staircases and gangways.
- 99 6 monthly inspection and annual testing of rising mains.
- 100 Routine checks of final exit doors and security fastenings.
- 101 Annual inspection and test of lightning protection system.

#### Asbestos

The principle requirement under the current legislation is the duty to manage asbestos on premises. This duty lies with the duty holder as defined in the building contract/lease agreement, which may vary throughout the estate. The duty requires that reasonable steps are taken to identify asbestos containing materials so that risks can be managed via a suitable management plan.

- 102 Asbestos survey reports completed before occupying new sites.
- 103 Any asbestos detected or presumed to be present is managed with Asbestos Management Plan. This will include asbestos register and re-inspection management surveys with condition reports on identified materials.
- 104 Refurbishment survey completed before upgrading or refurbishing buildings.
- 105 Work on asbestos only carried out by licensed contractors.
- 106 Competent contractors inducted in site rules only used for servicing or maintenance work in areas where asbestos present or presumed.

Electricity

Precautions must be in place to protect against death or injury from the use of electricity.

- 107 Fixed wiring installations subject to inspection and test every 5 years
- 108 Residual current devices test operated along with visual inspections and thermal imaging
- 109 Portable electrical equipment formally inspected and tested on annual basis with periodic visual inspections carried out locally
- 110 Lightning conductor inspected every 11 months including continuity tests, earth resistance tests, visual check of conductors, bonds and joints
- 111 Competent contractors meeting recognised standards and qualifications used for electrical work including installation, maintenance, inspection, servicing or repair
- 112 Electrical equipment purchased to meet appropriate British standards.

Gas / Oil

Legislation deals with the safe installation, maintenance and use of gas or oil fired systems, fittings, appliances and flues. This mainly covers heating systems and boilers which are normally located in boiler / plant rooms that are not readily accessible to staff.

- 113 Gas / oil fired appliances, fittings, pipe work and flues maintained and serviced according to manufacturer's instructions, at least annually.
- 114 Annual safety checks carried out or checked that completed before any new lease starts or checked within 12 months of installation date.
- 115 All installations, maintenance, safety checks and repairs carried out by Gas Safe registered engineers.
- 116 Staff instructed on actions to take if smell or suspect gas escape.

Radon

The Management of Health and Safety at Work Regulations 1999 require the assessment of health and safety risks and this should include the potential radon hazard in the workplace.

Radon is a radioactive gas occurring in rocks and soils, some building materials and water. The ground is the most important source as radon can seep out and build up in houses and indoor workplaces. Public Health England have produced a radon potential map of the UK by combining the results of measurements in houses with maps of the underlying geology. Locations with elevated radon potential are called 'Affected Areas' and risk assessments need to include measurements in appropriate ground floor rooms where a building is located in a radon affected area. Such measurements should be made for any buildings with workspaces in basements whether in an affected area or not.

Water

Water systems need to be designed and built to comply with the Water Supply (Water Fittings) Regulations. There is also a duty to assess the risk to employees from hazardous substances including waterborne biological agents such as legionella bacteria and manage water temperatures to avoid scalding.

- 117 Suitable and sufficient water risk assessments completed and reviewed bi-annually with water control scheme established

- 118 Water based ventilation systems regularly tested and maintained
- 119 Hot water taps with potential for scalding appropriately signed with warning
- 120 Showers fitted with thermostatic mixer valve to prevent scalding and tested and maintained in line with the requirements of the water control scheme.

Lifts / Lifting equipment

- 121 Passenger and goods lift subject to independent thorough examination on 6 monthly and annual basis with defects that can cause danger actioned immediately
- 122 Planned Preventative Maintenance schedule in place including assessments of observations made in examination reports.

Welfare

It is expected for sites to comply with the Workplace (Health, Safety and Welfare) Regulations, 1992. To summarise:

- 123 Planned Preventative Maintenance schedules in place to ensure comfort and reasonable temperatures maintained
- 124 Effective and suitable provision made to ensure well ventilated workplace with mechanical ventilation systems tested and maintained on annual basis
- 125 Suitable and sufficient lighting to allow safe working and movement from place to place along with emergency lighting in event of normal lighting failing
- 126 Room dimensions and space compliant with regulation 10
- 127 Workstations and seating suitably arranged as defined in regulation 11
- 128 Provision of suitable and sufficient sanitary conveniences and washing facilities at readily accessible places
- 129 Accessible toilets designed in accordance with British Standards 8300 and Part M of the Building Regulations
- 130 An adequate supply of wholesome drinking water provided
- 131 Suitable and sufficient rest facilities and places to eat provided
- 132 Suitable facilities are provided for any pregnant woman or nursing mother to rest.

Each DWP building is required to have a Senior Responsible Officer (SRO) who is responsible for ensuring that standards are maintained and processes in place to ensure risks are assessed, managed and reviewed. Support in this role is described in the DWP Building Senior Responsible Officer – Role and Responsibilities document.

Physical Security considerations

- 133 Security Perimeter – who controls it, how is it controlled, are perimeter lighting and access controls sufficient, make-up of doors and windows, what is the environment like outside of the building
- 134 Reception – is there guarding and is it sufficient, are they suitably trained, patrol routines and the recording of activity
- 135 Physical Barriers – are there sufficient controls to guard against attack – barriers, turnstiles, hostile vehicle mitigation

- 136 Intruder detection – are there suitable Intruder Detection Systems, is it maintained, how are alarms activated, are they adequately positioned, response arrangements, CCTV coverage
- 137 Physical Entry Controls – controls for permanent staff and visitor arrangements, if appropriate controls over vehicles and secure car parking
- 138 Access to assets – where is sensitive information held, how is access controlled
- 139 Key Management – how are keys protected, maintenance of registers, handing over of keys, key musters
- 140 Communications Rooms – where are these sited, is there sufficient protection to access the room and within the room, how is access managed
- 141 Identification – badges etc.
- 142 Back of House – how are these areas positioned, access controls
- 143 Post/deliveries – what are the arrangements, what controls are in place
- 144 Equipment – controls for equipment that is being left in public areas/places
- 145 Clear Desk
- 146 Panic alarms under desks
- 147 Secure Printing
- 148 Front of House positioning of furniture – prevention of physical incidents
- 149 IT – logging off from PC's/surface pros
- 150 Confidential Waste – how is this managed
- 151 Security Awareness/Culture

**Annex 3**

The postcodes in respect of which the Operational Services  
within the relevant Lot will be provided

<b>Lot 4 - London, South East and East Anglia</b>
BR
CM
CO
CR
CT
DA
E
EC
EN
HA
IG
IP
KT
ME
N
NR
NW
RM
SE
SM
SS
SW
TN
TW
UB
W
WC

Official - DWP Use Only  
OFFICIAL – COMMERCIAL

**SCHEDULE 15.2**  
**AUTHORITY ASSETS**

## 1 **DEFINITIONS**

1.1 In this Schedule unless the context requires otherwise the following expressions shall have the following meanings:

<b>“Additional Property”</b>	means the property (other than real property and the Initial Property):
	(a) issued or made available to the Supplier, free of charge, by the Authority in connection with this Agreement during the Term, including IT Equipment; or
	(b) acquired by the Supplier as an Allowable Cost under Schedule 7.1 ( <i>Charges and Invoicing</i> ), including Key Medical Equipment;
<b>“Initial Property”</b>	means all property (other than real property) issued or made available to the Supplier and/or to Supplier Personnel, free of charge, by the Authority in connection with this Agreement by the Operational Service Commencement Date, including IT Equipment;
<b>“Key Medical Equipment”</b>	means the property listed in Annex 1 to this Schedule 15.2, as amended from time to time;
<b>“Office Equipment”</b>	means office furniture, cabinetry, and white goods; and
<b>“Property”</b>	means the Initial Property, Additional Property and any replacements.

## 2 **PROPERTY**

2.1 The Authority shall issue or make available the Initial Property to the Supplier to enable delivery of the Services. The Supplier may acquire Additional Property and/or replacements for the Initial Property and Additional Property as required to support delivery of the Services.

2.2 All Property (including replacements) shall be and remain the property of the Authority. The Supplier shall not under any circumstances have a lien or any other interest in the Property and the Supplier shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Supplier 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.

2.3 The Supplier shall, at the Authority’s request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority. The Supplier irrevocably licences the Authority and its agents to enter upon any Sites during normal business hours on reasonable notice to recover any such Property.

2.4 The Property shall be deemed to be fit for purpose to deliver the Services when received by or on behalf of the Supplier unless the Supplier notifies the Authority otherwise in writing and within five (5) Working Days of receipt, with photographic evidence if required.

- 2.5 The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with the Agreement and for no other purpose without the prior written approval of the Authority.
- 2.6 The Supplier shall ensure that the Property, whilst in its possession during the supply of the Services, is secured in accordance with the Security Policies and Standards as defined in Schedule 2.4 (*Security Management*), Good Industry Practice and Law.
- 2.7 The Supplier shall notify the Authority within two (2) Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, IT Equipment, Office Equipment or Key Medical Equipment.
- 2.8 The Supplier 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 an Authority Cause and the Supplier notified the Authority of the loss or damage in accordance with Paragraph 2.7 above. Where the Supplier is liable for loss or damage to Property, the cost of replacing that Property shall be a Disallowable Cost for the purposes of Schedule 7.1 (*Charges and Invoicing*).

### **3 MAINTENANCE, REPLACEMENTS AND DISPOSAL**

- 3.1 Where Property requires maintenance, replacement (either through wear and tear or breakage) and/or disposal, then the following provisions shall apply:
  - 3.1.1 On Authority Premises: The Authority shall be responsible for the maintenance, replacement and/or disposal of IT Equipment and Office Equipment. The Supplier shall be responsible for the maintenance, replacement and/or disposal of all other Property, including Key Medical Equipment.
  - 3.1.2 On Sites other than Authority Premises: The Authority shall be responsible for the maintenance, replacement and/or disposal of IT Equipment. The Supplier shall be responsible for the maintenance, replacement and/or disposal of all other Property, including Key Medical Equipment and Office Equipment.
- 3.2 Where Property is replaced by the Supplier, the replacement Property shall be at least to the standard of the Property it is replacing as at the time that Property was acquired by the Supplier, or otherwise to the standard required by this Agreement where specified. The Supplier shall provide evidence as to the standard and warrant the quality of replacement Property upon request by the Authority.
- 3.3 Where Property is replaced by the Supplier, the Supplier shall ensure that the Property is properly installed at the relevant Site.
- 3.4 Maintenance, replacement and/or disposal of Property as described in Paragraph 3.1 above shall be at the Supplier's cost unless the Authority agrees (acting reasonably) that the maintenance, replacement and/or disposal is required due to fair wear and tear, in which case it shall be an Allowable Cost under Schedule 7.1 (*Charges and Invoicing*).
- 3.5 The Supplier shall provide such assistance as is reasonably requested by the Authority in connection with the maintenance, replacement and/or disposal of any Property.

**4 RECORDS**

- 4.1 Before the Operational Service Commencement Date, the Authority shall provide the Supplier with records of the following property that it intends to make available to the Supplier as part of the Initial Property:
  - 4.1.1. End User Devices, printers, monitors and multifunctional devices;
  - 4.1.2. in relation to Authority Premises, Key Medical Equipment; and
  - 4.1.3. in relation to Sites other than Authority Premises, Key Medical Equipment and Office Equipment.
- 4.2 The Supplier shall maintain and keep updated the records provided to it by the Authority in accordance with Paragraph 4.1, noting all Property that has been replaced or disposed and all Additional Property that the Supplier has acquired.
- 4.3 The Supplier shall provide updated copies of the records referred to in Paragraph 4.2 to the Authority by the end of each Quarter and upon reasonable request by the Authority.

## **ANNEX 1**

### **Key Medical Equipment**

- Medical couches
- Snellen's charts and reading charts
- Peak flow meters and spiroimeters
- Sphygmomanometers
- Otoscopes
- Jamar dynamometers
- Goniometers
- Tuning forks
- Perdue Peg Boards

The Authority may amend this Annex 1 to this Schedule 15.2 by notifying the Supplier in writing.

OFFICIAL – COMMERCIAL

**SCHEDULE 18**  
**INFORMATION TECHNOLOGY SERVICES**

**SCHEDULE 18**  
**INFORMATION TECHNOLOGY SERVICES**

**Authority IT Services**

**1. Scope of Authority IT Services**

1.1. Subject to the Supplier's compliance with its obligations under this Schedule 18, the Authority shall ensure that by the Operational Service Commencement Date and throughout the Term the relevant Supplier Personnel are provided with:

- 1.1.1. access to the PIP IT System to enable the Supplier Personnel to share with the Authority Assessment Reports for every Assessment for PIP completed in accordance with this Agreement;
- 1.1.2. access to the WCA IT System to enable the Supplier Personnel to share with the Authority Assessment Reports for every Assessment for UC and ESA and every Assessment for Specialist Benefits completed in accordance with this Agreement;
- 1.1.3. the End User Devices and the relevant items of the other information technology hardware listed in Annex 2 to this Schedule 18, that such member of Supplier Personnel requires (as determined by the Authority) to perform their role (the "**IT Equipment**"), the numbers and specification of which will be confirmed in the Implementation Plan (or otherwise agreed by the Parties in writing);
- 1.1.4. access to the Authority Contact Centre Platform, a softphone application as described in Paragraph 3 below;
- 1.1.5. access to the Authority Video Assessment Service, a web-based solution for Video Consultations as described in Paragraph 4 below;
- 1.1.6. the information technology network services as described in Paragraph 5.1 below; and
- 1.1.7. the IT Support as defined in Paragraph 7.5 below and subject to the terms of this Agreement,

(together the "**Authority IT Services**").

1.2. All End User Devices shall have installed the software set out at Annex 3 to this Schedule 18, or such other software as notified by the Authority from time to time to allow for:

- 1.2.1. the installation of additional software;
- 1.2.2. the installation of new versions of the software listed in Annex 3 to this Schedule 18;
- 1.2.3. the replacement of software listed in Annex 3 to this Schedule 18 with alternative software (subject to such replacement software having a similar

functionality to the software listed in Annex 3 to this Schedule 18 that it is replacing); and/or

- 1.2.4. ceasing to install, and/or the removal of, software listed in Annex 3 to this Schedule 18 where it is deemed by the Authority, acting reasonably, to be no longer necessary for installation on End User Devices being used to provide the Services.
- 1.3. For the avoidance of doubt, the software set out at Annex 3 to this Schedule 18 is not Assessment-specific software. Assessment-specific software provided as part of the IT System will be accessible, to the extent required by the relevant Supplier Personnel based on the Assessments they will deliver, on End User Devices.
- 1.4. Unless otherwise agreed by the Authority only Supplier Personnel who require access to the Assessment-specific software within the IT System for the purposes of providing the Services shall be provided with IT Equipment.
- 1.5. The Supplier may request:
  - 1.5.1. provision of the required IT Equipment and access to the IT System for new members of Supplier Personnel;
  - 1.5.2. changes to access rights to the IT System for existing members of Supplier Personnel; and
  - 1.5.3. removal of access to the IT System for existing members of Supplier Personnel by completing the appropriate form or data tool provided for that purpose by the Authority and submitting the completed form or data tool to the contact point indicated by the Authority.

**2. Terms of Use**

- 2.1. The Supplier agrees to:
  - 2.1.1. use the Authority IT Services only for the purposes of providing the Services;
  - 2.1.2. use the IT System on the terms of any licence granted under Clause 18.2 (*Licences granted by the Authority*). The Authority may revoke or amend the terms of any licence granted to the Supplier for the use of the IT System where necessary to enable the Authority to comply with the terms of the PIP IT Services Agreement or the WCA IT Services Agreement (as applicable). The Supplier shall immediately comply with such new licence terms communicated to it by the Authority or, where the licence is revoked, cease using the IT System as applicable;
  - 2.1.3. comply with its obligations under Schedule 15.2 (*Authority Assets*) in respect of IT Equipment;
  - 2.1.4. at the request of the Authority:
    - 2.1.4.1. return or destroy documents and other tangible materials to the extent that they contain specified PIP IT Provider IPR or WCA IT Provider IPR; and

- 2.1.4.2. ensure that any specified PIP IT Provider IPRs or WCA IT Provider IPRs held in electronic, digital or other machine-readable form cease to be readily accessible (other than by the information technology staff of the Supplier) from any computer, word processor, voicemail system or any other device containing such specified IPRs;
- 2.1.5. execute a confidentiality undertaking in favour of the PIP IT Provider in or substantially in the form set out in Part A of Annex 1 to this Schedule 18 and execute a confidentiality undertaking in favour of the WCA IT Provider in or substantially in the form set out in Part B of Annex 1 to this Schedule 18;
- 2.1.6. use the Authority IT Services in accordance with the security policies listed in Annex 1 to Schedule 2.4 (*Security Management*) and any successor, replacement or additional security policies as are published by the Authority from time to time;
- 2.1.7. in the event that any member of Supplier Personnel has their access to any part of the Authority IT Services permanently removed for any reason, or in either scenario detailed in paragraph 2.1.8 below, arrange for the immediate return to the Authority of the End User Device provided to said member of Supplier Personnel. In the event that any relevant member of Supplier Personnel permanently ceases to be engaged in the performance of the Supplier's obligations under this Agreement, then the Supplier shall arrange for all IT Equipment issued to said member of Supplier Personnel (including the End User Device) to be returned immediately to the Authority; and
- 2.1.8. where a member of Supplier Personnel does not log into their End User Device for 30 calendar days, arrange for the immediate return of the End User Device provided to such member of Supplier Personnel. Where it is anticipated that a member of Supplier Personnel will take a period of absence (for any reason) which will mean that it is not expected that they will log into their End User Device within the next 30 calendar days, then the Supplier shall arrange for the immediate return of the End User Device provided to such member of Supplier Personnel to the Authority once the period of absence commences.

### **3. Authority Contact Centre Platform**

- 3.1. The Authority shall provide the Authority Contact Centre Platform as a softphone solution for Telephone Consultations, as well as for the Claimant Enquiry Service and Clinical Enquiry Service, as set out in Schedule 2.1 (*Services Description*).
- 3.2. The Authority shall provide Supplier Personnel with access to the Authority Contact Centre Platform by way of the Authority call centre agent software for all services except for the Specialist Benefits Claimant Enquiry service, for which the Authority will provide access by way of the Specialist Benefit call centre software. The Authority call centre agent software and the Specialist Benefit call centre software will be installed on End User Devices. The Authority will provide both inbound and outbound services for use with the Authority Contact Centre Platform and shall assume responsibility for any associated charges from network providers.
- 3.3. FOR WCA AND PIP ONLY: The Authority Contact Centre Platform shall permit audio recording of Telephone Consultations and inbound enquiries. FOR SPECIALIST BENEFITS ONLY: The Authority Contact Centre Platform shall permit audio recording

of Telephone Consultations only. FOR WCA AND PIP AND SPECIALIST BENEFITS: The Authority shall provide secure storage for all such audio recordings.

- 3.4. The Supplier agrees to use the Authority Contact Centre Platform provided by the Authority in accordance with any terms of use as notified to the Supplier by the Authority.

#### **4. Authority Video Assessment Service**

- 4.1. The Authority shall provide the Authority Video Assessment Service as a web-based solution for Video Consultations.
- 4.2. The Authority shall provide access to the Authority Video Assessment Service by way of a URL link installed on End User Devices.
- 4.3. The Authority Video Assessment Service shall permit audio recording of Video Consultations. The Authority shall provide secure storage for such audio recordings.
- 4.4. The Supplier agrees to use the Authority Video Assessment Service provided by the Authority in accordance with any terms of use as notified to the Supplier by the Authority.

#### **5. Network**

- 5.1. The PIP IT System and the WCA IT System shall each be accessible through either an information technology network provided by the Authority in accordance with Paragraph 5.2 or any private Wi-Fi connection in conjunction with an endpoint security system on the relevant End User Device. The Authority shall be responsible for provision of the endpoint security system on End User Devices.
- 5.2. The Authority shall provide the information technology network services (which may include provision of a local area network or a wireless network) required to facilitate use of the IT System and IT Equipment to specified Sites where End User Devices will be used, as agreed in the Implementation Plan.
- 5.3. The Supplier agrees to use the information technology network services provided by the Authority in accordance with any terms of use as notified to the Supplier by the Authority.
- 5.4. Where the Supplier uses its own wireless network to enable access to the IT System in conjunction with the endpoint security system referred to in Paragraph 5.1, then unless otherwise notified to the Supplier by the Authority, the Supplier's provision of its own wireless network shall be considered part of the Services and the Supplier System for the purposes of Schedule 2.4 (*Security Management*).

#### **6. Integration of own systems**

- 6.1. It is recognised that the Supplier will need to provide some of its own IT systems (the "**Supplier IT Systems**") in order to manage its business as further described in Paragraph 47.2 of Schedule 2.1 (*Services Description*).
- 6.2. The Parties acknowledge and agree that the Supplier IT Systems may need to be integrated with the IT System in order to allow for the transfer of data, including

Authority Data, between the Supplier IT Systems and the IT System and to provide an effective Service. Where integration is required in accordance with this Paragraph 6 the Supplier and Authority shall follow the Change Control Procedure to arrange for the Supplier's IT system to be integrated as required. The Supplier shall be entitled to reclaim from the Authority any cost or expense incurred by the Supplier in respect of such integration to the extent they are Costs recoverable under Schedule 7.1 (*Charges and Invoicing*).

- 6.3. The Parties acknowledge and agree that some Supplier IT Systems may need to be accessible from the IT System in order to provide an effective Service. The Supplier confirms that it understands and accepts that the Authority may restrict the method of access of the Supplier IT Systems to reflect Authority policies and that, unless otherwise agreed by the Authority, only access via an HTML5 web portal (with no plugins) is permitted on End User Devices.
- 6.4. The Supplier shall comply with any conditions imposed by the Authority on the integration and accessibility of the Supplier IT Systems.
- 6.5. Unless otherwise notified to the Supplier by the Authority, the Supplier's integration of the Supplier IT Systems shall be considered part of the Services and the Supplier System for the purposes of Schedule 2.4 (*Security Management*).

## 7. Support

- 7.1. The Authority shall make available training on the use of the PIP IT System and WCA IT System at such times prior to the Operational Service Commencement Date as the Authority will notify to Supplier. At the Authority's discretion the Authority may provide further training after the Operational Service Commencement Date following an IT Update. The Supplier may arrange for suitably experienced members of the Supplier Personnel ("IT Trainers") to receive the training arranged by the Authority and subsequently train end users of the IT System. The training shall assume all individuals have reasonable IT knowledge. The training shall not include training on the use of the software listed in Annex 3 to this Schedule 18, unless otherwise agreed.
- 7.2. The Authority shall make available to the Supplier training materials (including a training environment) to support use of the IT System (excluding the software listed in Annex 3 to this Schedule 18), even if no IT Trainers attend the training arranged by the Authority as described in Paragraph 7.1. Where an IT Update takes place, the Authority may provide the Supplier with such additional training material and guidance as it considers necessary to support the use of the IT System following the IT Update.
- 7.3. The Supplier shall be responsible for ensuring that each of the Supplier Personnel in receipt of an End User Device is adequately trained on use of the IT System from, or facilitated by, the IT Trainers.
- 7.4. The Authority shall provide training and/or guidance on the use of the IT Equipment to Supplier Personnel in receipt of an End User Device.
- 7.5. The Authority shall ensure that support is provided to Supplier Personnel in respect of the Authority IT Services referred to in Paragraphs 1.1.1 to 1.1.6 above (the "IT Support") subject to the guidance, policies and procedures relating to the Authority IT Services made available to Supplier Personnel, or otherwise notified by the Authority

to the Supplier prior to the Operational Service Commencement Date, as amended from time to time (the “**Operational Working Procedures**”).

- 7.6. The Parties shall meet regularly throughout the Term to ensure that the IT Support and Operational Working Procedures continue to enable the Supplier to use the Authority IT Services referred to in Paragraphs 1.1.1 to 1.1.6 above on a day-to-day basis.
- 7.7. Service availability for the Authority IT Services shall be as described in Annex 4 of this Schedule 18. In the event of disruption to the IT System, the incident will be defined and managed as stated in Annex 4 and/or the Operational Working Procedures. The Supplier shall provide such support, and take such actions, as are reasonably requested by the Authority to manage any such incidents.

**8. Updates**

- 8.1. The Supplier acknowledges that the Authority may decide to update, replace or otherwise amend the Authority IT Services (an “**IT Update**”).
- 8.2. Where the Authority decides to implement an IT Update the Supplier shall provide such support, and take such actions, as are reasonably requested by the Authority to implement the IT Update as agreed in accordance with the Change Control Procedure. Such support may include, but is not limited to, ensuring that Supplier Personnel return to the Authority any IT Equipment that requires updating from time to time.
- 8.3. The Supplier shall meet with the Authority before an IT Update is implemented to discuss how to minimise disruption to the Services. The Supplier shall take all steps required to ensure that the Services are provided with minimal disruption in the event of an IT Update.
- 8.4. During or following an IT Update, the Supplier shall undertake such testing as is reasonably required by the Authority.
- 8.5. The Parties shall agree in advance of an IT Update (unless it is an Emergency Change) and in writing (whether in accordance with the Change Control Procedure or the agreed correspondence process), any additional costs as may be incurred (including any associated travel and subsistence costs) using the Rate Card set out in Annex 1 of Schedule 7.1 (*Charges and Invoicing*) in order for the Supplier to provide such support and take the actions as set out in Paragraph 8.2.
- 8.6. Where Emergency Changes are required, the Supplier shall work with the Authority using its best endeavours to provide the required resource within the timeframe deemed appropriate by the Authority. Any costs shall be reimbursed by the Authority subject to those costs being reasonable. The Supplier shall notify the Authority of all costs where possible before they are incurred.

**9. Supplier Obligations**

- 9.1. In addition to any other obligation set out in this Schedule 18, the Supplier agrees to:
  - 9.1.1. provide such documentation, data and/or other information that the Authority (and/or Authority Sub-Contractor) reasonably requests as being necessary for the Authority to implement and deliver the Authority IT Services and/or any IT Update;

- 9.1.2. provide such access and use of the Sites and facilities (including relevant IT systems) as is reasonably required for the Authority and/or an Authority Sub-Contractor to implement and deliver the Authority IT Services and/or any IT Update;
- 9.1.3. where, for incident resolution, the Authority (or an Authority Sub-Contractor) is providing repaired or replacement assets, provide a named contact and alternative named contact to be available from 08:00 and 18:00 to receive those assets;
- 9.1.4. provide electrical facilities to the Authority's (or an Authority Sub-Contractor's) network equipment on the Sites where such equipment is located and ensure such Sites have the required environmental conditions for such equipment;
- 9.1.5. obtain appropriate permissions and advise the Authority of the prevailing Health and Safety regime and guidelines where the Authority (or an Authority Sub-Contractor) needs to perform cabling, re-cabling or making good at the Sites in order to provide the Authority IT Services; and
- 9.1.6. notify the Authority as soon as practicable where the Authority fails to deliver a service that meets the service description referred to in Paragraph 1.1.

**10. Liability**

- 10.1. The Authority or an Authority Sub-Contractor shall not be liable for the delivery of the Authority IT Services where the Supplier has failed to comply with Paragraphs 2, 3, 4, 5, 6, 7, 8 or 9 and/or an Authority Sub-Contractor is unable to deliver the Authority IT Services because of a default by the Supplier under the terms of this Agreement.
- 10.2. The Supplier's remedies for the Authority's failure to fulfil its obligations under this Schedule 18 shall be limited to such remedies as are available for Authority Cause pursuant to Clause 33 (*Authority Cause*).

**Annex 1 – Part A**

**Confidentiality Undertaking**

**FORM OF CONFIDENTIALITY UNDERTAKING**

**CONFIDENTIALITY AGREEMENT**

**THIS AGREEMENT** is made on **[date]** 20

**BETWEEN:**

- (1) **[insert name]** of **[insert address]** (the “**Sub-licensee**”); and
- (2) **[insert name]** of **[insert address]** (the “**Supplier**” and together with the Supplier, the “**Parties**”).

**WHEREAS:**

- (A) **[insert name of Buyer]** (the “**Buyer**”) and the Supplier are party to a contract dated **[insert date]** (the “**Contract**”) for the provision by the Supplier of **[insert brief description of services]** to the Buyer.
- (B) The Buyer wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to the Buyer pursuant to the Contract (the “**Sub-licence**”).
- (C) It is a requirement of the Contract that, before the Buyer grants such sub-licence to the Sub-licensee, the Sub-licensee execute a confidentiality agreement in favour of the Supplier in or substantially in the form of this Contract to protect the Confidential Information of the Supplier.

**IT IS AGREED as follows:**

**1 Interpretation**

- 1.1 In this Contract, unless the context otherwise requires:

**“Confidential Information”** means:

- (a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Buyer to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:
  - (i) the Supplier; or
  - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;
- (b) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access

levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to the Buyer pursuant to or in connection with the Sub-licence;

(c) other Information provided by the Buyer pursuant to this Contract to the Sub-licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub-licensee's attention or into the Sub-licensee's possession in connection with the Sub-licence; and

(d) Information derived from any of the above,

but not including any Information that:

(a) was in the possession of the Sub-licensee without obligation of confidentiality prior to its disclosure by the Buyer;

(b) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality; or

(c) was independently developed without access to the Information;

**“Information”**

means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

**“Sub-licence”**

has the meaning given to that expression in recital (B) to this Contract.

1.2 In this Contract:

- a) a reference to any gender includes a reference to other genders;
- b) the singular includes the plural and vice versa;
- c) the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;
- d) references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Contract) and any prior or subsequent subordinate legislation made under it;
- e) headings are included for ease of reference only and shall not affect the interpretation or construction of this Contract; and
- f) references to Clauses are to clauses of this Contract.

**2 Confidentiality Obligations**

2.1 In consideration of the Buyer entering into the Sub-licence, the Sub-licensee shall:

- a) treat all Confidential Information as secret and confidential;
- b) have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- c) not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Contract;
- d) not transfer any of the Confidential Information outside the United Kingdom;
- e) not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;
- f) immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information;
- g) upon the expiry or termination of the Sub-licence:
  - i. destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
  - ii. ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub-licensee) from any computer, word processor, voicemail system or any other device; and
- h) make no further use of any Confidential Information.

### **3 Permitted Disclosures**

- 3.1 The Sub-licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
  - a) reasonably need to receive the Confidential Information in connection with the Sub-licence; and
  - b) have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and
  - c) have agreed to terms similar to those in this Contract.
- 3.2 The Sub-licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub-licensee.
- 3.3 Before making a disclosure pursuant to Clause 3.2, the Sub-licensee shall, if the circumstances permit:
  - a) notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and

- b) ask the court or other public body to treat the Confidential Information as confidential.

#### 4 General

- 4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Contract does not include, expressly or by implication, any representations, warranties or other obligations:
  - a) to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
  - b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
  - c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.
- 4.3 The rights, powers and remedies provided in this Contract are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub-licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub-licensee of any of the provisions of this Contract. Accordingly, the Sub-licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Contract and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Sub-licensee to the Supplier for any breach of this Contract shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Contract.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Contract.
- 4.8 This Contract may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Contract, but all the counterparts shall together constitute but one and the same instrument.

#### 5 Notices

- 5.1 Any notice to be given under this Contract (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.

5.2 Any Notice:

if to be given to the Supplier shall be sent to:

[Address]

Attention: [Contact name and/or position, e.g. "The Finance Director"]

if to be given to the Sub-licensee shall be sent to:

[Name of Organisation]

[Address]

Attention: [ ]

**6 Governing law**

- 6.1 This Contract shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Contract whether contractual or non-contractual, shall be governed by and determined in accordance with English law.
- 6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Contract.

**IN WITNESS** of the above this Contract has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

**For and on behalf of [name of Supplier]**

Signature:

Date:

\_\_\_\_\_  
Name:

Position:

**For and on behalf of [name of Sub-licensee]**

Signature:

Date:

\_\_\_\_\_  
Name:

Position:

**Annex 1 – Part B**

**FORM OF CONFIDENTIALITY UNDERTAKING**

**CONFIDENTIALITY AGREEMENT**

**THIS AGREEMENT** is made on [date] 20

**BETWEEN:**

- (1) **[insert name]** of **[insert address]** (the “**Sub-licensee**”); and
- (2) **[insert name]** of **[insert address]** (the “**Supplier**” and together with the Supplier, the “**Parties**”).

**WHEREAS:**

- (A) **[insert name of Authority]** (the “**Authority**”) and the Supplier are party to a contract dated **[insert date]** (the “**Contract**”) for the provision by the Supplier of **[insert brief description of services]** to the Authority.
- (B) The Authority wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to the Authority pursuant to the Contract (the “**Sub-licence**”).
- (C) It is a requirement of the Contract that, before the Authority grants such sub-licence to the Sub-licensee, the Sub-licensee execute a confidentiality agreement in favour of the Supplier in or substantially in the form of this Agreement to protect the Confidential Information of the Supplier.

**IT IS AGREED as follows:**

**1 Interpretation**

- 1.1 In this Agreement, unless the context otherwise requires:

**“Confidential Information”** means:

(a) Information, including all personal data within the meaning of the Data Protection Act 1998, and however it is conveyed, provided by the Authority to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:

(i) the Supplier; or

(ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;

(b) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and development information, technical specifications of all

functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to the Authority pursuant to or in connection with the Sub-licence;

(c) other Information provided by the Authority pursuant to this Agreement to the Sub-licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub-licensee's attention or into the Sub-licensee's possession in connection with the Sub-licence; and

(d) Information derived from any of the above,

but not including any Information that:

(i) was in the possession of the Sub-licensee without obligation of confidentiality prior to its disclosure by the Authority;

(ii) the Sub-licensee obtained on a non-confidential basis from a third party who is not, to the Sub-licensee's knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Sub-licensee;

(iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or

(iv) was independently developed without access to the Confidential Information;

**“Information”**

means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

**“Sub-licence”**

has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

1.2.1 a reference to any gender includes a reference to other genders;

1.2.2 the singular includes the plural and vice versa;

1.2.3 the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;

1.2.4 references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or

after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;

- 1.2.5 headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- 1.2.6 references to Clauses are to clauses of this Agreement.

## **2 Confidentiality Obligations**

2.1 In consideration of the Authority entering into the Sub-licence, the Sub-licensee shall:

- 2.1.1 treat all Confidential Information as secret and confidential;
- 2.1.2 have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- 2.1.3 not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Agreement;
- 2.1.4 not transfer any of the Confidential Information outside the United Kingdom;
- 2.1.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;
- 2.1.6 immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- 2.1.7 upon the expiry or termination of the Sub-licence:
  - (a) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
  - (b) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub-licensee) from any computer, word processor, voicemail system or any other device; and
  - (c) make no further use of any Confidential Information.

## **3 Permitted Disclosures**

- 3.1 The Sub-licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
  - 3.1.1 reasonably need to receive the Confidential Information in connection with the Sub-licence; and

- 3.1.2 have been informed by the Sub-licensee of the confidential nature of the Confidential Information and subject to the Sub-licensee ensuring their compliance with the terms of this Agreement; and
- 3.1.3 have agreed to terms at least as protective to those in this Agreement and which are enforceable by the Supplier.

3.2 The Sub-licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub-licensee.

3.3 Before making a disclosure pursuant to Clause 3.2, the Sub-licensee shall, if the circumstances permit:

- 3.3.1 notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
- 3.3.2 ask the court or other public body to treat the Confidential Information as confidential.

#### **4 General**

4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.

4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:

- 4.2.1 to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
- 4.2.2 to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
- 4.2.3 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.

4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub-licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub-licensee of any of the provisions of this Agreement. Accordingly, the Sub-licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.

- 4.5 [Not Used].
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with entry into this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

## 5 Notices

- 5.1 Any notice to be given under this Agreement (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.
- 5.2 Any Notice:
  - 5.2.1 if to be given to the Supplier shall be sent to:

[Address]

Attention: [Contact name and/or position, e.g. “The Finance Director”]
  - 5.2.2 if to be given to the Sub-licensee shall be sent to:

[Name of Organisation]  
[Address]

Attention: [ ]

## 6 Governing law

- 6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.
- 6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

**IN WITNESS** of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

**For and on behalf of [name of Supplier]**

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Signature: \_\_\_\_\_

Date:

Name: \_\_\_\_\_

Position: \_\_\_\_\_

**For and on behalf of [name of Sub-licensee]**

Signature: \_\_\_\_\_

Date:

Name: \_\_\_\_\_

Position: \_\_\_\_\_

**Annex 2****IT Equipment**

- (1) End User Devices
- (2) Keyboards
- (3) Mice
- (4) Monitors
- (5) Headsets
- (6) Power Supplies
- (7) Cables
- (8) Appropriate Assistive Technology (peripherals)
- (9) Multifunctional Devices or printers were appropriate
- (10) Print Consumables (excluding paper)
- (11) Network equipment where appropriate

In relation to items (1) – (5), these items shall be provided to Supplier Personnel as standard, except in circumstances where a member of Supplier Personnel is a Transferring Former Supplier Employee (as defined in Schedule 9.1), has previously been issued with any of the item(s) at (1) – (5) by the Former Supplier (as defined in Schedule 9.1) and / or the Authority, and is still in possession of said item(s), or where a member of Supplier Personnel has previously been issued with any of the item(s) at (1) - (5) by the Supplier, a Sub-contractor, a Former Supplier (as defined in Schedule 9.1) or the Authority, and is still in possession of said item(s). In such circumstances, the relevant item(s) shall not be provided by the Authority, except in circumstances where the item(s) require replacement or as otherwise deemed necessary by the Authority.

In relation to item (1), provision of End User Devices will be responsive to the Supplier's operating model.

Items (6) and (7) will be provided with associated equipment.

In relation to item (8), this item will be provided to Supplier Personnel only where deemed necessary following a DSE assessment for the relevant individual Supplier Personnel and upon order by the Supplier from the Authority. Where a relevant member of Supplier Personnel is a Transferring Former Supplier Employee (as defined in Schedule 9.1), has previously been issued with item (8) by the Former Supplier (as defined in Schedule 9.1) and / or the Authority, and is still in possession of said item, or where a member of Supplier Personnel has previously been issued with item (8) by the Supplier, a Sub-contractor, a Former Supplier (as defined in Schedule 9.1) or the Authority, and is still in possession of said item, the relevant item shall not be provided by the Authority, except in circumstances where the item requires replacement or as otherwise deemed necessary by the Authority.

Items (9)– (11) will only provided where Supplier Personnel are working in an office at a Site to which the Authority provides information technology network services in accordance with Paragraph 5.2.

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**Annex 3****Software installed on End User Devices****1. Default Applications.**

The following applications are installed by default on all End User Devices as part of the standard end user environment:

**1.1. General Productivity Applications**

- Microsoft Word
- Microsoft Excel
- Microsoft PowerPoint
- Microsoft OneNote
- Microsoft Outlook

**1.2. Collaboration / File Storage**

- Microsoft OneDrive
- Microsoft Teams (with access to Sharepoint)

**1.3. Web / Remote Connectivity / Virtual Desktop Infrastructure**

- Microsoft Edge Web Browser
- Citrix Workspace Client

**2. Additional Applications.**

The following applications are available for installation either via the self-service portals or by specific request via DWP Place:

**2.1 Self Service.**

The following applications are available for a user to select themselves for installation on a Cloud First End User Device without additional approval:

- Adobe Acrobat Reader DC
- Microsoft To Do: Lists, Tasks & Reminders
- Microsoft Whiteboard
- Notepad ++

**2.2 Specific Request.**

The following applications are available on a case-by-case basis following individual approval. Approval may be achieved following submission of request via DWP Place including a business case.

- Microsoft PowerBI Desktop
- Microsoft Project Standard

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- Microsoft Visio
- Articulate 360
- Appropriate Assistive Technology (Software)
- Cognos (Read)
- Cognos (Write)

**Annex 4****Availability of Authority IT Services**

Unless otherwise indicated, availability of a service line within the scope of the Authority IT Services will be measured during the operating hours and days shown for that service line in the table below.

Service line	Operating hours and days	Availability*	Support (DWP Place) **
Authority Contact Centre Platform	This service shall be measured 07:00 – 21:00 on Working Days and 07:00 – 17:15 on other days (non-Working Days)	99.99%	Support 24 hours, 7 days/week, 365 days/year for severity 1 & 2 incidents Support during DWP Place normal working hours for severity 3 and 4 incidents
Authority Video Assessment Service	This service shall be measured 07:00 – 21:00 on Working Days and 07:00 – 17:15 on other days (non-Working Days)	99.99%	Support 24 hours, 7 days/week, 365 days/year for severity 1 & 2 incidents Support during DWP Place normal working hours for severity 3 and 4 incidents
PIPCS	07:00 – 20:00 every day	96%	Support 24 hours, 7 days/week, 365 days/year for severity 1 & 2 incidents Support during DWP Place normal working hours for severity 3 and 4 incidents
PIP IT System	This service shall be measured 24 hours per day, 365 days per year (366 days in a leap year)	99.9% (Maximum of 8.76 hours of unscheduled downtime per year)	Support 24 hours, 7 days/week, 365 days/year for severity 1 & 2 incidents Support during DWP Place normal working hours for severity 3 and 4 incidents
WCA IT System (MSRS)	07:00 and 20:00 on Working Days and the period between 07:00 and 17:00 on other days (non-Working Days)	96%	Support 24 hours, 7 days/week, 365 days/year for severity 1 & 2 incidents Support during DWP Place normal working hours for severity 3 and 4 incidents

Network Connectivity	07:45 – 20:00 on Working Days, 08:45 – 17:00 on other days (non-Working Days).	This Service shall be available 24 hours per day, 365 days per year (366 days in a leap year)	Support 24 hours, 7 days/week, 365 days/year for severity 1 & 2 incidents  Support during DWP Place normal working hours for severity 3 and 4 incidents
Network Access Services Availability	07:45 – 20:00 on Working Days, 08:45 – 17:00 on other days (non-Working Days).	Services shall be available 24 hours per day, 365 days per year (366 days in a leap year)	Support 24 hours, 7 days/week, 365 days/year for severity 1 & 2 incidents  Support during DWP Place normal working hours for severity 3 and 4 incidents

### Authority IT Services Availability

\*The Authority provides a tool (**‘DWP Place’ (Service Now) application**) to show scheduled services which includes any planned shutdowns. This service allows users to subscribe to receive information about planned updates. In relation to public holidays, users can refer to the schedule of availability for planning purposes.

Availability as given in the third column of the table above refers to the availability of the relevant service line during the times shown in the second column of the table.

### DWP Place Support

\*\*DWP Place is the self-service means by which the Supplier or Supplier Personnel may access IT Support, by raising and tracking progress against Authority IT Services incidents and requests for IT Equipment or Authority IT Services. The normal working hours for DWP Place are 08:00 to 19:30 on Monday to Friday and 09:00 to 16:30 on Saturday. Outside of these hours, an out-of-hours service is provided for the logging of severity 1 and severity 2 incidents only. DWP Place provides details of incident definitions, response times and service levels for all users.

### Incident Support

Incident severity definitions	Description, Response & Resolution / Fix times
1 (Critical)	Production solution is unavailable or unusable resulting in major disruption to production use.  Advise workaround where possible. Target is 90% of severity 1 incidents resolved within 2 hours of the incident being reported.

2 (High)	<p>A major feature or component of the production solution is unavailable or unusable resulting in significant impact on production use.</p> <p>Non-production solution unavailable or unusable resulting in major disruption to development / configuration programmes.</p> <p>Target is 95% of severity 2 incidents resolved within 8 hours of the incident being reported.</p>
3 (Medium)	<p>A failure of a non-critical functional component of any non-production solution is unavailable or unusable resulting in significant disruption to development / configuration programmes.</p> <p>Target is 95% of severity 3 incidents resolved within 20 hours (2 Working Days) of the incident being reported.</p>
4 (Low)	<p>A failure of a non-critical functional component of any non-production solution. General questions regarding solution functionality or issues that do not impact capabilities/functionality of the solution.</p> <p>Target is 90% of severity 4 incidents resolved within 30 hours (3 Working Days) of the incident being reported.</p>

**Annex 5****Further description of PIP IT System**

- 1.1 The Authority's administration and maintenance of PIP claims and case load is enabled and supported by PIPCS. The PIP Services are a key element of the claim process for PIP and drive the decision making and certain Management Information requirements in PIPCS.
- 1.2 The Authority will provide the Supplier with a centrally sourced and hosted PIP IT System for use during the completion of all Assessment Reports, Consultations (Face to Face Consultations, Video Consultations and Telephone Consultations), PBRs and Special Rules End of Life. The Supplier shall (and shall procure that the Supplier Personnel shall) use the PIP IT System in the performance of the PIP Services.
- 1.3 The PIP IT System will enable the Supplier to have access to appropriate Claimant information in respect of the Referral, including personal details of the Claimant and details of their disability or health condition.
- 1.4 The PIP IT System and PIPCS will exist as separate systems; however there will be integration between these two systems at go-live.
- 1.5 This integration will include:
  - (a) the automatic notification of Referrals and provision of personal details from PIPCS to the PIP IT System; and
  - (a) the automatic notification to PIPCS from the PIP IT System of the results of completed Assessments (and Assessment Reports) or the inability to complete Assessment activity.
- 1.6 The Supplier shall access Claimant documentation stored on the Authority's document repository system (such as the PIP2 and Further Medical Evidence) via PIPCS access. From the Operational Service Commencement Date, the Supplier shall be required to utilise PIPCS as described above.
- 1.7 The PIP IT System components, at a high level, will deliver functionality to support the following services:
  - (a) receipt of data from the Authority (Referrals, tasks, change of circumstances and advice requests);
  - (b) initial review (to determine the appropriate Assessment Channel if a Consultation is required, and to request Further Medical Evidence);
  - (c) Assessment tool (Consultations (Face to Face Consultations, Video Consultations and Telephone Consultations)), PBRs and Special Rules End of Life;
  - (d) Audit Quality Assurance (of the initial review and Assessment Reports);
  - (e) change of circumstances (from the Authority, Claimant or third party) and notifying the Authority of such change;
  - (f) requesting Further Medical Evidence (from the Authority, Claimant or third party) and notifying the Authority of such evidence;

- (g) supplementary advice and Re-work (responding to the Authority's advice request and Re-working the Assessment Report);
- (h) submission of Assessment Reports to the Authority (returning completed and incomplete Assessments);
- (i) appointment creation, management, scheduling and rescheduling (including appointments for Consultations, availability of HPs and/or estate and appointments for Authority SoS Representative's Approval);
- (j) end to end workflow (case management, task management and enquiries);
- (k) notifications (letters – English and Welsh languages, Braille, large print and SMS);
- (l) expense processing (generation of Claimant expense details and generation of GP expense details, including Further Medical Evidence);
- (m) Complaints (capturing details and notifications);
- (n) capture of Management Information (for the Supplier and for the Authority); and
- (o) training environment.

**Annex 6****Further description of WCA IT System**

- 1.1 The WCA IT System is a key element of the claim process and drives decision making and certain Management Information requirements. This primarily supports UC and ESA, as well as a number of Specialist Benefits. The Supplier shall (and shall procure that the Supplier Personnel shall) use the WCA IT System in the performance of the WCA Services and the Specialist Benefit Services.
- 1.2 The WCA IT System will receive Referrals in respect of ESA from JSAPS. Referrals in respect of UC and Specialist Benefits will be received manually from the Authority.
- 1.3 The WCA IT System will, at a high level, deliver functionality to support:
  - (a) receipt of data from the Authority for ESA (Referrals);
  - (a) manual data entry by the Authority and Supplier for ESA and UC (Referrals and change of circumstances) - this functionality is provided by MSRS;
  - (b) manual data entry by the Supplier for Specialist Benefits (Referrals and change of circumstances) - this functionality is provided by SMART;
  - (c) initial review (to determine the appropriate Assessment Channel if a Consultation is required, and to request Further Medical Evidence);
  - (d) the online assessment tool for WCA and some Specialist Benefits (Consultations, PBRs and Special Rules End of Life) - this functionality is provided by the Logic integrated medical assessment (LiMA);
  - (e) Audit Quality Assurance (of the initial review and Assessment Reports);
  - (f) requesting Further Medical Evidence (from the Claimant or third party), manually inputting such evidence and notifying the Authority;
  - (g) supplementary advice and Re-work (responding to the Authority advice request and Re-working the Assessment Report);
  - (h) submission of Assessment Reports to the Authority (returning completed and incomplete Assessments);
  - (i) appointment creation, management, scheduling and rescheduling (including appointments for Consultations, availability of HPs and/or estate and appointments for Authority SoS Representative's Approval) - this functionality is provided by Siebel;
  - (j) automated workflow in MSRS;
  - (k) bulk print of notifications (letters – English and Welsh language);
  - (l) generating Claimant expense details;
  - (m) Complaints (capturing details and notifications) - this functionality is provided by the Complaints management system (CMS);
  - (n) Health Professional medical skills management - this functionality is provided by the medical skills database (MSD);

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- (o) capture of Management Information (for the Supplier and the Authority); and
- (p) provision of the training environment.

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**SCHEDULE 20**

**HEALTH ASSESSMENT SERVICE RELATED SERVICES**

## DEFINITIONS

1. In this Schedule 20, the following term has the following meanings:

**“supplier”** means the Supplier and/or any FAS Lot Supplier, as the context requires.

## INTRODUCTION

2. As set out in Schedule 2.1 (*Services Description*), this Agreement is a stepping stone to the national rollout of HAS. The Authority may introduce HAS Testing and/or HAS Rollout during the Term to support this transition.

## SUPPLIER SUITABILITY

3. A supplier’s suitability to provide HAS Testing and/or HAS Rollout shall be assessed by the Authority at the time of any such requirement using the following criteria (as may be further supplemented or refined at the time(s) to reflect the operating model for HAS):

- a. **Value for Money** – the extent to which a supplier can demonstrate it will achieve value for money when providing the Services under the operating model for HAS.
- b. **Supplier Performance and Compliance with Contractual Obligations** – the extent to which a supplier has a stable performance position and/or good performance track record as part of this Agreement and any other existing agreements with the Authority and the extent to which the supplier has complied with its contractual obligations as set out in this Agreement (including, without limitation, the Authority Requirements) or any other agreements with the Authority.
- c. **Supplier Capacity** – the ability of a supplier to meet volume capacity while implementing the operating model for HAS within any timeframes required by the Authority.
- d. **Financial Health** – a Financial Viability and Risk Assessment (FVRA) will be undertaken by the Authority to help to determine to what extent (if any) it is reasonable for a supplier to include the operating model for HAS in its provision of the Services given its financial position at the time. This assessment will consider the supplier’s continued ability to provide the existing Services (i.e. any Services which will not be subject to HAS Testing and/or HAS Rollout) under its current Agreement while also implementing the operating model for HAS as required by the Authority. This will be relevant to the Authority’s decision as to whether or not to split the introduction of the operating model for HAS across a number of suppliers.
- e. **Service Geography and/or other Service Synergies** – the Authority will assess if there are any geographic considerations that mean that exercising the option with a particular supplier will result in a better services outcome and/or reduced risk. For instance, there may be reasons that the option should be exercised with the supplier that has the best geographical and/or services fit based on the existing services that it provides to the Authority (e.g. that would mean efficiencies, reduced risks or other synergies in integrating

the service delivery and management of any HAS Testing and/or HAS Rollout with any existing services provided by that supplier).

- f. **Diversity of Supply** – When deciding with which supplier to exercise an option for the introduction of the operating model for HAS, the Authority may also take into account its desire to maintain a diverse and well balanced supply chain.

**WORKED EXAMPLE**

- 4. A worked example at Annex A to this Schedule 20 illustrates how the introduction of HAS Testing and/or HAS Rollout is intended to operate in practice.

**ANNEX A – Worked example illustrating the introduction of HAS Testing and/or HAS Rollout (this example is for illustrative purposes only)**

Relevant Processes	Relevant Agreement References
Contracts awarded to suppliers A, B, C, D, and E.	N/A
The Authority identifies aspects of the operating model for HAS that it wishes to test or rollout.	N/A
The Authority considers the criteria in this Schedule to determine which suppliers might be suitable to provide the required HAS Testing or HAS Rollout. Supplier B has performance issues under its contract. It has failed to meet various performance levels and volume clearance targets, although the situation has now been rectified. Due to this poor performance track record, the Authority does not consider that Supplier B is suitable to provide the required HAS service. However, Suppliers A, C and D are all considered suitable.	Paragraph 3 of this Schedule
The Authority issues a Change Request to Suppliers A, C and D setting out its requirements for a transformation environment within the supplier's operation to implement HAS Testing or HAS Rollout, as well as the strategic partnership required between the parties. The Change Request will reflect lessons learned from any earlier introduction of HAS Testing and/or HAS Rollout.	Paragraphs 10.2, 4.3 and 4.4 of Schedule 8.2 ( <i>Change Control Procedure</i> )
The Authority invites Suppliers A, C and D to submit Impact Assessments in response to the Change Request. The parties agree to fast track the Change Request, taking into account the urgency of the Authority's requirement for HAS Testing or HAS Rollout.	Paragraphs 10.3, 10.4 and 5 of Schedule 8.2 ( <i>Change Control Procedure</i> )
The Authority considers Suppliers A and D have submitted the most favourable Impact Assessments in relation to the criteria in this Schedule.	Paragraph 3 of this Schedule
The Authority rejects the Contract Change for Supplier C. The Authority approves the Contract Change for Suppliers A and D. HAS Testing or HAS Rollout is introduced in the Authority's contracts with Suppliers A and D.	Paragraphs 10.3 and 6 of Schedule 8.2 ( <i>Change Control Procedure</i> )  See also Clauses 5.10 and 5.11.
The suppliers work collaboratively with the Authority to collect and share timely feedback, insights and data from HAS Testing or HAS Rollout to support further optimisation of HAS.	Paragraph 4.4(b) of Schedule 2.1 ( <i>Services Description</i> )

OFFICIAL – COMMERCIAL

**SCHEDULE 21**

**PROVIDER ASSURANCE TEAM**

**1 DEFINITIONS**

1.1 In this Schedule, the following definitions shall apply:

<b>“PAT Action Plan”</b>	has the meaning given to it in Paragraph 3.2;
<b>“PAT Report”</b>	has the meaning given to it in Paragraph 3.2;
<b>“PAT Review”</b>	has the meaning given to it in Paragraph 2.3;
<b>“Provider Systems Questionnaire” or “PSQ”</b>	has the meaning given to it in Paragraph 6.2(a).
<b>“Scope Areas”</b>	has the meaning given to it in Paragraph 2.4;
<b>“Senior Assurance Manager”</b>	the persons listed in Paragraph 13.1, as updated from time to time and notified to the Supplier;
<b>“Stage 1”</b>	has the meaning given to it in Paragraph 5.2(a);
<b>“Stage 2”</b>	has the meaning given to it in Paragraph 5.2(b);
<b>“Stage 3”</b>	has the meaning given to it in Paragraph 5.2(c);
<b>“Stage 4”</b>	has the meaning given to it in Paragraph 5.2(d);
<b>“Stage 5”</b>	has the meaning given to it in Paragraph 5.2(e);
<b>“Stages”</b>	has the meaning given to it in Paragraph 5.2; and
<b>“Supplier Assurance Rating”</b>	has the meaning given to it in Paragraph 3.2.

**2 INTRODUCTION**

2.1 The Provider Assurance Team (“PAT”) is part of the Authority’s Contract Management and Partner Delivery (“CMPD”) team and has been in operation since October 2009.

2.2 The primary purpose of PAT is to provide the CMPD director with an assurance that the Supplier’s systems of internal control are such that payments made to the Supplier are in accordance with the Authority’s and HM Treasury’s requirements.

2.3 PAT shall be entitled to carry out at any time and at any frequency, reviews and tests of the Supplier’s systems of internal control to establish how effective it is at managing risk to the Authority including but not limited to Service expenditure and Service delivery including the arrangements it has in place for its supply chain (“PAT Review”). The Supplier shall co-operate with PAT and carry out its obligations under this Schedule 21 whenever a PAT Review is undertaken.

2.4 The PAT Review may be divided across various key scope areas including but not limited to:

- (a) **Governance arrangements** – including but not limited to the Supplier's governance arrangements, systems for tracking and reporting performance and its anti-fraud measures;
- (b) **Service delivery** – includes the Supplier's systems for starting, ending and moving Claimants through the Service and generally looks to ensure that the Authority is getting the Service it is paying for. This also covers management of the supply chain; and
- (c) **Claims procedures and payments** – looks to ensure that the Supplier has in place effective systems to support claims for payment, including appropriate segregation of duties,

(together referred to as the "**Scope Areas**").

### **3 HOW PAT OPERATES**

3.1 PAT typically operates at a national level enabling it to present to the Supplier operating across regions with a single view of the effectiveness of its systems. Whilst this would ordinarily encompass all of the Authority's health and employment service contracts, a PAT Review's scope may, at the Authority's discretion be limited to specific contracts. The Supplier shall be allocated a nominated Senior Assurance Manager as a single point of contact within the Authority for management of assurance related issues / concerns.

3.2 On completion of each PAT Review the Supplier shall be awarded a PAT assurance rating in one of the following four categories (or under any other categories that PAT may designate to the Supplier from time to time) – (i) weak; (ii) limited; (iii) reasonable; or (iv) strong ("**Supplier Assurance Ratings**"). The Supplier shall be sent a formal report detailing the review findings including key strengths and areas for improvement where weaknesses have been identified ("**PAT Report**"). The Supplier is required to complete and return an action plan ("**PAT Action Plan**") to the Authority within 10 Working Days of receipt of the PAT Report, setting out appropriate steps for the Supplier's improvement on the areas identified as needing improvement in the PAT Report. PAT may regularly check in with the Supplier regarding its PAT Action Plan until PAT is satisfied that all required actions have been undertaken.

The description of the Supplier Assurance Ratings are as follows:

- (a) **Strong assurance** – governance, risk management and control arrangements operated by the Supplier provide strong assurance that material risks are identified and managed efficiently and effectively, although improvements may be recommended;
- (b) **Reasonable assurance** – governance, risk management and control arrangements operated by the Supplier provide reasonable assurance that material risks are identified and managed efficiently and effectively. Remedial action is required to improve the control environment;
- (c) **Limited Assurance** – governance, risk management and control arrangements operated by the Supplier provide limited assurance that material risks are identified and managed efficiently and effectively. Corrective action is required to resolve control weaknesses; and
- (d) **Weak Assurance** – governance, risk management and control arrangements operated by the Supplier provide weak assurance that material risks are identified and managed effectively. Urgent and significant corrective action is required to resolve significant control weaknesses.

#### **4 HOW PAT CONDUCTS PAT REVIEWS**

4.1 In order to manage review activity and direct PAT resources in the most effective way, PAT operates a national plan covering all FAS Lot Suppliers in scope for PAT Reviews. PAT Reviews are allocated in priority order according to risk. This is determined by a number of factors including the current Supplier Assurance Rating, length of time since the previous PAT Review (or if there has been no previous PAT Review, the length of time since the Effective Date), Authority stakeholder intelligence, residual contract value and the Supplier's compliance with any PAT Action Plan.

#### **5 THE PAT REVIEW PROCESS**

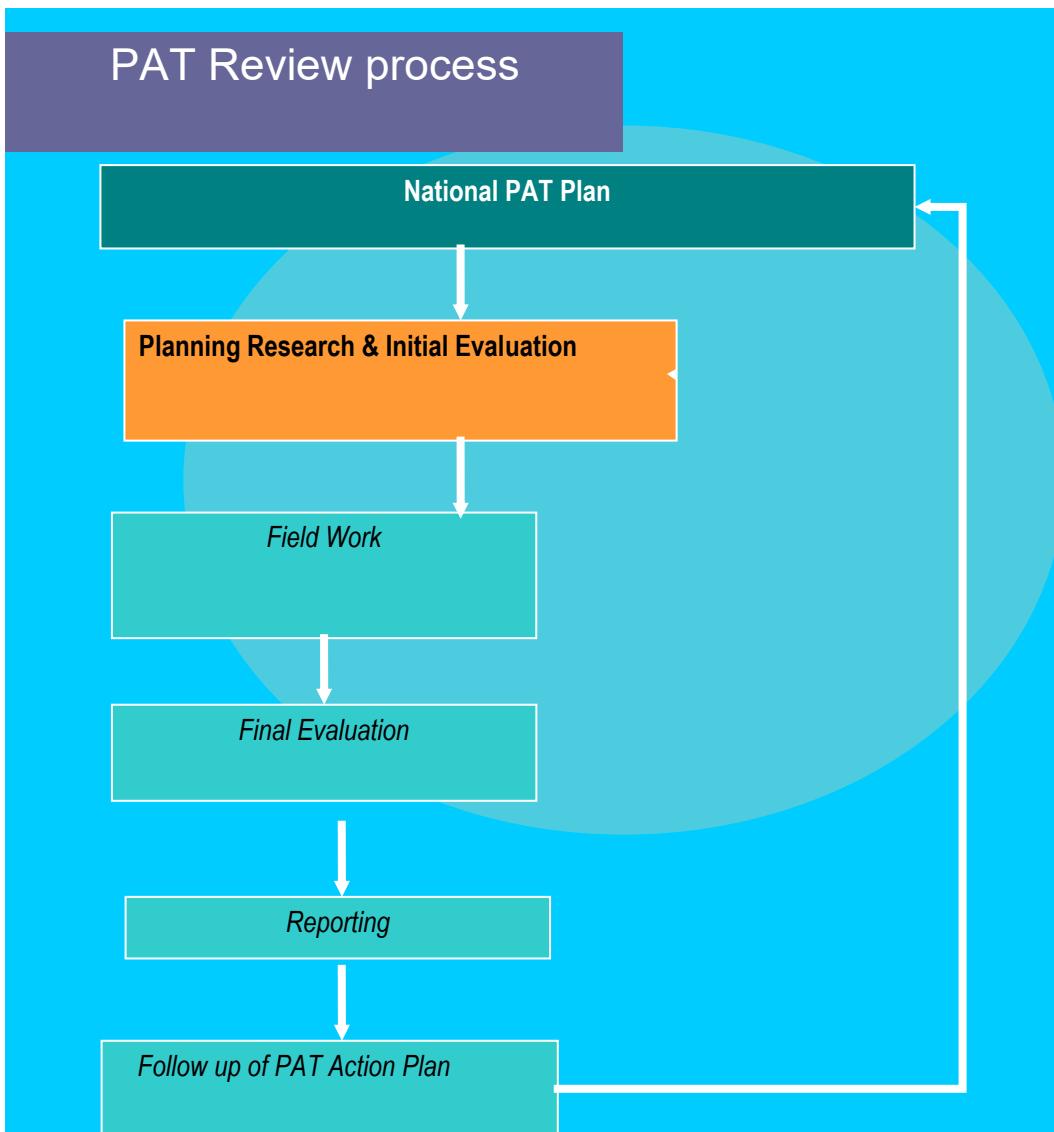
5.1 PAT looks for evidence that systems are in place across Supplier organisations to manage key risks to Authority expenditure. To facilitate this process, the key risks have been broken down across the Scope Areas set out at Paragraph 2.4 and PAT will examine the Supplier's controls to look at how effective it is in managing the risks identified.

5.2 A PAT Review is undertaken in stages, as set out below in Paragraphs 5.2(a) to 5.2(e), which may be updated by the Authority from time to time:

- (a) Planning research & initial evaluation (“**Stage 1**”)
- (b) Field work (“**Stage 2**”)
- (c) Final evaluation (“**Stage 3**”)
- (d) Reporting (“**Stage 4**”)
- (e) Follow up of PAT Action Plan (“**Stage 5**”)

together the “**Stages**”, which can typically take up to, but may exceed, 23 weeks to complete. The bulk of Supplier facing activity takes place within Stage 2 which generally lasts no longer than five weeks.

5.3 The diagram and paragraphs 6 to 10 below illustrate the different Stages of the current PAT Review process.



## 6 PLANNING RESEARCH AND INITIAL EVALUATION (STAGE 1)

6.1 At Stage 1, PAT shall:

- (a) pull together all relevant information about the Supplier;
- (b) form a paper-based opinion about the Supplier's systems; and
- (c) develop the testing strategy to be used at the Sites.

6.2 PAT shall send the following documents to the Supplier at the beginning of Stage 1:

- (a) a Provider Systems Questionnaire (“**PSQ**”) which asks a series of questions about the Supplier’s systems of control, policies, procedural guidance, including data management systems, e.g. booking systems across each of the Scope Areas, which the Supplier shall complete and return to PAT no later than 3 weeks after it receives the PSQ; and
- (b) a site information form to confirm information about the Supplier’s Site.

6.3 PAT shall also seek feedback from colleagues within the Authority who work closely with the Supplier. Intelligence is gathered from these sources during Stage 1 and used alongside the PSQ response from the Supplier when forming an initial view of the Supplier’s management of risk against the Scope Areas.

## **7 FIELD WORK WITH THE SUPPLIER (STAGE 2)**

- 7.1 Once PAT has received and reviewed the findings from Stage 1, Stage 2 shall commence following a formal start-up meeting between PAT and the Supplier on a date to be agreed between the Supplier and PAT (“**Start-up Meeting**”). The purpose of the Start-up Meeting is to brief the Supplier on the forthcoming PAT Review and agree the terms of engagement throughout the PAT Review, including timescales for final feedback and the timeframe for providing all evidence.
- 7.2 Based on the outcome of Stage 1, visits may be arranged at the Sites to carry out any testing deemed necessary to form a judgement as to the effectiveness of the systems under review.
- 7.3 The field work can be conducted at any of the Sites across the country and PAT will choose which Site to visit based on a number of factors, including the Services and activities delivered at individual Sites, any intelligence gathered during Stage 1 which may indicate weaknesses in certain areas, or the availability of PAT resource.
- 7.4 This Stage 2 will typically include reviewing key policy documents, examining Claimant files, interviewing Supplier Personnel, and performing checks in sufficient quantities to allow the team to form an opinion across the Supplier’s systems as a whole. This may mean that testing has to be extended in some circumstances.
- 7.5 During Stage 2, PAT will provide the Supplier with a written summary of interim feedback, based on findings from Stage 2. This allows the Supplier to understand and discuss the findings to date.
- 7.6 Throughout Stage 2, the Supplier shall be given the opportunity to provide any supporting documentation and/or missing evidence that has been requested by PAT. All evidence must be provided by the date agreed in the Start-up Meeting as set out in Paragraph 7.1.

## **8 FINAL EVALUATION (STAGE 3)**

- 8.1 Evaluation of the Supplier’s systems is continuous throughout all Stages of the PAT Review process. Once Stage 2 is complete and all the findings have been considered by PAT, an overall Supplier Assurance Rating shall be awarded covering the Scope Areas based on the assessment of the adequacy and effectiveness of the Supplier’s systems across all aspects of the provision delivered under the Agreement.
- 8.2 The Stage 3 final evaluation and Supplier Assurance Rating shall be formally presented to the Supplier at a final feedback meeting at a time agreed between PAT and the Supplier in advance. At this meeting, PAT and the Supplier shall discuss what actions are going to be included in the PAT Action Plan to address any issues raised and timescales for satisfactory completion of those actions.

## **9 REPORTING (STAGE 4)**

- 9.1 Following completion of Stage 3, the PAT Report shall be produced by PAT and sent to the Supplier. The PAT Report will contain details of PAT’s findings and opinions against all key risk areas across the Scope Areas and an overall Supplier Assurance Rating.
- 9.2 A PAT Action Plan shall be attached to the PAT Report covering all the issues raised at the feedback meeting. The Supplier shall submit a response to the PAT Action Plan within 10 Working Days of receipt. It is expected that the PAT Action Plan will be signed off within 3 months of the PAT Report being issued. The Supplier’s response shall contain any timescales for implementing any necessary improvements.
- 9.3 The Supplier shall also be required to complete and return a feedback form to the Senior Assurance Manager to support PAT’s continuous improvement.

9.4 Where the Supplier has any issues or causes for concern with the PAT Review process that cannot be addressed throughout the course of the review, then the Supplier may raise these in writing with the Head of Provider Assurance Team.

9.5 The Supplier is not entitled to appeal the Supplier Assurance Rating awarded. PAT undertakes a period of extensive evaluation to ensure that it has a good understanding of the Supplier'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 Supplier's controls.

9.6 The final feedback meeting will allow the Supplier ample opportunity to discuss the findings and Supplier Assurance Rating, before the PAT Report is issued.

9.7 The main focus of any meeting or correspondence after a Supplier Assurance Rating has been given shall concentrate on the implementation of the areas for improvement as detailed in the PAT Action Plan to strengthen the Supplier's controls/maintain a strong level of control in preparation for any subsequent PAT Review.

9.8 The PAT Report is also sent to the Authority's stakeholders which typically include:

- (a) Performance managers;
- (b) Commercial directorate;
- (c) Security risk advice team; and
- (d) Counter fraud & investigation.

## **10 FOLLOW UP OF PAT ACTION PLAN (STAGE 5)**

10.1 PAT will follow up with the Supplier to pursue clearance of all actions in the PAT Action Plan. This follow up will take place within the timescales agreed between PAT and the Supplier.

## **11 OTHER POTENTIAL ACTIONS**

11.1 Without prejudice to any other of the Authority's rights under the Agreement, there may be other actions required depending on the findings of the PAT Review including:

- (a) **Overpayment recovery** – if any potential overpayment is identified and the Supplier cannot produce evidence during the PAT Review to demonstrate that there has not been an overpayment, then the Authority may seek to recover such overpayment; and
- (b) **Backtracking** – if evidence suggests that any overpayments identified during the PAT Review are as a result of systematic weaknesses, then the Supplier may be asked to 'back track'. In such cases, the Supplier shall be required to provide information relating to such overpayments and, in doing so, identify the underlying cause of the overpayments. The results of the backtracking will be verified by PAT before the Authority decides appropriate action to rectify the overpayment.

## **12 PAT REPORTING**

12.1 The Authority has the right to periodically publish Supplier Assurance Ratings.

12.2 All PAT Reports are shared with the CMPD director and other senior managers within the Authority.

12.3 If the Supplier is attributed a "Weak" or "Limited" Supplier Assurance Rating, as notified to the Supplier by the Authority, the Supplier shall deploy all additional resources and take all

remedial action that is necessary to remedy the “Weak” or “Limited” Supplier Assurance Rating or to prevent the “Weak” or “Limited” Supplier Assurance Rating from recurring by a date specified by the Authority. The requirement for such additional resources and remedial action shall be set out in the PAT Action Plan.

12.4 If the Supplier has failed to deploy the required additional resources or to take the remedial action as required by the PAT Action Plan by the date specified by the Authority, the Authority shall be entitled to recover liquidated damages from the Supplier in accordance with Clause 26.14 (*Liquidated Damages*).

12.5 The following circumstances shall be Supplier Termination Events giving the Authority the right to terminate the Agreement in accordance with Clause 35.1(b) (*Termination by the Authority*) by issuing a Termination Notice to the Supplier:

- (a) where the Supplier has been awarded a Supplier Assurance Rating of “Weak” or “Limited”, as notified to the Supplier by the Authority, in two (2) separate consecutive PAT Reviews for reasons which the Authority regards, at its sole discretion, as similar reasons;
- (b) where the Supplier has been awarded a Supplier Assurance Rating of “Weak” or “Limited” as notified to the Supplier by the Authority, in three (3) separate consecutive PAT Reviews regardless of the reasons for such award; or
- (c) on-going or repeated failures on the part of the Supplier to comply with and implement a PAT Action Plan.

### **13 CONTACT DETAILS**

13.1 The contact details for PAT are listed below and enquiries can be submitted to the PAT central inbox [REDACTED].

<b>Senior Assurance Manager Contact Details</b>
[REDACTED] Chesham Jobcentre 31 Red Lion Street Chesham Buckinghamshire HP5 1BR  Mobile: [REDACTED] E-mail: [REDACTED]
[REDACTED] 1 Hartshead Square Sheffield S1 2FD  Mobile: [REDACTED] E-mail: [REDACTED]
[REDACTED] Leominster Jobcentre Lion Court Leominster

HR6 8JE

Mobile: [REDACTED]  
Email: [REDACTED]

**Head of Provider Assurance Team**

[REDACTED]  
1 Hartshead Square  
Sheffield  
S1 2FD

Mobile: [REDACTED]  
E-mail: [REDACTED]

**Operational Policy Lead**

[REDACTED]  
Scunthorpe Jobcentre  
Crown Buildings  
Laneham Street  
Scunthorpe  
DN15 5JT

Mobile: [REDACTED]  
E-mail: [REDACTED]

OFFICIAL – COMMERCIAL

**SCHEDULE 22**  
**CONTINGENCY SERVICES**

## INTRODUCTION

1. This Schedule 22 sets out a contingency option under which the Authority may require the Supplier to provide certain Contingency Services as an Optional Service. This is an important requirement to ensure continuity given the critical and urgent nature of such Contingency Services.

## CONTINGENCY SERVICES OPTION

2. If the Authority terminates in whole or in part any contract it has with another FAS Lot Supplier for the provision of services similar to the Services, the Supplier agrees that the Authority shall have the option to require that the Supplier takes over the delivery of such services that are terminated (the “**Contingency Services**”) and the Supplier hereby agrees to do so if so required.
3. Contingency Services will be implemented by the Authority using Clauses 5.10 and 5.12 of the Agreement with each Party acting reasonably and promptly taking into account the urgency of the Authority’s requirement for such Contingency Services.

## SUITABILITY TO PROVIDE CONTINGENCY SERVICES

4. The Supplier’s suitability to provide any Contingency Services shall be assessed by the Authority at the time of any such requirement using the following criteria (as may be further supplemented, or refined at the time(s) to reflect the requirements of the particular Contingency Services):
  - a. **Value for Money** – the extent to which the Supplier can demonstrate it will achieve value for money when providing the Contingency Services (including as set out in its Impact Assessment).
  - b. **Supplier Performance and Compliance with Contractual Obligations** – the extent to which the Supplier has a stable performance position / good performance track record as part of this Agreement and any other existing contracts with the Authority and the extent to which the Supplier has complied with its contractual obligations as set out in this Agreement (including, without limitation, the Authority Requirements) or any other contracts with the Authority.
  - c. **Supplier Capacity** – the ability of the Supplier to increase volume capacity to take on the Contingency Services within any timeframes required by the Authority.
  - d. **Financial Health** – a Financial Viability and Risk Assessment (FVRA) will be undertaken by the Authority to help to determine the volume of Contingency Services it is reasonable for the Supplier to take on (if any) given its financial position at the time. This assessment will consider the Supplier’s continued ability to provide the existing Services under its current Agreement whilst also taking on the volume of additional Contingency Services required by the Authority. This will be relevant to the Authority’s decision as to whether or not to split the relevant contingency service requirement across a number of suppliers or to exercise its option with just one supplier.
  - e. **Service Geography and/or Channel Mix** – the Authority will assess if there are any geographic considerations that mean that exercising the

option with a particular supplier (whether the Supplier or any other FAS Lot Supplier) will result in a better services outcome and/or reduced risk. For instance, there may be reasons that the option should be exercised with the supplier that has the best geographical and/or channel mix fit based on the existing services that it provides to the Authority (e.g. that would mean efficiencies, reduced risks or other synergies in integrating the service delivery and management of any Contingency Services with any existing services provided by that supplier).

- f. Diversity of Supply** – When deciding which supplier to exercise an option for Contingency Services with, the Authority may also take into account its desire to maintain a diverse and well-balanced supply chain. However, for the avoidance of doubt, Contingency Services shall not be subject to any market share limits previously applied (at contract award) to a supplier in respect of its services.
  5. Where, by applying the criteria above (as may be further supplemented or refined at the time to reflect the requirements of the particular Contingency Services), the Authority considers that there may be more than one supplier that may potentially be suitable to provide the required Contingency Services, the Authority may request proposals from each such potentially suitable supplier. The information required as part of such proposals may include, but shall not be limited to, the information that would normally be required as part of an Impact Assessment. In these circumstances, the Authority will evaluate such proposals and choose which supplier or suppliers to exercise its option for Contingency Services with, based on applying the criteria above (as may be more precisely supplemented, refined and/or formulated at the time (including by the addition of any relevant sub-criteria), as notified to the relevant suppliers as part of any request for such proposals).

## WORKED EXAMPLE

6. A worked example at Annex A to this Schedule 22 illustrates how the processes outlined in this Schedule 22 are intended to work in practice.

## ANNEX A

**Worked example illustrating the operation of Schedule 22 (Contingency Services) (this example is for illustrative purposes only)**

Relevant Processes	Relevant Agreement References
Contracts awarded to suppliers A, B, C, D, and E.	N/A
Supplier A fails to perform leading to a supplier termination event (similar or equivalent to a Supplier Termination Event).	“Supplier Termination Event” defined in Schedule 1 ( <i>Definitions</i> )
The Authority terminates part of supplier A’s contract due to this Supplier Termination Event. Such termination is specified by the Authority to take effect six (6) months from the date of the termination notice (similar or equivalent to a Termination Notice).	Clauses 35.1 (b) and 35.2 (b) of Agreement. See also definition of “Termination Notice” in Schedule 1 ( <i>Definitions</i> ).
The Authority requires Contingency Services to effectively take over the services terminated under supplier A’s contract. Such Contingency Services are an “Optional Service” under all of the supplier contracts awarded (ie, the contracts awarded to the Supplier and any other FAS Lot Supplier).	Schedule 22 ( <i>Contingency Services</i> ). See also definitions of “Contingency Services” and “Optional Services” in Schedule 1 ( <i>Definitions</i> ).
The Authority considers the criteria in Schedule 22 to determine which supplier might be suitable to provide the required Contingency Services. Suppliers B and C have both had performance issues under their own contracts in that they have failed to meet various performance targets in accordance with the terms of their contracts (although the situation has now been rectified). Due to this poor performance track record (i.e. their failure to meet their contractual obligations) the Authority does not consider that suppliers B or C are suitable to provide the required Contingency Services. However, suppliers D and E are both considered potentially suitable to provide the Contingency Services.	Paragraph 4 of Schedule 22 ( <i>Contingency Services</i> )
The Authority invites suppliers D and E to submit proposals in relation to the provision of the Contingency Services. The Authority’s invite sets out the format such proposals should take and how they will be evaluated by the Authority applying	Paragraph 5 of Schedule 22 ( <i>Contingency Services</i> )

Relevant Processes	Relevant Agreement References
<p>the criteria in Schedule 22 (including some more precisely formulated sub-criteria relevant to the particular Contingency Services required). Supplier E submits the best proposal on this basis.</p>	
<p>The Authority exercises its option under supplier E's contract to require the relevant Contingency Services from supplier E to be implemented by the effective date (as defined) of the partial termination of supplier A's contract. This option is implemented as a change to supplier E's contract. However, an Impact Assessment is not required, as the information normally included as part of such Impact Assessment has already been provided to the Authority as part of supplier E's proposal (as referred to above).</p>	<p>Paragraphs 2 to 3 of Schedule 22 (<i>Contingency Services</i>).</p> <p>Clauses 5.10 and 5.12 of the Terms and Conditions.</p> <p>See also Schedule 8.2 (<i>Change Control Procedure</i>) and definition of "Impact Assessment" in Schedule 1 (<i>Definitions</i>)</p>

OFFICIAL – COMMERCIAL

**SCHEDULE 23**

**APPRENTICESHIPS AND SKILLS REQUIREMENT**

**SCHEDULE 23**

**APPRENTICESHIPS AND SKILLS REQUIREMENT**

**1 GENERAL**

- 1.1 This Schedule 23 sets out the Apprenticeships and Skills Requirements which are applicable to the Services delivered under this Agreement.
- 1.2 The Government is committed to addressing skills issues and promoting training opportunities through procurement, to maximise the potential for improvements provided by its considerable spend.
- 1.3 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 Government Departments must now focus.
- 1.4 The Supplier acknowledges that the Authority is required to support the Apprenticeships and skills aims and targets.
- 1.5 In delivering the Services, the Supplier shall comply with, and shall procure that its Sub-contractors assist and cooperate with the Authority by fully complying with, the requirements of this Schedule 23.

**2 COMPLIANCE**

- 2.1 The Supplier 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 Supplier shall, and shall procure that its Sub-contractors, take all reasonable steps to ensure that a minimum of five percent (5%) of the Supplier Personnel (excluding Health Professionals) are Apprentices.
- 2.3 The Supplier shall, and shall procure that its Sub-contractors, make available to Supplier Personnel, information about the Government’s Apprenticeship programme and wider skills opportunities.
- 2.4 The Supplier shall, and shall procure that its Sub-contractors, provide any appropriate further skills training opportunities for Supplier Personnel involved in delivery of this Agreement.
- 2.5 The Supplier will produce an Apprenticeships and Skills Report in accordance with Paragraph 3.

**3 MONITORING AND REPORTING**

- 3.1 The Supplier shall provide an Apprenticeships and Skills Report within six months following the Operational Service Commencement Date and annually thereafter. The Apprenticeships and Skills Report must be specific to this Agreement and include details for all Supplier Personnel involved in delivery of this Agreement.

3.2 The Apprenticeships and Skills Report will include:

- (a) the number of Supplier Personnel, during the applicable reporting period, involved in delivery of this Agreement, including administration and support staff;
- (b) the number of Supplier Personnel who are Apprentices which have been employed for a period of 26 weeks or longer during the applicable reporting period;
- (c) the percentage of Supplier Personnel who are Apprentices at the end of the applicable reporting period;
- (d) the number of Supplier Personnel who are Apprentices and began Apprenticeships during the applicable reporting period;
- (e) if applicable, a robust explanation as to why it is not possible to meet the five percent (5%) target as set out in Paragraph 2.2 in any given reporting period (for example, it may be that use of Apprentices is not possible or appropriate in delivery of the Services);
- (f) action being taken to improve the take up of Apprenticeships. This could include issuing leaflets on Apprenticeships to eligible existing Supplier Personnel, 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
- (g) save where the information is recorded in accordance with the Life Chance Workforce Monitoring Template referred to in Annex 1 of Schedule 14 (*Life Chances*), other training/skills development being undertaken by Supplier Personnel involved in delivery of this Agreement 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; and
  - (vii) On site training provision/facilities.

3.3 The Apprenticeships and Skills Report shall be completed:

- (a) in full by the Supplier in respect of all Supplier Personnel (including but not limited to personnel of all Sub-contractors used in the performance of the Supplier's obligations under the Agreement);

(b) in line with the Life Chances through Procurement Guidance for DWP Contractors.

3.4 The Supplier will compare figures in all categories listed in the Apprenticeships and Skills Report and provide (where possible) comparisons against any official national/regional statistics that are publicly available as notified by the Authority to the Supplier from time to time.

3.5 The official national/regional statistics notified by the Authority to the Supplier in accordance with Paragraph 3.4 may not be an exhaustive list and other sources may be available. The Authority recognises that there may be regional variations in terms of population demographics and some data categories and coverage may not be complete or fully aligned. However, the Supplier agrees to provide high level analysis and identification of trends as and when requested by the Authority.

3.6 The Supplier shall provide and shall ensure that its Sub-contractors provide such evidence as the Authority may require of action(s) undertaken or planned by the Supplier and/or any Sub-contractor to improve the numbers in the Apprenticeships and Skills Report to the satisfaction of the Authority.

3.7 The Supplier shall, and shall procure that its Sub-contractors shall, ensure at all times that they comply with the requirements of Clause 24 (*Protection of Personal Data*) and Schedule 11 (*Processing Personal Data*) in the collection and reporting of information to the Authority pursuant to this Schedule 23.

OFFICIAL – COMMERCIAL

**SCHEDULE 24**

**SOCIAL VALUE**

**1 SOCIAL VALUE COMMITMENTS**

- 1.1 The Supplier shall support the themes and policy outcomes set out in Procurement Policy Note PPN 06/20 and will comply with the requirements set out in this Schedule 24.
- 1.2 In support of these policy outcomes, the Supplier shall use its best endeavours to:
  - (a) progress its current and proposed Social Value activities (the "**Social Value Activities**"); and
  - (b) achieve its Social Value objectives and improvements (the "**Social Value Objectives and Improvements**"),both as set out in Annex 1 to this Schedule 24.
- 1.3 The Supplier shall ensure that all of its Key Sub-contractors comply with the requirements set out in Paragraph 1.2.
- 1.4 For the purposes of this Schedule and its Annexes, the "**Contract Workforce**" means all people employed or engaged by the Supplier in connection with the provision of the Services under this Agreement.

**2 SOCIAL VALUE REPORTS AND SOCIAL VALUE ACTION PLANS**

- 2.1 Within 20 Working Days following the end of each Service Delivery Year, the Supplier shall provide to the Authority:
  - 2.1.1 a written report setting out its progress in carrying out the Social Value Activities and achievement of the Social Value Objectives and Improvements (the "**Social Value Report**"); and
  - 2.1.2 if the Supplier or any of its Key Sub-contractors have failed to meet the Social Value Objectives and Improvements listed under the heading "Equal opportunities" in Annex 1, a letter of explanation and the Supplier's action plans to remedy such failure (the "**Social Value Action Plan**").
- 2.2 The provisions of this Paragraph 2 shall be without prejudice to any other reporting requirements under this Agreement, including but not limited to, under:
  - 2.2.1 Schedule 2.3 (*Standards*); and
  - 2.2.2 Schedule 8.4 (*Management Information and Records Provisions*).

**3 SOCIAL VALUE PERFORMANCE INDICATORS**

- 3.1 The Supplier will report on its performance against the Social Value PIs in accordance with the requirements set out in 0.

**4 CORRECTIVE ACTION**

- 4.1 The Authority may issue a written notice to the Supplier at any time (a "**Corrective Action Notice**") where the Supplier, in the reasonable opinion of the Authority:
  - 4.1.1 fails to provide any of the Social Value Reports;
  - 4.1.2 fails to provide a Social Value Action Plan in accordance with Paragraph 2.1.2; and/or

- 4.1.3 fails to implement any actions set out in the Social Value Action Plan, together a “**Social Value Failure**”.
- 4.2 Any Corrective Action Notice issued pursuant to Paragraph 4.1 shall set out the period within which the Authority requires the Supplier to remedy the relevant Social Value Failure (the “**CAN Period**”).
- 4.3 Following the issue of a Corrective Action Notice, the Authority and the Supplier shall meet as soon as reasonably possible (and thereafter, on such further dates as the Authority may reasonably require from time to time) in order to discuss the progress of the Supplier in remedying any Social Value Failure.
- 4.4 If, notwithstanding Paragraph 4.3, the Supplier fails to remedy a Social Value Failure by the end of the CAN Period, the Authority shall be entitled to recover liquidated damages from the Supplier in accordance with Clauses 26.14 to 26.17.

**ANNEX 1: SOCIAL VALUE ACTIVITIES, OBJECTIVES AND IMPROVEMENTS****Social Value Objectives and Improvements**

The Supplier shall achieve the following objectives and improvements, which relate to both the Equal Opportunity theme and the Wellbeing theme under the Government Commercial Function's Social Value Model (which can be found here for background information [Social-Value-Model-Edn-1.1-3-Dec-20.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/Social-Value-Model-Edn-1.1-3-Dec-20.pdf)):

**Wellbeing**

- (a) Improve the overall rating, as a percentage of survey participants, given by members of the Contract Workforce in each Service Delivery Year in response to an anonymous survey asking them to rate the support provided by the Supplier for the health and wellbeing of the Contract Workforce.
- (b) Increase in each Service Delivery Year the percentage of all suppliers within the Supplier's supply chain implementing documented measures to improve the physical and mental health and wellbeing of their employees and other staff, as a proportion of all suppliers in the Supplier's supply chain.
- (c) Increase in each Service Delivery Year the number of suppliers within the Supplier's supply chain implementing the six standards in the Mental Health at Work commitment (or equivalent).
- (d) Increase in each Service Delivery Year the percentage of all suppliers within the Supplier's supply chain implementing the six standards in the Mental Health at Work commitment (or equivalent), as a proportion of all suppliers in the Supplier's supply chain.
- (e) Increase in each Service Delivery Year the number of people-hours spent by the Contract Workforce supporting local community integration, for example, volunteering and other community-led initiatives.

**Equal opportunities**

- (f) Increase in each Service Delivery Year the percentage of full time equivalent (FTE) disabled people employed or engaged by the Supplier as part of its Contract Workforce, as a proportion of the Supplier's total Contract Workforce.
- (g) Increase in each Service Delivery Year the number of full time equivalent (FTE) disabled people employed or engaged by the Supplier as part of its Contract Workforce.

[REDACTED]

**ANNEX 2: SOCIAL VALUE PERFORMANCE INDICATORS**

No later than 20 Working Days after the end of each Service Delivery Year, the Supplier shall submit a written report to the Authority on each of the following Social Value PIs:

Wellbeing

- (a) The percentage of all suppliers within the Supplier's supply chain to have implemented documented measures to improve the physical and mental health and wellbeing of their employees and other staff, as a proportion of all suppliers in the Supplier's supply chain.
- (b) The number of suppliers within the Supplier's supply chain to have implemented the six standards in the Mental Health at Work commitment (or equivalent).
- (c) The percentage of all suppliers within the Supplier's supply chain to have implemented the six standards in the Mental Health at Work commitment (or equivalent), as a proportion of all suppliers in the Supplier's supply chain.

Equal Opportunities

- (d) The percentage of full time equivalent (FTE) disabled people employed or engaged by the Supplier as part of its Contract Workforce, as a proportion of the Supplier's total Contract Workforce, by UK region.
- (e) The number of full time equivalent (FTE) disabled people employed or engaged by the Supplier as part of its Contract Workforce, by UK region.

The Supplier's performance against the Social Value PIs under the heading "Equal Opportunities" above will be Publishable Performance Information for the purposes of the Agreement.