

**COMMERCIAL AGREEMENT FOR THE PROVISION OF
EMPLOYMENT AND HEALTH RELATED SERVICES**

ACCESS TO WORK HOLISTIC ASSESSMENTS

DATED 30 May 2023

(1) THE SECRETARY OF STATE FOR WORK AND PENSIONS

and

(2) Maximus UK Services Limited

AGREEMENT

relating to

**ACCESS TO WORK HOLISTIC
ASSESSMENTS**

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Order Form

SECTION A

This Order Form is issued in accordance with the provisions between (1) the Secretary of State for Work and Pensions and (2) Maximus UK Services Limited dated [] for the provision of employment and health related services with contract reference number 2020/S 207-506418. . The Supplier agrees to supply the Services specified below on and subject to the terms of this Agreement.

FROM

Authority	Secretary of State for Work and Pensions (" Authority ") acting as part of the Crown
Service Address:	Caxton House, Tothill Street, London, SW1H 9NA
Invoice Address:	Not Applicable
Contact Reference:	Name: [Redacted] Ref: [Redacted] e-mail: [Redacted]
Order Number:	ecm_11005 To be quoted on all correspondence relating to this Order:
Supplier A or B (see paragraph 3 of Section 2 of the Specification):	Supplier B (National Insurance Numbers 50-99)

TO

Supplier:	Maximus UK Services Limited (" Supplier ")
Registered Number:	09072343
Service Address:	18c Meridian Business Park, Leicester, Leicestershire. LE19 1WZ
Contact Reference:	Name: [Redacted] Ref: [Redacted] Phone: [Redacted] e-mail: [Redacted]

herein after called the "**Parties**", each being a "**Party**".

SECTION B


1. FORMATION OF AGREEMENT

- 1.1 BY SIGNING AND RETURNING THIS ORDER FORM the Supplier agrees to enter the Agreement with the Authority to provide the Services.
- 1.2 The Parties hereby acknowledge and agree that they have read the Order Form and the Terms and Conditions (attached hereto) and by signing below agree to be bound by this Agreement.

Executed by the Supplier:

Executed as a deed by Maximus UK Services Limited acting by [Redacted] a director, in the presence of: [Redacted] Signature of witness	[Redacted] Signature of Director Name of Director: [Redacted]
Name of Witness:	[Redacted]
Address of Witness:	[Redacted] [Redacted]
Occupation of Witness:	Finance Director
Date:	22 May 2023

Executed by the Authority (acting as part of the Crown):

Executed as a deed by affixing the seal of The Secretary of State for Work and Pensions duly authorised by:	[Redacted] Signature of Officer	
Name of Officer:	[Redacted]	
Position in Organisation:	Deputy Director, Head of Employer Services	
Date:	30/5/23	

This Agreement is executed as a deed and is delivered by each Party on the date on which it is signed by that Party. The rights and obligations of the Parties under this Agreement come into force in accordance with Clause B1 (Term).

SECTION A - PRELIMINARIES

A1. Definitions and interpretation

- A1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
- A1.2 In this Agreement, unless the context otherwise requires:
- (a) the singular includes the plural and vice versa;
 - (b) reference to a gender includes the other gender and the neuter;
 - (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
 - (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - (e) the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
 - (f) references to "writing" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - (g) the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
 - (h) unless otherwise provided and save for references in Schedule 10 (Guarantee), references to Clauses and Schedules are references to the Clauses and schedules of this Agreement and references in any Schedule to Paragraphs, Parts, Annexes and Appendices are, unless otherwise provided, references to the paragraphs, parts, annexes and appendices of the Schedule or the Part of the Schedule in which the references appear; and
 - (i) references to this Agreement are references to this Agreement as amended from time to time.
- A1.3 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Agreement with a reference to the replacement hyperlink. References to those standards, policies and documents are references to those standards, policies or documents as amended from time to time. Without prejudice to the preceding sentence, where standards, policies and documents are published by the Authority it will inform the Supplier of amendments to those standards, policies and documents.
- A1.4 If there is any conflict between the Clauses and the Schedules and/or any Annexes and Appendices to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Clauses and Schedule 1 (Definitions);

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- (b) Schedules 2.1 (Services Description) and 2.2 (Customer Service Standards and Performance Reviews) and their Annexes and Appendices;
 - (c) any other Schedules and their Annexes and Appendices (other than Schedule 4.1 (Supplier Solution) and its Annexes and Appendices, and Schedule 14 (DWP Supplier Code of Conduct));
 - (d) Schedule 4.1 (Supplier Solution) and its Annexes and Appendices (if any);
 - (e) the CAEHRS;
 - (f) the Provider Guidance; and
 - (g) Schedule 14 (DWP Supplier Code of Conduct).

A1.5 The Schedules, and their Annexes and Appendices, form part of this Agreement.

A1.6 In entering into this Agreement the Authority is acting as part of the Crown.

A2. Due diligence

A2.1 The Supplier acknowledges that:

- (a) the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;
- (b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
- (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to:
 - (i) the Authority Requirements;
 - (ii) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;
 - (iii) the operating processes and procedures and the working methods of the Authority;
 - (iv) the ownership, functionality, capacity, condition and suitability for use in the Services of the Authority Assets; and
 - (v) the existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Agreement and/or which the Supplier will require the benefit of for the provision of the Services; and
- (d) it has advised the Authority in writing of:
 - (i) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
 - (ii) the actions needed to remedy each such unsuitable aspect; and

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- (iii) a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,

and such actions, timetable and costs are fully reflected in this Agreement.

A2.2 The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

- (a) any unsuitable aspects of the Operating Environment;
- (b) any misinterpretation of the Authority Requirements; and/or
- (c) any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

A2.3 Not Used.

A3. Warranties

A3.1 The Authority represents and warrants that:

- (a) it has full capacity and authority to enter into and to perform this Agreement;
- (b) this Agreement is executed by its duly authorised representative;
- (c) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and
- (d) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

A3.2 The Supplier represents and warrants that:

- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b) it has full capacity and authority to enter into and to perform this Agreement;
- (c) this Agreement is executed by its duly authorised representative;
- (d) it has all necessary consents and regulatory approvals to enter into this Agreement;
- (e) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
- (f) its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;

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- (g) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
 - (h) all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the selection questionnaire in respect of CAEHRS and the ITT (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;
 - (i) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
 - (j) it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;
 - (k) the Financial Model is a true and accurate reflection of the Fees and Supplier Profit Margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;
 - (l) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
 - (m) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
 - (n) within the previous twelve (12) months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Agreement had this Agreement been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.

A3.3 The representations and warranties set out in Clause A3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing.

A3.4 Each of the representations and warranties set out in Clauses A3.1 and A3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.

A3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause A3.1 or A3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

A3.6 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.

A3.7 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

A4. Not Used

A4.1 Not used.

A4.2 Not used

A5. Supplier Code of Conduct

A5.1 The Supplier shall at all times during the Term comply with the Supplier Code of Conduct.

A5.2 Any breach by the Supplier of this Clause A5 shall entitle the Authority to terminate the Agreement by issuing a Termination Notice to the Supplier.

A6. Provider Guidance and Generic Guidance for DWP Providers

A6.1 The Supplier shall at all times during the Term comply with the Provider Guidance and the Generic Guidance for DWP Providers.

SECTION B – THE SERVICES

B1. Term

B1.1 This Agreement shall:

- (a) come into force on the Effective Date, save for Clauses A1 (Definitions and Interpretation), A3 (Warranties), B1 (Term), F6 (Confidentiality), F7 (Transparency and Freedom of Information), F9 (Publicity and Branding), G1 (Limitations on Liability), J3 (Waiver and Cumulative Remedies), J4 (Relationship of the Parties), J6 (Severance), J8 (Entire Agreement), J9 (Third Party Rights), J10 (Notices), J11 (Disputes) and J12 (Governing Law and Jurisdiction), which shall be binding and enforceable as between the Parties from the date of signature; and
- (b) unless terminated at an earlier date by operation of Law or in accordance with Clause I1 (Termination Rights), terminate on the last day of the Run-Off Period.

Condition Precedent

B1.2 Save for Clauses A1 (Definitions and Interpretation), A3 (Warranties), B1 (Term), F6 (Confidentiality), F7 (Transparency and Freedom of Information), F9 (Publicity and Branding), G1 (Limitations on Liability), J3 (Waiver and Cumulative Remedies), J4 (Relationship of the Parties), J6 (Severance), J8 (Entire Agreement), J9 (Third Party Rights), J10 (Notices), J11 (Disputes) and J12 (Governing Law and Jurisdiction), this Agreement is conditional upon the valid execution and delivery to the Authority of the Guarantee (the "Condition Precedent"). The Authority may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Supplier notice in writing.

B1.3 The Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. In the event that the Condition Precedent is not satisfied within twenty (20) Working Days after the date of this Agreement then, unless the Condition Precedent is waived by the Authority in accordance with Clause B1.2:

- (a) this Agreement shall automatically cease and shall not come into effect; and
- (b) neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.

B1.4 The Supplier shall consult with the Authority in relation to the steps it takes to satisfy the condition set out in Clause B1.2 and shall keep the Authority fully informed of its progress in satisfying the condition and of any circumstances which are likely to result in the condition not being satisfied by the date set out in Clause B1.3.

B2. Services

Standard of Services

B2.1 Not Used.

B2.2 The Supplier shall ensure that:

(a) the Services:

- (i) are supplied in accordance with Schedule 2.1 (Services Description); and
- (ii) are supplied in accordance with the Supplier Solution and the provisions of this Agreement; and
- (iii) are supplied in accordance with the Supplier Code of Conduct; and

(b) where:

- (i) the Services to be provided from the Effective Date are similar to services that the Authority was receiving immediately prior to the Effective Date (such similar services being "**Preceding Services**"); and
- (ii) the standard and level of service received by the Authority in respect of any of the Preceding Services in the twelve (12) month period immediately prior to the Effective Date have been disclosed to the Supplier in the Due Diligence Information (such preceding services being "**Relevant Preceding Services**")

the Services to be provided from the Effective Date that are similar to the Relevant Preceding Services are in each case provided to a standard and level of service which is at least as good as the standard and level of service received by the Authority in respect of the Relevant Preceding Services in the twelve (12) month period immediately prior to the Effective Date.

B2.3 The Supplier shall:

(a) perform its obligations under this Agreement, including in relation to the supply of the Services and any Goods in accordance with:

- (i) all applicable Law;
- (ii) Good Industry Practice;
- (iii) the Standards;
- (iv) the Baseline Security Requirements;
- (v) the Quality Plans;
- (vi) Not used; and
- (vii) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses B2.3(a)(i) to B2.3(a)(v); and

(b) deliver the Services using efficient business processes and ways of working having

regard to the Authority's obligation to ensure value for money.

- B2.4** In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses B2.3(a)(i) to B2.3(a)(v), the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

Supplier covenants

- B2.5** The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Agreement;
- (b) subject to Clause D3 (Change), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- (c) ensure that:
 - (i) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;
 - (ii) the release of any new Software or upgrade to any Software complies with the interface requirements of the Services and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 2.4 (Security Requirements)) shall notify the Authority three (3) months before the release of any new Software or Upgrade;
 - (iii) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
 - (iv) any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Authority Requirements; and
 - (v) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Authority);
- (d) minimise any disruption to the Services, the IT Environment and/or the Authority's operations when carrying out its obligations under this Agreement;
- (e) ensure that any Documentation and training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or

organisational interfaces with the Services and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier;

- (g) to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
- (h) unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause B2.5(g);
- (i) provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- (j) gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;
- (k) notify the Authority in writing as soon as reasonably possible and in any event within one (1) month of any Change of Control taking place;
- (l) notify the Authority in writing within ten (10) Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
- (m) ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Agreement;
- (n) manage closure or termination of Services and end of life of Goods to take account of the Authority's disposal requirements, including recycling and scope for re-use, and all applicable Standards;
- (o) comply and shall ensure that its Supplier Personnel comply with the provisions of Schedule 13 (Life Chances); and
- (p) to the extent required by the Authority, comply and shall ensure that its Supplier Personnel comply with the provisions of Schedule 16 (Welsh Language Scheme) in providing the Services in the Welsh language.

B2.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

B2.7 Without prejudice to Clauses F4.2 and F4.3 (*IPRs Indemnity*) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:

- (a) remedy any breach of its obligations in Clauses B2.5(b) to B2.5(d) inclusive within three (3) Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has

occurred);

- (b) remedy any breach of its obligations in Clause B2.5(a) and Clauses B2.5(e) to B2.5(j) inclusive within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by the Authority; and
- (c) meet all the costs of, and incidental to, the performance of such remedial work.

Specially written software warranty

B2.8 Without prejudice to Clauses B2.5 (Supplier Covenants) and B2.7 (Services) and any other rights and remedies of the Authority howsoever arising, the Supplier warrants to the Authority that all components of the Specially Written Software shall:

- (a) be free from material design and programming errors;
- (b) perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution and Documentation; and
- (c) not infringe any Intellectual Property Rights.

Continuing obligation to provide the Services

B2.9 The Supplier shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Services, notwithstanding:

- (a) Not Used;
- (b) the existence of an unresolved Dispute; and/or
- (c) any failure by the Authority to pay any Fees,

unless the Supplier is entitled to terminate this Agreement under Clause 11.3(a) (Termination by the Supplier) for failure to pay undisputed Fees.

Optional services

B2.10 Not used.

B2.11 Not used.

B2.12 Not used.

Power of attorney

B2.13 By way of security for the performance of its obligations under Clauses B2.5(g) and B2.5(h) (Supplier covenants) the Supplier hereby irrevocably appoints the Authority as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to delegate one or more of the powers conferred on it by this Clause B2.13 (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time.

Authority responsibilities

B2.14 Not used.

B3. Implementation

Quality plans

- B3.1 The Supplier shall develop, within 20 Working Days of the Effective Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("Quality Plans").
- B3.2 The Supplier shall obtain the Authority Representative's written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the Authority's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Agreement.
- B3.3 Following the approval by the Authority of the Quality Plans:
- (a) the Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and
 - (b) any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

Implementation plan and delays

- B3.4 The Supplier shall implement the Implementation Plan to the satisfaction of the Authority and satisfy the requirement of Clause C8.6 with effect from the Effective Date in accordance with the terms of the Implementation Plan and in accordance with the timescales set out in the Implementation Plan but in any event prior to the Referral Period Start Date, and if the Supplier fails to do so the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Supplier.
- B3.5 Timely supply of the Services shall be of the essence of the Agreement, including in relation to commencing the supply of the Services within the time agreed or on a specified date including the dates specified in the Specification and the Implementation Plan.
- B3.6 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:
- (a) it shall:
 - (i) notify the Authority of the Delay or anticipated Delay; and
 - (ii) address the impact of the Delay or anticipated Delay; and
 - (iii) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.
 - (b) Not used.

B4. KPIs and Customer Service

- B4.1 The Supplier shall ensure that, at all times from the Effective Date, the Services are supplied in such a manner as to meet or exceed (a) the KPI Targets as calculated by the Authority; and (b) the Customer Service Standards set out in paragraph 2 of Schedule 2.2.

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- B4.2** In measuring the Supplier's performance against each of the KPI Targets, the Authority shall have absolute discretion to choose any Performance Measurement Point and any Performance Measurement Period. In measuring the Supplier's performance against each of the Customer Service Standards, the Authority shall have absolute discretion to choose any CSS Measurement Point and any CSS Measurement Period.
- B4.3** The Authority shall conduct regular formal Contract Performance Review meetings ("CPRs") in accordance with Schedule 2.2 to monitor, and review, the Supplier's performance against the KPI Targets, the Customer Service Standards.
- B4.4** The Supplier shall comply with the provisions of Schedule 2.2 in relation to the review, monitoring and reporting of its performance against the KPI Targets and the Customer Service Standards.
- B4.5** The Authority's measurement of the Supplier's performance against each of the KPI Targets and the Customer Service Standards shall continue throughout the period from the Effective Date until the end of the Run-Off Period.
- B4.6** The Authority may, at its sole discretion, elect to make changes to the KPI Targets and/or the Customer Service Standards from time to time. If the Authority elects to make changes to the KPI Targets and/or the Customer Service Standards, the Authority shall notify the Supplier in writing two (2) months prior to such changes becoming effective and shall confirm any Management Information requirements in respect of such changed KPI Targets and/or changed Customer Service Standards.

B5. Performance Improvement Process

- B5.1** Where the Authority believes that a Service Failure has occurred, the Authority may at any time (in its absolute discretion and without prejudice to any other right or remedy of the Authority in respect of the Service Failure) elect to give a Performance Improvement Notice to the Supplier in respect of such Service Failure and thereby initiate the Performance Improvement Process in accordance with this Clause B5.
- B5.2** If the Authority initiates the Performance Improvement Process in accordance with this Clause B5:
- (a) the Supplier acknowledges and agrees that the Authority has the right to invoice the Supplier for Performance Improvement Admin Fees;
 - (b) the Performance Improvement Admin Fees shall be payable by the Supplier within thirty (30) days of the date of the relevant invoice;
 - (c) the Supplier acknowledges and agrees that the Performance Improvement Admin Fees are a fair and conservative reflection of the additional costs incurred by the Authority in the initiation and management of the Performance Improvement Process;
 - (d) the Authority shall not be prevented from charging Performance Improvement Admin Fees for subsequent instances in which it initiates the Performance Improvement Process;
 - (e) any exercise by the Authority of its rights under this Clause B5.2 shall be without prejudice to any other rights that may arise pursuant to the terms of this Agreement.
- B5.3** A Performance Improvement Notice given in accordance with this Clause B5 shall indicate:

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- (a) that it is a Performance Improvement Notice;
 - (b) the Service Failure;
 - (c) whether the Supplier is required to pay Performance Improvement Admin Fees;
 - (d) the actions the Authority in its absolute discretion requires the Supplier to take to satisfy the Authority that the Supplier can ensure compliance with its contractual obligations in relation to the subject matter of the Service Failure, which, for the avoidance of doubt, may include the requirement to remedy the Service Failure, where it is capable of remedy; and
 - (e) the Performance Improvement Period which will start on the date of issue of the Performance Improvement Notice and will end on the Performance Improvement End Date specified in the Performance Improvement Notice.

B5.4 For the avoidance of doubt, the Authority may issue a Performance Improvement Notice and initiate the Performance Improvement Process at any time after the occurrence of a Service Failure and any delay in exercising its right to issue a Performance Improvement Notice and/or initiate the Performance Improvement Process shall not constitute a waiver or cause of diminution of the Authority's right to do so.

B5.5 For the avoidance of doubt, the Authority shall be under no obligation to initiate the Performance Improvement Process including, without limitation, if it serves notice to terminate the Agreement pursuant to any other termination rights under the Agreement.

B5.6 Within such timescales as notified by the Authority to the Supplier (taking into account all relevant circumstances in relation to the subject matter and nature of the Service Failure) but in any event no more than ten (10) Working Days following receipt of a Performance Improvement Notice the Supplier shall either:

- (a) submit a draft Performance Improvement Plan; or
- (b) inform the Authority that it does not intend to submit a draft Performance Improvement Plan,

in the event that the Supplier either fails to submit a draft Performance Plan or the Supplier informs the Authority that it does not intend to submit a draft Performance Improvement Plan the Authority shall be entitled to terminate the Agreement by issuing a Termination Notice to the Supplier.

B5.7 The Authority shall either approve the draft Performance Improvement Plan within ten (10) Working Days (or such other period as notified by the Authority to the Supplier) of its receipt pursuant to Clause B5.6(a), or it shall inform the Supplier why it cannot accept the draft Performance Improvement Plan. In such circumstances, the Supplier shall address all such concerns in a revised Performance Improvement Plan, which it shall submit to the Authority within a period of ten (10) Working Days (or such other period as notified by the Authority to the Supplier) of its receipt of the Authority's comments. If no such notice is given, the Supplier's draft Performance Improvement Plan shall be deemed to be agreed.

B5.8 The Authority and the Supplier may agree temporary variations to the Agreement in relation to the subject matter and nature of the Service Failure as part of the Performance Improvement Plan.

B5.9 Once agreed the Supplier shall immediately implement the Performance Improvement Plan.

B5.10 If, despite the measures taken under Clause B5.7 a revised Performance Improvement

Plan cannot be agreed within the period of ten (10) Working Days (or such other period as notified by the Authority to the Supplier) of receipt by the Supplier of the Authority's comments in respect of the Supplier's draft Performance Improvement Plan then the Authority may elect to end the Performance Improvement Process and (a) refer the matter for resolution by the Dispute Resolution Procedure set out in Clause J11 (Disputes); or (b) to terminate the Agreement by issuing a Termination Notice to the Supplier.

B5.11 If a Performance Improvement Plan is agreed between the Parties, but the Supplier fails to implement the Performance Improvement Plan in accordance with its terms and by the Performance Improvement End Date as specified in the Performance Improvement Notice such that the Supplier fails to rectify the Service Failure and/or undertake all the actions specified by the Authority in the Performance Improvement Notice by the Performance Improvement End Date (a "Performance Improvement Plan Failure"), the Authority may, at its absolute discretion, but shall not be obliged to:

- (a) terminate the Agreement by issuing a Termination Notice to the Supplier; and/or
- (b) escalate any issues arising out of the failure to implement the Performance Improvement Plan to the Supplier's commercial director (or equivalent) under the Dispute Resolution Procedure set out in Clause J11 (Disputes);

and for the avoidance of doubt, this Clause is without prejudice to any other rights which the Authority has under the Agreement.

B5.12 Any subsequent Service Failure, which the Authority regards, at its sole discretion, as being substantially the same in character to a Service Failure in respect of which a Performance Improvement Notice has been issued in accordance with this Clause B5, which occurs not more than six (6) months after the Performance Improvement End Date, shall entitle the Authority to terminate the Agreement by issuing a Termination Notice to the Supplier.

B6. Services improvement

B6.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause B6, and is required to collaborate with other Access to Work: Holistic Assessment suppliers and sub-contractors for this purpose. As part of this obligation the Supplier shall identify and report to the Authority once every twelve (12) months on:

- (a) the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
- (b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
- (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk;
- (d) changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority; and/or
- (e) changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.

B6.2 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.

B6.3 If the Authority wishes to incorporate any improvement identified by the Supplier the Authority shall use the Change Control Procedure.

B7. Equipment and maintenance

Supplier equipment

B7.1 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Authority Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise, on termination or expiry of this Agreement the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Authority Premises, including the cost of packing, carriage and making good the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.

B7.2 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Authority shall be liable for loss of or damage to any of the Supplier's property located on Authority Premises which is due to the negligent act or omission of the Authority.

B7.3 Subject to any express provision of the Service Continuity Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Agreement.

Maintenance

B7.4 The Supplier shall create and maintain a rolling schedule of planned maintenance to the IT Environment (the "**Maintenance Schedule**") which shall be agreed with the Authority. Once the Maintenance Schedule has been agreed with the Authority Representative, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.

B7.5 The Supplier shall give as much notice as is reasonably practicable to the Authority Representative prior to carrying out any Emergency Maintenance.

B7.6 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the IT Environment or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the IT Environment and the Services.

Supply of Goods

B7.7 Where, as part of the Services, the Supplier is to sell goods or equipment ("**Goods**") to the Authority:

(a) the relevant Goods and their prices shall be as set out in the Financial Model or, if no Goods or prices are set out there, as agreed by the Parties from time to time;

(b) the Supplier shall supply and, where relevant, install the Goods in accordance with the relevant specification;

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- (c) the Supplier shall ensure that the Goods are free from material defects in design, materials and workmanship and remain so for twelve (12) months after delivery;
 - (d) if following inspection or testing the Authority considers that the Goods do not conform with the relevant specification, the Authority shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance; and
 - (e) without prejudice to any other rights or remedies of the Authority:
 - (i) risk in the Goods shall pass to the Authority at the time of delivery; and
 - (ii) ownership of the Goods shall pass to the Authority at the time of payment.

B8. No Guarantee of Levels, Values or Exclusivity

- B8.1** Subject to Clause B8.2 and Clause B8.3, the Authority will refer prospective Participants to the Supplier during the Referral Period in accordance with the provisions of the Agreement (in particular, the Specification).
- B8.2** The Supplier acknowledges and has submitted its Tender on the understanding that no guarantee is given by the Authority in respect of levels or values of Services referred to in the Schedules which are indicative only and shall not be binding on the Authority.
- B8.3** The Supplier acknowledges that, in entering the Agreement, no form of exclusivity has been granted by the Authority for Services from the Supplier and that the Authority is at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.

B9. Participant complaints

- B9.1** The Supplier shall have an internal dispute resolution procedure for dealing with complaints from Participants about the Supplier (and/or any of its Sub-contractors) or any aspect of the supply of the Services.
- B9.2** If the dispute between any Participant and the Supplier (and/or any Sub-contractor) cannot be resolved the dispute shall be referred to the ICE for mediation.
- B9.3** If the dispute cannot be resolved by mediation, ICE will conduct a full investigation. In accordance with ICE's usual procedures, the Supplier shall have the opportunity to present its case and any evidence during the investigation and ICE shall share its draft report with the Supplier for comment before issuing a final version. The decision of ICE shall be final and binding upon the parties to the dispute. The ICE investigation shall carry a £5,000 fee paid by the Supplier or the Sub-contractor, who will also be liable for any financial redress recommended by ICE. In the event that the complaint against the Supplier or Sub-contractor is dismissed, no fee shall be payable. Any fees in respect of complaints that have been upheld against the Supplier (and/or any Sub-contractor) and any financial redress due to the Participant shall be paid within four (4) weeks of the date of the ICE final investigation report.
- B9.4** Without prejudice to Clauses B9.1 to B9.3, the Authority shall take all reasonable steps to investigate any complaint it receives regarding:
 - a) the standard of Services;
 - b) the manner in which any Services have been supplied,

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- c) the manner in which work has been performed;
 - d) the materials or procedures the Supplier uses; or
 - e) any other matter connected with the performance of the Supplier's obligations under the Agreement.

B9.5 Without prejudice to its other rights and remedies under the Agreement, the Authority may, in its sole discretion, uphold any complaint and take further action in accordance with Clause B or Clause I of the Agreement.

B9.6 The Supplier shall provide Management Information relating to complaints from Participants in accordance with the requirements of Schedule 8.8 (Management Information).

B10. Not used

B11. Inspection of Sites

B11.1 The Authority shall be entitled to inspect the Sites at any time during the Term and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of the Supplier's obligations under this Agreement.

B12. Licence to occupy Sites

B12.1 To the extent that any land or Sites are made available from time to time to the Supplier by the Authority in connection with this Agreement this shall, subject to the provisions of any additional agreement entered into by the Parties as may be required by the Authority, be made available to the Supplier on a non-exclusive licence basis, and shall be used by the Supplier solely for the purpose of performing its obligations under this Agreement. The Supplier shall have the use of such land or Sites as licensee and shall vacate the same on completion, termination or abandonment of the Agreement.

B12.2 Subject to Clause B12.1, the Supplier shall limit access to the land or Sites 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 its Supplier Personnel co-operate) with such other persons working concurrently on such land or Sites as the Authority may reasonably request.

B12.3 Subject to Clause B12.1, the Supplier shall (and shall ensure that its Supplier Personnel shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Sites as determined by the Authority, and the Supplier shall pay for the cost of making good any damage caused by the Supplier or its 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.

B12.4 Subject to Clause B12.1, 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 its 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 premises owned or occupied by it in any manner it sees fit.

B12.5 Subject to Clause B12.1, should the Supplier request modifications to the Authority Premises, such modifications shall be subject to Approval and if Approved shall be carried out by the Authority at the Supplier's expense. Ownership of such modifications shall rest with the Authority.

B13. Property

- B13.1** Where the Authority provides Property free of charge to the Supplier such Property shall be and remain the property of the Authority and the Supplier irrevocably licences the Authority and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Property. The Supplier shall not in any circumstances have a lien or any other interest on 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 and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- B13.2** The Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Authority otherwise in writing within five (5) Working Days of receipt.
- B13.3** 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 Approval.
- B13.4** The Supplier shall ensure all the Property whilst in its possession, either on the Sites or elsewhere during the supply of the Services, is secured in accordance with the Authority's reasonable security requirements as published from time to time.
- B13.5** 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 the Authority's Default. The Supplier shall inform the Authority in writing within two (2) Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

B14. Offers of employment

- B14.1** For the duration of the Agreement and for a period of twelve (12) months thereafter neither the Authority nor the Supplier shall directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other Party any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other Party.

B15. Formal Warning Notice

- B15.1** Where the Authority considers that there has been Non Service Failure Default by the Supplier and that such Non Service Failure Default is capable of remedy by the Supplier, then the Authority may issue a Formal Warning Notice to the Supplier specifying the Non Service Failure Default and requiring that it be remedied by the Supplier at the Supplier's cost within ten (10) Working Days or such other period of time as the Authority may specify in the Formal Warning Notice. In the event that the Supplier fails to remedy the Non Service Failure Default in accordance with the Formal Warning Notice, this will entitle the Authority to terminate the Agreement by issuing a Termination Notice to the Supplier.

B16. Monitoring of contract performance

- B16.1** The Authority (including any representative of the Authority) shall monitor the Supplier's performance in supplying the Services in accordance with the provisions of Schedule 2.2

or such other requirements as notified by the Authority to the Supplier from time to time.

B16.2 The Parties shall have regular meetings to monitor and review:

- a) the performance of the Agreement;
- b) the achievement of the KPI Targets;
- c) the achievement of the Customer Service Standards;
- d) the supply of the Services;
- e) the performance by the Supplier of any of its other obligations under the Agreement;
and
- f) any other matter the Parties consider appropriate,

and the Supplier shall comply with the provisions of Schedule 2.2 in this regard. The Authority may organise regular monitoring and spot checks of the Sites at any time to ensure the Supplier is complying with its obligations under the Agreement and the Supplier shall co-operate fully, at its own cost, with the Authority. The Authority shall use all reasonable endeavours to ensure that the onsite monitoring will not interfere with the supply of the Services by the Supplier.

B16.3 The Authority may appoint an assessor (which may be an internal or an external assessor, subject (in the case of an external assessor) to the external assessor entering into a non-disclosure arrangement and having the relevant expertise and competence), to participate in the monitoring of the Supplier's performance in supplying the Services and the Supplier will co-operate with the assessor and take all necessary steps to implement recommendations made. Any Changes to any Services made as a result of a recommendation of any such persons shall be made in writing and in accordance with the Change Control Procedure.

B16.4 The Supplier shall ensure that the Authority (and its authorised representatives) have access to all relevant property, including the Sites, and information (and where requested are given a copy of such information) necessary to carry out the monitoring referred to in Clause B16 including putting in place arrangements to permit legal access to information as may be required.

B16.5 With effect from the Effective Date, the Authority and the Supplier shall meet at the times and with such frequency as specified in Schedule 2.2 or as notified by the Authority to the Supplier from time to time. Such meetings shall be convened by the Authority upon the Authority giving written notice to the Supplier.

B16.6 The Authority may monitor the Supplier's (and any Sub-contractor's) performance in supplying the Services to assess, amongst other things, compliance with Law, including without limitation in the fields of environmental, equality, social, labour and competition law. Where (in the opinion of the Authority), the Supplier (or any Affiliate or any of the Supplier Group) has or may have engaged in any agreement, arrangement, practice or conduct which would amount to an infringement of Law, including without limitation in the fields of environmental, social, labour and competition law, without prejudice to any other rights or remedies that the Authority has under the Agreement the Authority shall be entitled to terminate the Agreement by issuing a Termination Notice to the Supplier.

B17. Not used

B17.1 Not used.

B17.2 Not used.

(a) Not used.

(b) Not used.

B17.3 Not used.

(a) Not used.

(b) Not used.

SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

C1. Fees

- C1.1 In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the Fees to the Supplier in accordance with the provisions of this Clause C and Schedule 7.1 (Fees and Payment) (and for the avoidance of doubt where there is any conflict and/or ambiguity between the two the provisions of this Clause C shall prevail) via a self-billing process approved by HMRC.
- C1.2 The Parties acknowledge and agree that the Fees shall be the total amount payable by the Authority to the Supplier under or in relation to the Agreement.
- C1.3 If the Authority fails to pay any undisputed Fees properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at a rate of nought point nought one percent (0.01%) per day, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- C1.4 The Authority shall have no obligation to pay any Fees to the Supplier after the last day of the Run-Off Period.

C2. Not used

- C2.1 Not used.

C3. Outcome Payments

General provisions

- C3.1 In order to make a claim for an Outcome Payment the Supplier shall:
- (a) input such information as specified by the Authority in the Specification onto the Authority System in the format specified by the Authority; or
 - (b) where the Participant is a Special Customer Record Participant, follow the Special Customer Record Procedures.
- C3.2 The Supplier agrees and acknowledges that payment of an Outcome Payment by the Authority does not constitute confirmation by the Authority that the Outcome to which it relates is valid and is without prejudice to any of the Authority's rights under this Agreement or otherwise to check, validate or otherwise verify the validity of such Outcome.
- C3.3 Not used.
- C3.4 Without prejudice to anything else in this Clause C, the Authority shall have no obligation to make any Outcome Payments to the Supplier where an Outcome Payment is claimed by the Supplier after the end of the Run-Off Period.
- C3.5 Subject always to Clause C3.2 and Clause C4, the Authority shall pay Outcome Payments no later than a period of thirty (30) calendar days from the date on which the Authority has determined that the qualifying criteria and requirements for an Outcome have been met. Payment will be made at the rate(s) set out in Schedule 7.1. The Authority may at its

discretion require the Supplier to provide any appropriate supporting information it considers necessary before making payment.

- C3.6 The Supplier shall notify details of the Supplier's bank account and address to the Authority via the Authority System. The Authority shall send notifications of Fees paid to that address.
- C3.7 At any time and/or times (including, for the avoidance of doubt, at any time and/or times before and/or after payment has been made by the Authority to the Supplier) the Authority shall be entitled to seek to establish the validity of any Outcome. At all times the Supplier shall provide all necessary assistance as requested by the Authority to enable the Authority to establish the validity of any Outcome.
- C3.8 When the Authority has made an Outcome Payment to the Supplier in respect of an Outcome, the Authority shall refuse any requests of the Supplier to remove the claim for any such Outcome Payments from the Authority System, except in exceptional cases where the Authority determines, in its sole discretion, are appropriate circumstances to permit such a request.
- C3.9 The Supplier hereby agrees to use its best endeavours to procure, if required by the Authority at any time, the written consent of the Participant for the Authority to contact the Participant's employer and the Supplier shall retain copies of such written consent or, where it has been unable to obtain such consent, detailed records of the steps it has taken to attempt to procure such consent, as part of the Supplier's record keeping obligations under the Agreement including, without limitation, Clause D2 (Records, Reports, Audits & Open Book Data). The Authority reserves the right to inspect such written consent and/or such detailed records from time to time
- C3.10 Not used.
- (a) Not used.
- (b) Not used.
- C3.11 Not used.
- (a) not used
- (b) not used.

Outcomes

- C3.12 Not used.
- (a) Not used.
- (b) Not used.
- C3.13 Not used.
- a) Not used.
- b) Not used.
- C3.14 Subject to the Supplier notifying the Authority of each Outcome in accordance with the Agreement, including, without limitation, this Clause C3, the Authority shall pay to a Supplier an Outcome Payment in respect of each valid Outcome.

C3.15 The Supplier shall only notify the Authority of an Outcome where:

- a) it has carried out sufficient checks to ensure that such Outcome meets all of the relevant qualifying criteria and requirements as detailed in the Specification; and
- b) it holds sufficient and reliable evidence of such criteria and requirements being met in accordance with the Agreement.

C3.16 The Supplier shall only have validly notified the Authority of an Outcome where the Supplier:

- (a) has inputted the information specified by the Authority onto the Authority System, or
- (b) where the Participant is a Special Customer Record Participant, followed the Special Customer Record Procedures.

The Supplier must have submitted the appropriate supporting information in accordance with Clause C3. For the avoidance of doubt, the Authority will be unable to consider and verify eligibility of any Outcome until the Supplier has validly notified the Authority thereof.

C4. Validation

Pre-payment validation and Standards Checks

- C4.1** Before payment of any Outcome Payment by the Authority to the Supplier, in respect of each Outcome Payment, the Authority may undertake a check(s) to verify the validity of such Outcome. For the avoidance of doubt, where the Authority has undertaken any check(s) pursuant to this Clause C4.1 it reserves the right to include such Outcome Payment in the relevant Outcomes Sample for the Payment Validation Period in which it falls.
- C4.2** The Authority shall be entitled to reject any claims for payment made by the Supplier which fail any check(s) undertaken by the Authority pursuant to Clause C4.1 without undertaking any further check(s).
- C4.2A** The Authority shall have no obligation to pay, and the Supplier shall not submit a request for payment for, an Outcome Payment unless and until the Quality Standards Check has been carried out in relation to the relevant Holistic Assessment Report and has been passed in accordance with the Specification to the satisfaction of the Authority. No Outcome Payment shall be payable in respect of a Holistic Assessment Report which is subject to a Rework unless and until the Quality Standards Check has been passed in accordance with this Clause C4.2A.

Post-payment validation

- C4.3** At any time during the Term, for any Payment Validation Period the Authority may carry out a check(s) of all, or a sample, of the Outcomes (i) under this Agreement only; or (ii) under all Programme Agreements, which have been made under Agreements or all Programme Agreements (as the case may be) during such Payment Validation Period (such Outcomes which are to be checked hereinafter being referred to as follows: an "Outcomes Sample").
- C4.4** For each Outcomes Sample:
- a) the Authority will determine the types of Outcomes from which the Authority will draw the sample;

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- b) the Authority will determine whether the sample is drawn from this Agreement only or from all Programme Agreements;
 - c) the Authority will determine the sample size;
 - d) the Authority will determine the Payment Validation Period and may, for the avoidance of doubt, include any period of time:
 - (i) during which the Authority carried out any check(s) in respect of Outcome Payments pursuant to Clause C4.1 or C4.2A; or
 - (ii) which formed part of a Payment Validation Period for any other Outcomes Sample;
 - e) the Authority may draw a number of random samples from the relevant population of Outcomes across the relevant Payment Validation Period which random samples shall together constitute an Outcomes Sample;
 - f) the sample size may vary between Outcomes Samples depending on the numbers of Outcome Payments in the types of Outcomes from which the sample is drawn during the Payment Validation Period;
 - g) the sample size may vary between Outcomes Samples depending on whether the Outcomes from which the sample is drawn during the Payment Validation Period are drawn from this Agreement only or from all Programme Agreements;
 - h) the sample may include Outcomes in respect of which the Authority undertook a check(s) pursuant to Clause C4.1 and/or Clause C4.2A, in which case the Authority may rely upon any evidence relating to that Outcome generated through such checks in order to verify the validity of such Outcome pursuant to Clause C4.3 without carrying out any additional check(s) in respect of that Outcome; and
 - i) the sample may include Outcomes which were included in any other Outcomes Sample pursuant to Clause C4.3, in which case the Authority may rely upon any evidence relating to that Outcome generated through such checks in order to verify the validity of such Outcome pursuant to Clause C4.3 without carrying out any additional check(s) in respect of that Outcome.

C4.5 In respect of each Outcomes Sample and without prejudice to any other right or remedy under this Agreement, where any error or over claim has been identified by the Authority (in its sole opinion) in an Outcomes Sample, the Authority shall be entitled to recover in full from the Supplier the amount or value of the Total Outcome Fails.

General

C4.6 In checking either an Outcome Payment pursuant to Clause C4.1 or an Outcomes Sample pursuant to Clause C4.3 or in carrying out a Compliance Check, the Authority may (but shall not be obliged to):

- a) not used;
 - b) carry out checks of data pertaining to the Participant arising out of or in connection with the Agreement against the Authority's data;
 - c) contact the Participant;
 - d) not used; and/or
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- e) carry out checks of data pertaining to the Participant from such other sources as the Authority may reasonably determine from time to time.

C4.7 For the avoidance of doubt, the Authority's rights in this Clause C4 shall be without prejudice to any other rights or remedies that the Authority has under the Agreement (including for the avoidance of doubt any rights of set-off pursuant to Clause C5 (Recovery of Sums Due) or Clause C9.3 (Set-off and Withholding)).

Compliance Checks

C4.8 The Authority may carry out Compliance Checks at such times and at such frequency that it shall determine during the Term.

C4.9 Subject to the Authority's obligations of confidentiality, the Supplier shall provide the Authority with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each Compliance Check, which may include:

- (a) all information reasonably required by the Authority for the Compliance Check;
- (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.

C4.10 In respect of each Compliance Check and without prejudice to any other right or remedy under this Agreement, where any error or over-claim has been identified by the Authority (in its sole opinion), the Authority shall be entitled to recover in full from the Supplier the amount or value of Total Outcome Fails and any other overpayment that has been identified.

C5. Recovery of sums due

C5.1 The Authority may apply each Ineligible Outcome to reduce the number of Outcomes achieved in respect of the Start Cohort from which such Ineligible Outcome was achieved and the Supplier shall pay an amount to the Authority in respect of each Ineligible Outcome on demand which is equal to each Outcome Payment made in respect of an Ineligible Outcome.

C5.2 The Authority may recover any amount due and payable under Clause C5.1 in such instalments and at such times as it may decide in its sole discretion (i) during the Term or (ii) during the twelve (12) months immediately following the end of the Term. The Parties acknowledge and agree that the Authority may recover an instalment equal to all or part of such amount through PRaP at one time (for the avoidance of doubt, including by way of set-off) and may subsequently at any time during the Term demand one or more balancing payments from the Supplier if the instalment recovered through PRaP is less than the amount due and payable to the Authority pursuant to Clause C5.1 until such time as the Authority has received the full amount due and payable pursuant to Clause C5.1.

C5.3 Any overpayment by either Party, whether of the Fees or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

C5.4 Wherever under the Agreement any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Authority in respect

of any default of the Agreement), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Agreement or under any other agreement or contract with the Authority or the Crown.

C5.5 The Supplier shall make any payments due to the Authority without any deduction whether by way of any set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.

C5.6 All payments due shall be made within a reasonable time unless otherwise specified in the Agreement, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C6. Not used

C6.1 Not used.

(a) Not used.

(b) Not used.

C6.2 Not used.

C6.3 Not used.

C6.4 Not used.

C6.5 Not used.

C6.6 Not used.

C6.7 Not used.

C6.8 Not used.

(a) Not used.

(b) Not used.

C6.9 Not used.

C6.10 Not used.

C6.11 Not used.

C6.12 Not used.

C6.13 Not used.

C7. Third party revenue

C7.1 The Supplier may not obtain any third party revenue, income or credit based on the Services and/or copyright works delivered under this Agreement without the Approval of the Authority.

C7.2 Neither the Supplier nor its agents or Sub-contractors, shall levy any charge, fee or any

other sum on the Participants in connection with the Services without Approval which may be granted or refused at the Authority's sole discretion.

C8. VAT

- C8.1** The Supplier shall add VAT to the Fees at the prevailing rate as applicable and the Authority shall pay the VAT to the Supplier following an eligible claim for VAT payment being notified by the Supplier.
- C8.2** The Supplier shall, within three (3) Working Days of demand, indemnify fully, keep the Authority indemnified and hold harmless the Authority at all times from and against all claims, proceedings, actions, damages, costs and expenses (including, but not limited to, legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities (including any interest, penalties or costs incurred which is levied, demanded or assessed on the Authority at any time) caused to the Authority whether directly or indirectly in whole or in part by reason of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Agreement.
- C8.3** Without prejudice to Clause C8.2, for the avoidance of doubt, it shall at all times remain the sole responsibility of the Supplier to:
- a) assess the VAT rate(s) and tax liability arising out of or in connection with the Agreement; and
 - b) account for or pay any VAT (and any other tax liability) relating to payments made to the Supplier under the Agreement to HMRC.
- C8.4** The Authority shall not be liable to the Supplier in any way whatsoever for any error or failure made by the Supplier (or the Authority) in relation to VAT, including without limit:
- a) where the Supplier is subject to a VAT ruling(s) by HMRC (or such other relevant authority) in connection with the Agreement;
 - b) where the Supplier has assumed that it can recover input VAT and (for whatever reason) this assumption is subsequently held by HMRC (or such other relevant authority) to be incorrect or invalid;
 - c) where the Supplier's treatment of VAT in respect of any claim for payment made under the Agreement is subsequently held by HMRC (or such other relevant authority) for whatever reason to be incorrect or invalid; and/or
 - d) where the Supplier does not provide accurate information to the Authority for it to calculate the VAT on an invoice produced by the self-billing process, the Authority will not be liable to pay any VAT for that invoice either when it falls due, or at any later date. Further, in this scenario, the Supplier shall be obliged to repay any overpayment by the Authority on demand.
- C8.5** The Supplier acknowledges that the Authority has advised the Supplier that the Supplier should seek specialist VAT advice in relation to the Agreement and, in the event of any uncertainty following specialist advice, the Supplier should seek clarification of the Agreement's VAT status with HMRC.
- C8.6** Without prejudice to Clause C8.2 and C8.3, the Supplier shall comply with the Law governing self-billing contracts including, without limitation, as more particularly described in HMRC Notice 700/62 it shall:
- a) prior to the Referral Period Start Date, confirm the rate(s) of VAT that the Authority

should apply to each part of the funding model used in the Agreement on the Effective Date and on each anniversary thereof;

- b) enter into an annual self-billing agreement with the Authority on or around the Effective Date and on each anniversary thereof, for the duration of the Agreement (a template of the current version of which is set out in Appendix 2 to Schedule 7.1 (Fees and Payment)); and
- c) complete the VAT confirmation documentation as required by the Authority (a template of the current version of which is set out in Appendix 1 to Schedule 7.1 (Fees and Payment)).

C9. Methods of Payment

- C9.1 The Authority reserves the right to set and/or alter, at its absolute discretion, the method of payment and will use reasonable endeavours to give thirty (30) days' notice to the Supplier of any change to the method of payment. All payments of Fees are conditional upon the Supplier providing the Services in accordance with the terms of the Agreement.
- C9.2 Without prejudice to the rest of this Clause C, Outcome Payments are made on the condition that the Supplier's entitlement to such payments can be verified on request by the production of the records which the Supplier is required to hold and/or maintain under this Agreement (including as specified in the Specification). The Authority shall, acting reasonably, be entitled to assume, in the absence of such records, or of any evidence which the Authority may reasonably decide to accept in substitution, that no delivery of Services has taken place and that any such purported delivery of Services constitutes "Unsupported Services". The Authority shall be entitled to recover any and all sums paid in respect of such Unsupported Services from the Supplier and the Supplier shall repay such sums on demand.

Set-off and withholding

- C9.3 Further to Clause C5, the Authority may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority.
- C9.4 Not used.
- C9.5 Not used.

Financial Distress

- C9.6 The Parties shall comply with the provisions of Schedule 7.4 (Financial Distress) in relation to the assessment of the financial standing of the Supplier and other specified entities and the consequences of a change to that financial standing.

C10. Promoting Tax Compliance

- C10.1 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
 - (a) notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
 - (b) promptly provide to the Authority:

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- (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

SECTION D - CONTRACT GOVERNANCE

D1. Governance

- D1.1 The Parties shall comply with the provisions of Schedule 8.1 (Governance) in relation to the management and governance of this Agreement.

Representatives

- D1.2 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.
- D1.3 The initial Supplier Representative shall be the person named as such in Schedule 9.2 (Key Personnel). Any change to the Supplier Representative shall be agreed in accordance with Clause E1 (Supplier Personnel).
- D1.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within five (5) Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

D2. Records, Reports, Audits and Open Book Data

- D2.1 The Supplier shall comply with the provisions of:
- (a) Schedule 8.4 (Reports and Records Provisions) in relation to the maintenance and retention of Records; and
 - (b) Part A of Schedule 7.5 (Financial Transparency and Audit Rights) in relation to the maintenance of Open Book Data.
- D2.2 The Parties shall comply with the provisions of:
- (a) Not Used;
 - (b) Part C of Schedule 7.5 (Financial Transparency and Audit Rights) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

D3. Change

Change Control Procedure

- D3.1 Any requirement for a Change shall be subject to the Change Control Procedure.

Change in Law

- D3.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Fees as the result of:
- (a) a General Change in Law; or
 - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.

D3.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause D3.2), the Supplier shall:

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
 - (i) whether any Change is required to the Services, the Fees or this Agreement; and
 - (ii) whether any relief from compliance with the Supplier's obligations is required; and
- (b) provide the Authority with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause B6 (Services Improvement), has been taken into account in amending the Fees.

Any variation in the Fees or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause D3.2(b)) shall be implemented in accordance with the Change Control Procedure.

Changes to the Agreement

D3.4 No Change, amendment, variation, restatement or supplement to this Agreement shall be effective unless it is made in writing in accordance with the Change Control Procedure and signed on behalf of the Parties.

D3.5 Save as provided in Clauses D3.6, D3.7 and D3.7A to D3.7H below, the Parties acknowledge and agree that no Contract Change or Operational Change may be made to this Agreement which has the effect of:

- (a) rendering this Agreement materially different in character from this Agreement as at the Effective Date;
- (b) changing the economic balance of this Agreement in favour of the Supplier in a manner which is not provided for in this Agreement as at the Effective Date; or
- (c) extending the scope of this Agreement considerably

unless such Contract Change or Operational Change is otherwise permitted under regulation 72 of the Public Contracts Regulations 2015.

D3.6 The Parties may agree to make a Contract Change or Operational Change to this Agreement where such Change is provided for in the Agreement and/or in the ITT including (but not limited to):

- (a) Not used;
- (b) any modification to the Referral Period Start Date and any consequential modifications to this Agreement required to ensure that the economic balance of this Agreement is not changed in favour of the Supplier;

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- (c) Not Used;
 - (d) Not Used;
 - (e) Not Used;
 - (f) any modification required as a consequence of, or in connection with, changes from time to time to the Authority's administrative or operational structures or procedures;
 - (g) any modification required as a consequence of, or in connection with, changes from time to time to any of the Authority's:
 - (i) DWP Information Security Policy;
 - (ii) DWP Physical Security Policy; or
 - (iii) DWP Acceptable Use Policy
 - (h) any modification required as a consequence of, or in connection with, any Transfer of Functions Order;
 - (i) any modification which is a consequence of, or arising in connection with, any recommendation made by an assessor appointed pursuant to Clause B16.3;
 - (j) Not Used;
 - (k) any modification required as a consequence of, or in connection with, the implementation of Universal Credit;
 - (l) any waiver (whether permanent or temporary or conditional or unconditional) by a Party of any of its rights under this Agreement;
 - (m) any temporary modification made pursuant to a Performance Improvement Plan;
 - (n) any settlement and/or compromise agreement entered into in respect of this Agreement;
 - (o) any modification required as a consequence of, or in connection with, changes in applicable Law; and
 - (p) any consequential modifications to this Agreement required to give effect to any Contract Change or Operational Change made pursuant to this Clause D3.6.
- D3.7 The Authority may extend the Referral Period by one (1) or more extensions up to a maximum of twenty-four (24) months in total by following the process set out in Clauses D3.7A to D3.7H. Any extension of the Referral Period will have the effect of extending the Referral Period End Date and the Term.
- D3.7A The Authority may ten (10) months before the Referral Period End Date, require by written notice that the Supplier provides to the Authority for the Authority's consideration the Supplier's proposal for the Extension Period Unit Prices by completing and submitting a proposed Extension Period Financial Model. The Authority shall, when making its request, provide its proposed duration for the Extension Period (subject to Clause D3.7) and its estimated indicative volumes of Holistic Assessments in respect of the Extension Period, including details of the types of Holistic Assessment, to facilitate completion of the Extension Period Financial Model.
- D3.7B The Supplier shall submit its proposal for the Extension Period Unit Prices and Extension
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Period Financial Model no later than twenty (20) Working Days following the date of the Authority's written notice under Clause D3.7A. The Extension Period Financial Model shall:

- (a) be in the same format and include the same amount of detail and information as the Financial Model;
- (b) provide sufficient detail to the Authority to explain and justify the nature of any variance from the Financial Model and enable the Authority to fully evaluate the Extension Period Unit Prices and Extension Period Financial Model;
- (c) have a Supplier Profit Margin no higher than is applicable under the Financial Model; and
- (d) ensure that each Extension Period Unit Price does not entail a percentage increase (per Outcome Payment) in respect of the relevant Outcome Payment (as set out in the Contract Cost Register as at the Effective Date) which exceeds the percentage increase in the Consumer Prices Index (CPI)(all items)(United Kingdom) from the latest version of CPI published prior to the Effective Date up to the latest version of CPI published prior to the date by which the Supplier must submit its proposal under this Clause D3.7B.

D3.7C In preparing the Extension Period Unit Prices and Extension Period Financial Model for the provision of Services for the Extension Period the Supplier shall:

- (a) act reasonably and in good faith;
- (b) not adjust the economic balance of this Agreement; and
- (c) comply with the Financial Transparency Objectives.

D3.7D The Supplier shall attend such meetings and shall provide such further or other information, data and documents as the Authority reasonably requires in order to assess the Supplier's proposed Extension Period Unit Prices and Extension Period Financial Model. The Supplier shall promptly make such changes to the proposed Extension Period Unit Prices and Extension Period Financial Model that the Authority requests in order to ensure compliance with Clause D3.7B and D3.7C above and resubmit its proposals to the Authority for further review.

D3.7E The Authority shall give notice to the Supplier either accepting or rejecting the Supplier's proposed Extension Period Unit Prices and Extension Period Financial Model for the Extension Period no later than seven (7) months before the Referral Period End Date.

D3.7F Where the Authority agrees the Extension Period Unit Prices and Extension Period Financial Model for the Extension Period with the Supplier the Extension Period Unit Prices and Extension Period Financial Model shall be binding on the Supplier subject to the terms of this Agreement. The Authority's agreement of the Extension Period Maximum Price and/or the Extension Period Supplier Profit Margin in no way obliges the Authority to extend the Term beyond the Referral Period End Date.

D3.7G Following agreement of the Extension Period Unit Prices and Extension Period Financial Model the Authority may, by no later than six (6) months before the Referral Period End Date, at its sole discretion give notice to the Supplier extending the Referral Period by the Extension Period. The Extension Period Financial Model shall apply in place of the Financial Model for the Extension Period and Schedule 7.7 shall be deemed to be amended (with all necessary changes) to include the risk premiums and Participant costs set out in the Extension Period.

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- D3.7H** The provisions of this Agreement shall continue to apply throughout any extended Term (as extended pursuant to Clauses D3.7 to D3.7G) subject to:
- (a) any Contract Change, Operational Change or adjustment to the Fees made pursuant to this Clause D3; and
 - (b) the right of the Authority in its absolute discretion to amend the funding and payment model for such extended Term, including but not limited to, introducing a delivery fee and amending the proportion of the Fees constituted by each of the delivery fee and the Outcome Payments.
- D3.8** If the Authority serves written notice to the Supplier to extend the Referral Period pursuant to Clause D3.7G above, the Supplier undertakes to do all acts and execute all documents which may be necessary to give effect to such extension.
- D3.9** If the Parties agree to make a Contract Change or Operational Change, the Supplier undertakes to procure the consent of the Guarantor to such Contract Change or Operational Change. The Supplier undertakes to procure the consent of the Guarantor to any Extension Period, including with respect to the Extension Period Unit Prices and Extension Period Financial Model.
- D3.10** Not Used.
- D3.11** Subject to Clause D3.12, the Authority may modify the format of Appendix 1 to Schedule 13 (Life Chances) unilaterally at any time during the Agreement and such modification shall become effective on and from the date notified to the Supplier.
- D3.12** If the Supplier reasonably believes that a modification made pursuant to Clause D3.11 will have an economic effect on the Supplier and therefore wishes such modification to be made via the Change Control Procedure, the Supplier shall so notify the Authority within ten (10) days of receiving notification under Clause D3.11. Such notification shall include:
- (a) why the Supplier reasonably believes that there will be an economic impact; and
 - (b) the quantum of such economic impact accompanied by supporting calculations and assumptions.

SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN

E1. Supplier Personnel

E1.1 The Supplier shall:

- (a) provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
- (b) ensure that all Supplier Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2.1 (Services Description) and Schedule 2.4 (Security Requirements); and
 - (iii) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 2.4 (Security Requirements);
- (c) subject to Schedule 9.1 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;
- (d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier;
- (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- (f) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- (g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- (h) procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement.

E1.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Agreement, it may:

- (a) refuse admission to the relevant person(s) to the Authority Premises; and/or
- (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

Key Personnel

E1.3 *The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 9.2 (Key Personnel) lists the Key Roles and names of the persons

who the Supplier shall appoint to fill those Key Roles at the Effective Date.

- E1.4 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- E1.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- (a) requested to do so by the Authority;
 - (b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - (c) the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
 - (d) the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- E1.6 The Supplier shall:
- (a) notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - (b) ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Working Days' notice;
 - (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
 - (e) ensure that any replacement for a Key Role:
 - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

Employment indemnity

- E1.7 The Parties agree that:
- (a) the Supplier shall both during and after the Term indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel; and
 - (b) the Authority shall both during and after the Term indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of the

Authority or any of the Authority's employees, agents, consultants and contractors.

Income Tax and National Insurance Contributions

- E1.8** Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Agreement, the Supplier shall:
- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
 - (b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

Staff transfer

- E1.9** The Parties agree that:
- (a) where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 9.1 (Staff Transfer) shall apply as follows:
 - (i) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A and Part D of Schedule 9.1 (Staff Transfer) shall apply;
 - (ii) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B and Part D of Schedule 9.1 (Staff Transfer) shall apply;
 - (iii) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A, B and D of Schedule 9.1 (Staff Transfer) shall apply; and
 - (iv) Part C of Schedule 9.1 (Staff Transfer) shall not apply;
 - (b) where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 9.1 (Staff Transfer) shall apply, Part D of Schedule 9.1 may apply and Parts A and B of Schedule 9.1 (Staff Transfer) shall not apply; and
 - (c) Part E of Schedule 9.1 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services.

E2. Supply chain rights and protections

Advertising Sub-contract opportunities

- E2.1** The Supplier shall:
- (a) subject to Clause E2.3 and E2.4, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the Goods and/or Services and/or Works above a minimum threshold of twenty-five thousand pounds

(£25,000) that arise during the Term;

- (b) within ninety (90) days of awarding a Sub-contract to a Sub-contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;
- (c) monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
- (d) provide reports on the information at Clause E2.1(c) to the Authority in the format and frequency as reasonably specified by the Authority; and
- (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

E2.2 Each advert referred to in Clause E2.1 above shall provide a full and detailed description of the Sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.

E2.3 The obligation at Clause E2.1 shall only apply in respect of Sub-contract opportunities arising after the Effective Date.

E2.4 Notwithstanding Clause E2.1 the Authority may, by giving its prior written approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

Appointment of Sub-contractors

E2.5 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:

- (a) manage any Sub-contractors in accordance with Good Industry Practice;
- (b) comply with its obligations under this Agreement in the delivery of the Services; and
- (c) assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement.

E2.6 Prior to sub-contracting any of its obligations under this Agreement, the Supplier shall notify the Authority in writing of:

- (a) the proposed Sub-contractor's name, registered office and company registration number;
- (b) the scope of any Services to be provided by the proposed Sub-contractor; and
- (c) where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.

E2.7 If requested by the Authority within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause E2.6, the Supplier shall also provide:

- (a) a copy of the proposed Sub-contract; and
- (b) any further information reasonably requested by the Authority.

E2.8 The Authority may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause E2.6 (or, if later, receipt of any further information requested pursuant

to Clause E2.7), object to the appointment of the relevant Sub-contractor if it considers that:

- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
- (b) the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
- (c) the proposed Sub-contractor employs unfit persons; and/or
- (d) the proposed Sub-contractor should be excluded in accordance with Clause E2.22;

in which case, the Supplier shall not proceed with the proposed appointment.

E2.9 If:

- (a) the Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of ten (10) Working Days of receipt of:
 - (i) the Supplier's notice issued pursuant to Clause E2.6; and
 - (ii) any further information requested by the Authority pursuant to Clause E2.7; and
- (b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause E2.10 (Appointment of Key Sub-contractors)),

the Supplier may proceed with the proposed appointment.

Appointment of Key Sub-contractors

E2.10 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:

- (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
- (b) the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
- (c) the proposed Key Sub-contractor employs unfit persons; and/or
- (d) the proposed Key Sub-contractor should be excluded in accordance with Clause E2.22.

E2.11 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 4.3 (Notified Key Sub-contractors).

E2.12 Except where the Authority has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:

- (a) provisions which will enable the Supplier to discharge its obligations under this Agreement;

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- (b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
 - (c) a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier;
 - (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
 - (e) obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
 - (i) data protection requirements set out in Clauses F5 (Authority Data and Security Requirements) and F8 (Protection of Personal Data);
 - (ii) FOIA requirements set out in Clause F7 (Transparency and Freedom of Information);
 - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause B2.5(m) (Services);
 - (iv) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
 - (v) the conduct of Audits set out in Part C of Schedule 7.5 (Financial Reports and Audit Rights);
 - (f) provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses I1.1(a) (Termination by the Authority) and I2.4 (Payments by the Authority) and Schedule 7.2 (Payments on Termination) of this Agreement;
 - (g) a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;
 - (h) a provision enabling the Supplier or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in Clause H3 (Remedial Adviser);
 - (i) a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause H4 (Step-in Rights);
 - (j) a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and
 - (k) a provision requiring the Key Sub-contractor to:
 - (i) promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
 - (A) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
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- (B) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,

and in any event, provide such notification within ten (10) Working Days of the date on which the Key Sub-contractor first becomes aware of such); and

- (ii) co-operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 7.4 (Financial Distress), including meeting with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, contributing to and complying with the Financial Distress Remediation Plan, and providing the information specified at paragraph 4.3(b)(ii) of Schedule 7.4 (Financial Distress).

- E2.13 The Supplier shall not terminate or materially amend the terms of any Key Sub-contract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.

Supply chain protection

- E2.14 The Supplier shall ensure that all Sub-contracts (which in this sub-Clause includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:

- (a) giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;
- (b) requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- (c) that if the Supplier or other party fails to consider and verify an invoice in accordance with sub-paragraph (b), the invoice shall be regarded as valid and undisputed for the purpose of sub-paragraph (d) after a reasonable time has passed;
- (d) requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed; and
- (e) giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (f) requiring the Sub-contractor to include a Clause to the same effect as this Clause E2.14 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.

- E2.15 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed;
- (b) produce a summary of its compliance with Clause E2.15(a), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

- E2.16 Notwithstanding any provision of Clauses F6 (Confidentiality) and F9 (Publicity and
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Branding), if the Supplier notifies the Authority that the Supplier has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Termination of Sub-contracts

E2.17 The Authority may require the Supplier to terminate:

- (a) a Sub-contract where:
 - (i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 11.1(b) (Termination by the Authority);
 - (ii) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
 - (iii) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or
 - (iv) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause E2.22; and
- (b) a Key Sub-contract where there is a Change of Control of the relevant Key Sub-contractor, unless:
 - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.

Competitive Terms

E2.18 If the Authority is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may:

- (a) require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
- (b) subject to Clause E2.17, enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.

E2.19 If the Authority exercises either of its options pursuant to Clause E2.18, then the Fees shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.

E2.20 The Authority's right to enter into a direct agreement for the supply of the relevant items is

subject to:

- (a) the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
- (b) any reduction in the Fees taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

Retention of legal obligations

- E2.21** Notwithstanding the Supplier's right to sub-contract pursuant to this E2, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. In respect of any element of the Services delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Agreement, shall include an obligation on the Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.

Exclusion of Sub-contractors

- E2.22** Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:
- (a) if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;
 - (b) if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

Reporting SME/VCSE Sub-contracts

- E2.23** In addition to any other Management Information requirements set out in this Agreement, the Supplier agrees that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Information Reports to the Authority thirty (30) days prior to the end of each financial year by providing all of the information described in the Supply Chain Transparency Information Template in the format set out in the Schedule 8.4 (Reports and Records Provisions) Annex 4 and in accordance with any guidance issued by the Authority from time to time.
- E2.24** The Authority may update its requirements for the Supply Chain Transparency Information Report from time to time (including the data required and/or format) by issuing a replacement version with at least thirty (30) days' notice and specifying the date from which it must be used.

SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

F1. Intellectual Property Rights

F1.1 Except as expressly set out in this Agreement:

- (a) the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:**
 - (i) the Supplier Software;**
 - (ii) the Third Party Software;**
 - (iii) the Third Party IPRs; and**
 - (iv) the Supplier Background IPRs;**
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:**
 - (i) the Authority Software;**
 - (ii) the Authority Data; and**
 - (iii) the Authority Background IPRs;**
- (c) Specially Written Software and Project Specific IPRs (except for any Know-How, trade secrets or Confidential Information contained therein) shall be the property of the Authority.**

F1.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause F1.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

F1.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

F1.4 Unless the Authority otherwise agrees in advance in writing:

- (a) all Specially Written Software and any software element of Project Specific IPRs shall be created in a format, or able to be converted into a format, which is suitable for publication by the Authority as open source software; and**
- (b) where the Specially Written Software and any software element of Project Specific IPRs are written in a format that requires conversion before publication as open source software, the Supplier shall also provide the converted format to the Authority.**

F1.5 Where the Authority agrees that any Specially Written Software and/or any software element of Project Specific IPRs should be excluded from Open Source publication, the Supplier shall as soon as reasonably practicable provide written details of the impact that such exclusion will have on the Authority's ability to publish other Open Source software under Clause F4A (Open Source Publication).

F2. Transfer and Licences Granted by the Supplier

Specially Written Software and Project Specific IPRs

F2.1 Subject to Clause F2.17 (Patents) the Supplier hereby agrees to transfer to the Authority, or shall procure the transfer to the Authority of, all rights (subject to Clause F1.1(a)) in the Specially Written Software and the Project Specific IPRs including (without limitation):

- (a) the Documentation, Source Code and the Object Code of the Specially Written Software; and
- (b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the **"Software Supporting Materials"**);

but not including any Know-How, trade secrets or Confidential Information.

F2.2 The Supplier:

- (a) shall:
 - (i) inform the Authority of all Specially Written Software and any element of Project Specific IPRs that constitutes a modification or enhancement to Supplier Software or Third Party Software; and
 - (ii) deliver to the Authority the Specially Written Software and the software element of Project Specific IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the Authority's request and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Authority; and
 - (iii) without prejudice to Clause F2.11 (Third Party Software and Third Party IPRs), provide full details to the Authority of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs;
- (b) acknowledges and agrees that the ownership of the media referred to in Clause F2.2(a)(ii) shall vest in the Authority upon their receipt by the Authority; and
- (c) shall execute all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly transferred to the Authority.

Supplier Software and Supplier Background IPRs

F2.3 The Supplier shall not use any Supplier Non-COTS Software or Supplier Non-COTS Background IPR in the provision of the Services unless it is sent to the Technical Board for review and approval granted by the Authority.

F2.4 The Supplier hereby grants to the Authority:

- (a) subject to the provisions of Clause F2.17 (*Patents*), perpetual, royalty-free and non-

exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):

- (i) the Supplier Non-COTS Software for which the Supplier delivers a copy to the Authority for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function; and
 - (ii) the Supplier Non-COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function;
- (b) a licence to use the Supplier COTS Software for which the Supplier delivers a copy to the Authority and Supplier COTS Background IPRs on the licence terms identified in a letter and signed by or on behalf of the Parties on or before the Effective Date provided always that the Authority shall remain entitled to sub-license and to assign and novate the Supplier COTS Software and Supplier COTS Background IPRs on equivalent terms to those set out in Clauses F2.7 and F2.8(b) in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs; and
- (c) a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.

F2.5 At any time during the Term or following termination or expiry of this Agreement, the Supplier may terminate the licence granted in respect of the Supplier Non-COTS Software under Clause F2.4(a)(i) or in respect of the Supplier Non-COTS Background IPRs under Clause F2.4(a)(ii) by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if the Authority or any person to whom the Authority grants a sub-licence pursuant to Clause F2.7 (Authority's right to sub-license) commits any material breach of the terms of Clause F2.4(a)(i) or F2.4(a)(ii) (as the case may be) which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Authority written notice specifying the breach and requiring its remedy.

F2.6 In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Clause F2.5, the Authority shall:

- (a) immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);
- (b) at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within six (6) months of the termination of the licence, the Authority may destroy the documents and other tangible materials that contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs (as the case may be); and
- (c) ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs.

Authority's right to sub-license

F2.7 Subject to Clause F2.17 (Patents) the Authority may sub-license:

- (a) the rights granted under Clause F2.4(a) (Supplier Software and Supplier Background IPRs) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
 - (i) the sub-licence is on terms no broader than those granted to the Authority;
 - (ii) the sub-licence authorises the third party to use the rights licensed in Clause F2.4(a) (Supplier Software and Supplier Background IPRs) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function; and
 - (iii) the sub-licensee shall have executed a confidentiality undertaking in favour of the Supplier; and
- (b) the rights granted under Clause F2.4(a) (Supplier Software and Supplier Background IPRs) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:
 - (i) the sub-licence is on terms no broader than those granted to the Authority; and
 - (ii) the Supplier has received a confidentiality undertaking in its favour duly executed by the Approved Sub-Licensee.

Authority's right to assign/novate licences

F2.8 The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause F2.4(a) (Supplier Software and Supplier Background IPRs) to:

- (a) A Central Government Body
- (b) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.

F2.9 Any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause F2.4 (Supplier Software and Supplier Background IPRs). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licence granted in Clause F2.4 (Supplier Software and Supplier Background IPRs).

F2.10 If a licence granted in Clause F2.4 (Supplier Software and Supplier Background IPRs) is novated under Clause F2.8 (Authority's right to assign/novate licences) or there is a change of the Authority's status pursuant to Clause F2.9, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority

Third Party Software and Third Party IPRs

F2.11 The Supplier shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party

Non-COTS Software or Third Party Non-COTS IPRs or approval is granted by the Authority following a review by the Technical Board and has in each case either:

- (a) first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Authority on a royalty-free basis to the Authority and on terms no less favourable to the Authority than those set out in Clauses F2.4(a) and F2.5 (Supplier Software and Supplier Background IPRs) and Clause F2.8 (Authority's right to assign/novate licences); or
- (b) complied with the provisions of Clause F2.12.

F2.12 If the Supplier cannot obtain for the Authority a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Clause F2.11(a), the Supplier shall:

- (a) notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
- (b) use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Authority has first approved in writing the terms of the licence from the relevant third party.

F2.13 The Supplier shall:

- (a) notify the Authority in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
- (b) unless instructed otherwise in writing by the Authority in any case within twenty (20) Working Days of notification pursuant to Clause F2.12(a), use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

F2.14 Should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights for which the Authority does not have a suitable licence, then the Supplier must notify the Authority within ten (10) days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in.

Termination and replacement Suppliers

F2.15 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause F2.

F2.16 The Supplier shall, if requested by the Authority in accordance with Schedule 8.5 (Exit Management) and at the Supplier's cost:

- (a) grant (or procure the grant) to any Replacement Supplier of:
 - (i) a licence to use any Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to the Authority in respect of

the relevant Software and/or IPRs pursuant to or as contemplated by this Clause F2 subject to receipt by the Supplier of a confidentiality undertaking in its favour duly executed by the Replacement Supplier;

- (ii) a licence to use any Supplier COTS Software and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and/or
- (b) use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

Patents

- F2.17** Where a patent owned by the Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs by the Authority or any Replacement Supplier, the Supplier hereby grants to the Authority and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Agreement.

F3. Licences granted by the Authority

- F3.1** The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Software, the Authority Background IPRs, the Specially Written Software, the Project Specific IPRs and the Authority Data solely to the extent necessary for performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:
- (a) any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause F6 (Confidentiality); and
 - (b) the Supplier shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.
- F3.2** In the event of the termination or expiry of this Agreement, the licence granted pursuant to Clause F3.1 and any sub-licence granted by the Supplier in accordance with Clause F3.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:
- (a) immediately cease all use of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be);
 - (b) at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data, provided that if the Authority has not made an election within six (6) months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be); and
 - (c) ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPRs and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer,

word processor, voicemail system or any other Supplier device containing such Authority Software, Authority Background IPRs and/or Authority Data.

F4. IPRs indemnity

- F4.1** The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- F4.2** If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- (a) procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
 - (iii) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
 - (iv) the terms and conditions of this Agreement shall apply to the replaced or modified Services.
- F4.3** If the Supplier elects to procure a licence in accordance with Clause F4.2(a) or to modify or replace an item pursuant to Clause F4.2(b), but this has not avoided or resolved the IPRs Claim, then:
- (a) the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
 - (b) without prejudice to the indemnity set out in Clause F4.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

F4A Open Source publication

- F4A.1** The Supplier agrees that the Authority may at its sole discretion publish as Open Source Software all or part of the Specially Written Software and any software element of the Project Specific IPRs after the Effective Date.
- F4A.2** The Supplier hereby warrants that the Specially Written Software and any software element of the Project Specific IPRs:
- (a) are suitable for release as Open Source and that any release will not allow a third party to use the Open Source software to in any way compromise the operation, running or security of the Specially Written Software, the Project Specific IPRs or the Authority System;
 - (b) shall not cause any harm or damage to any party using anything published as Open

Source and that the Specially Written Software and the Project Specific IPRs do not contain any Malicious Software;

- (c) do not contain any material which would bring the Authority into disrepute upon publication as Open Source;
- (d) do not contain any IPR owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and the Project Specific IPRs ("**Non-Party IPRs**"); and
- (e) will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the Effective Date.

F4A.3 The Supplier shall ensure that the Open Source Publication Material provided to the Authority does not include any Supplier Software or Supplier Background IPRs save that which the Supplier is willing to allow to be included in any Open Source publication. In such a case, the Supplier hereby acknowledges that any such Supplier Software or Supplier Background IPRs will become Open Source and will be licensed and treated as such following publication by the Authority and any third party that uses the Open Source Publication Materials on the terms of the Open Source licence used by the Authority when publishing as Open Source.

F4A.4 The Supplier hereby indemnifies the Authority against all claims in which the Authority is, or is threatened to be, a party for any alleged infringement of any Non-Party IPRs arising from publication of the Specially Written Software and any software element of the Project Specific IPRs as Open Source under sub-Clause F4A.1.

F5. Authority Data and security requirements

F5.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

F5.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.

F5.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2.1 (Services Description).

F5.4 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.

F5.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Service Continuity Plan. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than six (6) monthly intervals (or such other intervals as may be agreed in writing between the Parties).

F5.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Baseline Security Requirements.

F5.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:

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- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning) and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Authority's notice; and/or
 - (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning).
- F5.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.
- F5.9 The Supplier shall comply with the requirements of Schedule 2.4 (Security Requirements).
- F5.10 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- F5.11 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services, it may request a Contract Change. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Fees shall then be agreed in accordance with the Change Control Procedure.
- F5.12 Until and/or unless a change to the Fees is agreed by the Authority pursuant to Clause F5.11 the Supplier shall continue to perform the Services in accordance with its existing obligations.
- F5.13 The Supplier and any of its Sub-contractors, shall not access, process, host or transfer Authority Data outside the United Kingdom without the prior written consent of the Authority, and where the Authority gives consent, the Supplier shall comply with any reasonable instructions notified to it by the Authority in relation to the Authority Data in question. The provisions set out in this paragraph F5.13 shall apply to Landed Resources.
- F5.14 Where the Authority has given its prior written consent to the Supplier to access, process, host or transfer Authority Data from premises outside the United Kingdom (in accordance with clause F5.13 of the Agreement):
- (a) the Supplier must notify the Authority (in so far as they are not prohibited by Law) where any regulatory bodies seek to gain or has gained access to such Authority Data; and
 - (b) the Contractor shall take all necessary steps in order to prevent any access to, or disclosure of, any Authority Data to any regulatory bodies outside the United Kingdom unless required by Law without any applicable exception or exemption.

F6. Confidentiality

- F6.1 For the purposes of this Clause F6, the term "Disclosing Party" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "Recipient" shall mean the Party which receives or obtains directly or indirectly Confidential Information.

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- F6.2 Except to the extent set out in this Clause F6 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
 - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
 - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- F6.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause F7 (Transparency and Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
 - (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
 - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Agreement; or
 - (iii) the conduct of a Central Government Body review in respect of this Agreement; or
 - (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- F6.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- F6.5 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:
- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;
 - (b) its auditors; and
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- (c) its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where the Supplier discloses Confidential Information of the Authority pursuant to this F6.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

F6.6 The Authority may disclose the Confidential Information of the Supplier:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause F6.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to Clause H4 (Step-In Rights), its rights to appoint a Remedial Adviser pursuant to Clause H3 (Remedial Adviser) and Exit Management rights; or
- (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause F6.

- F6.7** Nothing in this Clause F6 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an Infringement of Intellectual Property Rights.

F7. Transparency and Freedom of Information

F7.1 The Parties acknowledge that:

- (a) the Transparency Reports; and
- (b) the content of this Agreement, including any changes to this Agreement agreed from time to time, except for:
 - (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
 - (ii) Commercially Sensitive Information;

(together the "Transparency Information") are not Confidential Information.

- F7.2** Notwithstanding any other provision of this Agreement, the Supplier hereby gives its

consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

- F7.3** The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 8.4 (Reports and Records Provisions).
- F7.4** If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- F7.5** The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- F7.6** The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause F6.6(c)) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within five (5) working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- F7.7** The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
 - (c) provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - (d) not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.
- F7.8** The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting

or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

F8. Protection of Personal Data

Status of the Controller

- F8.1** The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Agreement will determine the status of each Party under the Data Protection Legislation. A Party may act as:
- (a) "Controller" (where the other Party acts as the "Processor");
 - (b) "Processor" (where the other Party acts as the "Controller");
 - (c) "Joint Controller" (where both Parties are considered to jointly control the same Personal Data);
 - (d) "Independent Controller" of the Personal Data where either:
 - (i) the other Party is also "Controller" of the same Personal Data in its own right (but there is no element of joint control); or
 - (ii) the Party is "Controller" of the Personal Data, and the other Party does not process the Personal Data;

and the Parties shall set out in Schedule 11 (*Processing Personal Data*) which scenario or scenarios are intended to apply under this Agreement.

Where one Party is Controller and the other Party its Processor

- F8.2** Where a Party is a Processor, the only processing that it is authorised to do is listed in Schedule 11 (*Processing Personal Data*) by the Controller and may not be determined by the processor. The term 'processing' and any other associated terms are to be read in accordance with Article 4 of the UKSD GDPR.
- F8.3** The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- F8.4** The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and

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- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

F8.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Schedule 11 (Processing Personal Data), unless the Processor is required to do otherwise by Law. If it is so required, the Processor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event including in the case of the Controller the measures set out in Clause F5 (Authority Data and Security Requirements), which the Controller may reasonably reject. In the event of the Controller reasonably rejecting Protective Measures put in place by the Processor, the Processor must propose alternative Protective Measures to the satisfaction of the Controller. Failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures. Protective Measures must take account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 11 (Processing Personal Data));
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this Clause, Clauses F6 (Confidentiality) and F5 (Authority Data and Security Requirements);
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (d) not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR or section 74 of

the DPA 3;

- (ii) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or Section 75 DPA) as determined by the Controller, which could include the International Data Transfer Agreement or International Data Transfer Agreement Addendum to the European Commission's SCCs as published by the Information Commissioner's Office (as appropriate), as well as any additional measures;
 - (iii) the Data Subject has enforceable rights and effective legal remedies;
 - (iv) the Processor complies with its obligations under the Data Protection Legislation by providing an appropriate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (v) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

F8.6 Subject to Clause F8.7, the Processor shall notify the Controller immediately if it:

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

F8.7 The Processor's obligation to notify under Clause F8.6 shall include the provision of further information to the Controller in phases, as details become available.

F8.8 Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause F8.6 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- (a) the Controller with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

- (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- F8.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than two-hundred and fifty (250) staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- F8.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- F8.11 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- F8.12 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause F8 such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- F8.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- F8.14 The Authority may, at any time on not less than thirty (30) Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard Clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- F8.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may upon giving the Supplier not less than thirty (30) Working Days' notice amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Where the Parties are Joint Controllers of Personal Data

- F8.16 In the event that the Parties are Joint Controllers in respect of Personal Data under this Agreement, the Parties shall implement Clauses that are necessary to comply with UK

GDPR Article 26 based on the terms set out in Annex 1 to Schedule 11 (Processing Personal Data).

Where the Parties are Independent Controllers of the same Personal Data

- F8.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.
- F8.18 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- F8.19 Where a Party has provided Personal Data to the other Party in accordance with Clause F8.17, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- F8.20 The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the processing of Personal Data for the purposes of this Agreement.
- F8.21 The Parties shall only provide Personal Data to each other:
- (a) to the extent necessary to perform the respective obligations under this Agreement;
 - (b) in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
 - (c) where it has recorded it in Schedule 11 (*Processing Personal Data*).
- F8.22 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
- F8.23 A Party processing Personal Data for the purposes of this Agreement shall maintain a record of its processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.
- F8.24 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Agreement (the "Request Recipient"):
- (a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
 - (b) where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:

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- (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and
 - (ii) provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.

- F8.25** Each party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to this Agreement and shall:
- (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
 - (b) implement any measures necessary to restore the security of any compromised Personal Data;
 - (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
 - (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- F8.26** Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Agreement as specified in Schedule 11 (Processing Personal Data).
- F8.27** Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Agreement which is specified in Schedule 11 (Processing Personal Data).
- F8.28** Notwithstanding the general application of Clauses F8.2 to F8.15 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Clause F8.16 to F8.27.

Other obligations when a Party acts as a Controller, Processor, Joint Controller, or Independent Controller

- F8.29** Each Party shall in relation to the processing of Personal Data comply with its obligations under the Data Protection Legislation. Each Party shall not knowingly or negligently by any act or omission, place the other Party in breach, or potential breach of the Data Protection Legislation. This Clause is in addition to and does not relieve, remove or replace a Party's obligations under the Data Protection Legislation.
- F8.30** Without limiting the generality of the obligations set out in Clause F8.29, each Party shall ensure that it is not subject to any prohibition or restriction which would:
- (a) prevent or restrict it from disclosing or transferring Personal Data to the other Party, as required under this Agreement;
 - (b) prevent or restrict it from granting the other Party access to the Personal Data, as required under this Agreement; or
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- (c) prevent or restrict either Party from processing the Personal Data, as envisaged under this Agreement.

F8.31 Each Party shall ensure that:

- (a) all fair processing notices have been given (and/or as applicable, explicit consents obtained) and are sufficient in scope to enable each Party to process the Personal Data as required in order to obtain the benefits of its rights and to fulfil its obligations under this Agreement in accordance with the Data Protection Legislation, which shall include notification to Data Subjects that their Personal Data may be shared by the Authority with the Supplier and by the Supplier with the Authority and with any other third party organisations envisaged within the Agreement;
- (b) appropriate Protective Measures are in place to ensure and be able to demonstrate that processing is performed in accordance with the UK GDPR.

F8.32 The Supplier shall indemnify and keep the Authority indemnified in full from and against all claims, proceedings, actions, damages, loss, penalties, fines, levies, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of or in connection with, any breach by the Supplier or Supplier Personnel of this Clause F8.

F9. Publicity and Branding

F9.1 The Supplier shall not:

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

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

F9.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Supplier System and the Authority System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

F10. Provision of Management Information

F10.1 The Supplier shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver timely and accurate Management Information to the Authority in accordance with the provisions of this Clause F10 and Schedule 8.8 (Management Information).

F10.2 Not used.

SECTION G - LIABILITY, INSURANCE, INDEMNITIES, AND LIQUIDATED DAMAGES

G1. Limitations on liability

Unlimited liability

G1.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
- (b) fraud or fraudulent misrepresentation by it or its employees;
- (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any liability to the extent it cannot be limited or excluded by Law.

G1.2 The Supplier's liability in respect of the indemnities in Clause C8 (VAT), Clause E1.7 (Employment Indemnity), Clause E1.8 (Income Tax and National Insurance Contributions), Clause F4 (IPRs Indemnity), F8.32 (Protection of Personal Data), Schedule 9.1 (Staff Transfer) and the Annexes to Schedule 9.1 (Staff Transfer) shall be unlimited.

G1.3 The Authority's liability in respect of the indemnities in Clause E1.7 (Employment Indemnity), Schedule 9.1 (Staff Transfer) and the Annexes to Schedule 9.1 (Staff Transfer) shall be unlimited.

Financial and other limits

G1.4 Subject to Clauses G1.1 and G1.2 (Unlimited Liability) and Clauses G1.7 and G1.8 (Consequential losses):

- (a) the Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed ten million pounds (£10 million);
- (b) Not Used;
- (c) Not Used;
- (d) the Supplier's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed:
 - (i) in relation to Defaults occurring in the first Contract Year, an amount equal to one-hundred and fifty percent (150%) of the Estimated Year 1 Fees;
 - (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to one-hundred and fifty percent (150%) of the Fees paid and/or due to be paid to the Supplier under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and

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- (iii) in relation to Defaults occurring after the end of the Term, an amount equal to one-hundred and fifty percent (150%) of the Fees paid and/or due to be paid to the Supplier in the twelve (12) month period immediately prior to the last day of the Term,

provided that where any Losses referred to in this Clause G1.4(d) have been incurred by the Authority as a result of the Supplier's abandonment of this Agreement or the Supplier's wilful default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement, the references in such Clause to one-hundred and fifty percent (150%) shall be deemed to be references to two-hundred percent (200%).

- (e) the liability of the Supplier under any indemnity in any document which forms part of this Agreement shall not be limited or capped and shall not count towards the limits or caps imposed on the liability of the Supplier for Defaults by this Clause G1.4.

G1.5 Not used.

G1.6 Subject to Clauses G1.1 and G1.3 (Unlimited Liability) and Clause G1.7 (Consequential Losses) and without prejudice to the Authority's obligation to pay the Fees as and when they fall due for payment:

- (a) the Authority's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of early termination of this Agreement by the Authority pursuant to Clause 11.1(a) (Termination by the Authority) or by the Supplier pursuant to Clause 11.3(a) (Termination by the Supplier) shall in no event exceed the following amounts:
 - (i) in relation to the Unrecovered Payment, the amount set out in Paragraph 4 of Schedule 7.2 (Payments on Termination);
 - (ii) in relation to the Breakage Costs Payment, the amount set out in Paragraph 3.2 of Schedule 7.2 (Payments on Termination); and
 - (iii) in relation to the Compensation Payment, the amount set out in Paragraph 6 of Schedule 7.2 (Payments on Termination); and
- (b) the Authority's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of the Authority shall in no event exceed:
 - (i) in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Fees;
 - (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Fees paid and/or due to be paid under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and
 - (iii) in relation to Defaults occurring after the end of the Term, an amount equal to the total Fees paid and/or due to be paid to the Supplier in the twelve (12) month period immediately prior to the last day of the Term.

Consequential losses

G1.7 Subject to Clauses F8.32 (Protection of Personal Data), G1.1, G1.2 and G1.3 (Unlimited Liability) and Clause G1.8, neither Party shall be liable to the other Party for:

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- (a) any indirect, special or consequential Loss; or
 - (b) any loss of profits, turnover, business opportunities or damage to goodwill (In each case whether direct or indirect).

G1.8 Notwithstanding Clause G1.7 but subject to Clause G1.4, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (b) any wasted expenditure or Fees;
- (c) the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Agreement;
- (d) any compensation or interest paid to a third party by the Authority; and
- (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.
- (f) Not used.

Conduct of indemnity claims

G1.9 Where under this Agreement one (1) Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 8.7 (Conduct of Claims) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

Mitigation

G1.10 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.

Participants

G1.11 Responsibility for the control, management, and supervision of all Participants shall rest entirely with the Supplier subject to the Participant complying with all reasonable instructions and directions which the Supplier may issue to the Participant from time to time. The Authority shall not be liable for any personal injury, disease or death, or loss or damage whatsoever caused, by any act or omission of a Participant.

G2. Insurance

The Supplier shall comply with the provisions of Schedule 2.5 (Insurance Requirements) in relation to obtaining and maintaining insurance.

G3. Not used.

G4. Liquidated damages and suspension of payments

G4.1 The Parties agree that, without prejudice to any of, and in addition to, the Authority's rights under this Agreement or otherwise:

- (a) if a Default occurs under any of:
 - (i) Not used;
 - (ii) Not used;
 - (iii) Clause C10 (Promoting Tax Compliance);
 - (iv) Clause F8 (Protection of Personal Data);
 - (v) Clause J1 (Compliance);
 - (vi) Clause J5 (Prevention of Fraud and Bribery);
 - (vii) Schedule 7.5 (Financial Reports and Audit Rights);
 - (viii) Schedule 16 (Welsh Language Scheme); and
- (b) if the Authority considers, acting reasonably, that such Default is capable of remedy; and
- (c) such Default is not remedied within five (5) Working Days (or such longer period as the Authority may specify in each case) of the Authority notifying the Supplier of the Default and the remedy required or within twenty-five (25) Working Days of the Supplier notifying the Authority of the Default;

then in respect of each and every such Default the Authority, may suspend payments under this Agreement until the time that such Default is remedied by the Supplier to the reasonable satisfaction of the Authority.

G4.2 The Parties agree that, without prejudice to any of, and in addition to, the Authority's rights under this Agreement or otherwise:

- (a) If a Default occurs under any of:
 - (i) Clause B3 (Implementation);
 - (ii) Clause F7.6 (Transparency and Freedom of Information);
 - (iii) Clause F7.7(b) (Transparency and Freedom of Information);
 - (iv) Clause F7.7(c) (Transparency and Freedom of Information);
 - (v) Schedule 2.1 (Services Description);
 - (vi) Schedule 2.4 (Security Requirements);
 - (vii) Part A of Annex 1 to Schedule 2.5 (Insurance Requirements);
 - (viii) Schedule 4.1 (Supplier Solution);

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- (ix) Schedule 6 (Implementation);
 - (x) paragraph 2.1 of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
 - (xi) paragraph 2.4(b) of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
 - (xii) paragraph 7.1 of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
 - (xiii) paragraph 7.4(b) of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
 - (xiv) paragraph 8.5 of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
 - (xv) paragraph 2.1 of Schedule 12 (Sustainable Development Requirements);
 - (xvi) not used;
 - (xvii) not used; and
- (b) if the Authority considers, acting reasonably, that such Default is capable of remedy; and
 - (c) such Default is not remedied within five (5) Working Days (or such longer period as the Authority may specify in each case) of the Authority notifying the Supplier of the Default and the remedy required or within twenty-five (25) Working Days of the Supplier notifying the Authority of the Default;

then in respect of each and every such Default the Supplier shall pay the Authority, as liquidated damages, £500 for each Working Day's delay (exclusive of VAT) in remedying the Default.

G4.3 The Parties agree that, without prejudice to any of, and in addition to, the Authority's rights under this Agreement or otherwise:

- (a) if a Default occurs under any of:
 - (i) paragraph 2.3 of Schedule 8.5 (Exit Management);
 - (ii) paragraph 4.1 of Schedule 8.5 (Exit Management);
 - (iii) paragraph 4.5 of Schedule 8.5 (Exit Management); and
- (b) if the Authority considers, acting reasonably, that such Default is capable of remedy; and
- (c) such Default is not remedied within five (5) Working Days (or such longer period as the Authority may specify in each case) of the Authority notifying the Supplier of the Default and the remedy required or within twenty-five (25) Working Days of the Supplier notifying the Authority of the Default;

then in respect of each and every such Default the Supplier shall pay the Authority, as liquidated damages, £1,000 for each Working Day's Delay (exclusive of VAT) in remedying the Default.

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- G4.4** The Supplier shall pay liquidated damages under Clauses G4.1, G4.2 and G4.3 on demand or the Authority may deduct them from its payments to the Supplier.
- G4.5** The Parties confirm that these liquidated damages are reasonable and proportionate to protect the Authority's legitimate interest in the performance of this Agreement by the Supplier.

SECTION H – REMEDIES AND RELIEF

H1. Not used

H2. Not used

H3. Remedial Adviser

H3.1 If:

- (a) any of the Intervention Trigger Events occur; or
- (b) the Authority reasonably believes that any of the Intervention Trigger Events are likely to occur,

(each an "Intervention Cause"), the Authority may give notice to the Supplier (an "Intervention Notice") giving reasonable details of the Intervention Cause and requiring:

- (i) a meeting between the Authority Representative and the Supplier Representative to discuss the Intervention Cause; and/or
- (ii) the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause H3.

For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Authority has no obligation to exercise its rights under this Clause H3.1 prior to or instead of exercising its right to terminate this Agreement.

H3.2 If the Authority gives notice that it requires the appointment of a Remedial Adviser:

- (a) the Remedial Adviser shall be:
 - (i) a person selected by the Supplier and approved by the Authority; or
 - (ii) if none of the persons selected by the Supplier have been approved by the Authority (or no person has been selected by the Supplier) within ten (10) Working Days following the date on which the Intervention Notice is given, a person identified by the Authority;
- (b) the terms of engagement and start date agreed with the Remedial Adviser must be approved by the Authority; and
- (c) any right of the Authority to terminate this Agreement pursuant to Clause I1.1(b) (Termination by the Authority) for the occurrence of that Intervention Cause shall be suspended for sixty (60) Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties) (the "Intervention Period").

H3.3 The Remedial Adviser's overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Supplier's responsibilities under this Agreement), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:

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- (a) observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
 - (b) gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
 - (c) write reports and provide information to the Authority in connection with the steps being taken by the Supplier to remedy the Intervention Cause;
 - (d) make recommendations to the Authority and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or
 - (e) take any other steps that the Authority and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.

H3.4 The Supplier shall:

- (a) work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
- (b) ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
- (c) submit to such monitoring as the Authority and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
- (d) implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Authority within the timescales given by the Remedial Adviser; and
- (e) not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Authority (such consent not to be unreasonably withheld).

H3.5 The Supplier shall be responsible for:

- (a) the costs of appointing, and the fees charged by, the Remedial Adviser; and
- (b) its own costs in connection with any action required by the Authority and/or the Remedial Adviser pursuant to this Clause H3.

H3.6 If:

- (a) the Supplier:
 - (i) fails to perform any of the steps required by the Authority in an Intervention Notice; and/or
 - (ii) is in Default of any of its obligations under Clause H3.4; and/or
- (b) the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a "**Remedial Adviser Failure**"), the Authority shall be entitled to terminate this Agreement pursuant to Clause I1.1(b) (Termination by the Authority).

H4. Step-In Rights

- H4.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a **"Step-In Notice"**) that it will be taking action under this Clause H4 (Step-in Rights), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause F6 (Confidentiality)). The Step-In Notice shall set out the following:
- (a) the action the Authority wishes to take and in particular the Services that it wishes to control (the **"Required Action"**);
 - (b) the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier's Default;
 - (c) the date on which it wishes to commence the Required Action;
 - (d) the time period which it believes will be necessary for the Required Action;
 - (e) whether the Authority will require access to the Supplier's premises and/or the Sites; and
 - (f) to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.
- H4.2 Following service of a Step-In Notice, the Authority shall:
- (a) take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
 - (b) keep records of the Required Action taken and provide information about the Required Action to the Supplier;
 - (c) co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and
 - (d) act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this H4.
- H4.3 For so long as and to the extent that the Required Action is continuing, then:
- (a) the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
 - (b) no Deductions shall be applicable in relation to Fees in respect of Services that are the subject of the Required Action and the provisions of Clause H4.4 shall apply to Deductions from Fees in respect of other Services; and
 - (c) the Authority shall pay to the Supplier the Fees after subtracting any applicable Deductions and the Authority's costs of taking the Required Action.
- H4.4 If the Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:
- (a) the degradation of any Services not subject to the Required Action; or

(b) the non-achievement of any KPI Target or Customer Service Standard,

beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Fees.

H4.5 Before ceasing to exercise its step in rights under this Clause H4 the Authority shall deliver a written notice to the Supplier (a **"Step-Out Notice"**), specifying:

(a) the Required Action it has actually taken; and

(b) the date on which the Authority plans to end the Required Action (the **"Step-Out Date"**) subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause H4.6.

H4.6 The Supplier shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a **"Step-Out Plan"**) relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.

H4.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

H4.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause H4, provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:

(a) Limbs (c) or (d) of the definition of a Step-In Trigger Event; or

(b) Limbs (e), (f) and (g) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Supplier's Default).

H5. Authority Cause

H5.1 Notwithstanding any other provision of this Agreement, if the Supplier has failed to:

(a) provide the Services in accordance with the Customer Service Standards and KPI Targets; and/or

(b) comply with its obligations under this Agreement,

(each a **"Supplier Non-Performance"**),

and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause H5):

(i) the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;

(ii) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:

(A) to terminate this Agreement pursuant to Clause I1.1(b) (Termination by the Authority); or

(B) to take action pursuant Clauses H3 (Remedial Adviser) or H4 (Step-In);

(iii) Not Used;

(iv) Not Used.

H5.2 In order to claim any of the rights and/or relief referred to in Clause H5.1, the Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a "Relief Notice") setting out details of:

(a) the Supplier Non-Performance;

(b) the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Agreement;

(c) any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and

(d) the relief and/or compensation claimed by the Supplier.

H5.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary.

H5.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

H5.5 Without prejudice to Clause B2.9 (Continuing obligation to provide the Services), if a Dispute arises as to:

(a) whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or

(b) the nature and/or extent of the relief and/or compensation claimed by the Supplier,

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

H5.6 Any Change that is required to the Implementation Plan or to the Fees pursuant to this Clause H5 shall be implemented in accordance with the Change Control Procedure.

H6. Force Majeure

H6.1 Subject to the remaining provisions of this Clause H6 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning)), a Party may claim relief under this Clause H6 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force

Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

- H6.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- H6.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause H6 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated by any of the Services including the Service Continuity Services, but the Supplier has failed to do so; and/or
 - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.
- H6.4 Subject to Clause H6.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- H6.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- H6.6 Where, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
 - (i) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause I1.1(c) (Termination by the Authority) or Clause I1.3(b) (Termination by the Supplier); and
 - (ii) neither Party shall be liable for any Default arising as a result of such failure;
 - (b) the Supplier fails to perform its obligations in accordance with this Agreement:
 - (i) the Authority shall not be entitled:
 - (A) during the continuance of the Force Majeure Event to exercise its rights under Clause H3 (Remedial Adviser) and/or Clause H4 (Step-in Rights) as a result of such failure;
 - (B) Not used;
 - (C) Not used; and
 - (ii) the Supplier shall be entitled to receive payment of the Fees (or a proportional payment of them) only to the extent that the Services (or part of

the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.

- H6.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.
- H6.8 Relief from liability for the Affected Party under this Clause H6 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause H6.7.

SECTION I – TERMINATION AND EXIT MANAGEMENT

11. Termination Rights

Termination by the Authority

11.1 The Authority may terminate this Agreement by issuing a Termination Notice to the Supplier:

- (a) for convenience at any time;
- (b) if a Supplier Termination Event occurs;
- (c) if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or
- (d) if the Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

and this Agreement shall terminate on the date specified in the Termination Notice.

11.2 Where the Authority:

- (a) is terminating this Agreement under Clause 11.1(b) due to the occurrence of either limb (b), (h) and/or (i) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
- (b) has the right to terminate this Agreement under Clause 11.1(b) or Clause 11.1(c), it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

Termination by the Supplier

11.3 The Supplier may, by issuing a Termination Notice to the Authority, terminate:

- (a) this Agreement if the Authority fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds two percent (2%) of the Anticipated Contract Value and such amount remains outstanding sixty (60) Working Days after the receipt by the Authority of a notice of non-payment from the Supplier, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under Clause C5, C9.3, or G4; or
- (b) any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice). If the operation of Clause 11.3(b) would result in a Partial Termination, the provisions of Clause 11.4 (Partial Termination) shall apply.

Partial Termination

11.4 If the Supplier notifies the Authority pursuant to Clause 11.3(b) (Termination by the Supplier) that it intends to terminate this Agreement in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Agreement by serving a Termination Notice to the Supplier within one (1) month of receiving the Supplier's Termination Notice. For the purpose of this Clause 11.4, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.

11.5 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Fees, provided that:

- (a) the Supplier shall not be entitled to an increase in the Fees in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;
- (b) any adjustment to the Fees (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and
- (c) the Supplier shall not be entitled to reject the Change.

12. Consequences of Expiry or Termination

General provisions on Expiry or Termination

12.1 The provisions of Clauses B2.8 (Specially Written Software warranty), C4 (Validation), C5 (Recovery of Sums Due), C8 (VAT), C9.3 (Set-off and Withholding), D2 (Records, Reports, Audits and Open Book Data), E1.7 (Employment Indemnity), E1.8 (Income Tax and National Insurance Contributions), F1 (Intellectual Property Rights), F2 (Transfer and Licences Granted by the Supplier), F4.1 (IPRs Indemnity), F6 (Confidentiality), F7 (Transparency and Freedom of Information), F8 (Protection of Personal Data), G1 (Limitations on Liability), I2 (Consequences of Expiry or Termination), J6 (Severance), J8 (Entire Agreement), J9 (Third Party Rights), J11 (Disputes) and J12 (Governing Law and Jurisdiction), and the provisions of Schedules 1 (Definitions), 7.1 (Fees and Payments), 7.2 (Payments on Termination), 7.5 (Financial Transparency and Audit Rights), 8.3 (Dispute Resolution Procedure), 8.4 (Reports and Records Provisions), 8.5 (Exit Management), and 9.1 (Staff Transfer), shall survive the termination or expiry of this Agreement.

Exit Management

12.2 The Parties shall comply with the provisions of Schedule 8.5 (Exit Management) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Supplier.

Payments by the Authority

12.3 If this Agreement is terminated by the Authority pursuant to Clause 11.1(a) (Termination by the Authority) or by the Supplier pursuant to Clause 11.3(a) (Termination by the Supplier), the Authority shall pay the Supplier the following payments (which shall be the Supplier's sole remedy for the termination of this Agreement):

- (a) the Termination Payment; and

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- (b) the Compensation Payment, if either of the following periods is less than three-hundred and sixty-five (365) days:
- (i) the period from (but excluding) the date that the Termination Notice is given (or deemed given pursuant to Clause J10) by the Authority pursuant to Clause I1.1(a) (Termination by the Authority)) to (and including) the Termination Date; or
 - (ii) the period from (and including) the date of the non-payment by the Authority referred to in Clause I1.3(a) (Termination by the Supplier) to (and including) the Termination Date.
- 12.4 If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clauses I1.1(b), I1.1(c) and/or I1.2 (Termination by the Authority), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:
- (a) payments in respect of any Assets or apportionments in accordance with Schedule 8.5 (Exit Management); and
 - (b) payments in respect of unpaid Fees for Services received up until the Termination Date.
- 12.5 The costs of termination incurred by the Parties shall lie where they fall if:
- (a) either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clauses I1.1(c) or I1.2(b) (Termination by the Authority) or I1.3(b) (Termination by the Supplier); or
 - (b) the Authority terminates this Agreement under Clause I1.1(d).
- 12.6 If this Agreement is terminated in whole by the Authority pursuant to Clauses I1.1(b), I1.1(c) and/or I1.2 (Termination by the Authority), or the Term Expires, the Supplier shall not have any right to receive any Outcome Payment in respect of any Participant.
- 12.7 If this Agreement is terminated in part by the Authority pursuant to Clauses I1.1(b), I1.1(c) and/or I1.2 (Termination by the Authority), the Supplier shall not have any right to receive any Outcome Payment in respect of any Participant who receives or has received any Services which are subject to such Partial Termination.

Payments by the Supplier

- 12.8 In the event of termination or expiry of this Agreement, the Supplier shall repay to the Authority all Fees it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.
- 12.9 Where the Authority terminates the Agreement under Clause I1.1(b) (Termination by the Authority) and then makes other arrangements for the supply of Services ("**Other Arrangements**"), the Authority may recover from the Supplier the cost of making such Other Arrangements and any expenditure incurred (including but not limited to legal costs) by the Authority in connection with such Other Arrangements in accordance with Schedule 7.2 (Payments on Termination). The Authority shall take all reasonable steps to mitigate such cost and expenditure.
- 12.10 Where an Agreement is terminated under Clause I1.1(b), the Authority shall be entitled to withhold payment of any amount otherwise due to the Supplier under this Agreement until such time as the Authority has been able to establish the cost of making such Other Arrangements. For the avoidance of doubt, no interest shall accrue on any payments that
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are withheld under this Clause 12.10.

SECTION J - MISCELLANEOUS AND GOVERNING LAW

J1. Compliance

Health and Safety

J1.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

- (a) all applicable Law regarding health and safety; and
- (b) the Health and Safety Policy whilst at the Authority Premises.

J1.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

Equality and Diversity

J1.3 The Supplier shall:

- (a) perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (ii) the Authority's equality and diversity policy as provided to the Supplier from time to time; and
 - (iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
- (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

Official Secrets Act and Finance Act

J1.4 The Supplier shall comply with the provisions of:

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

Sustainable Development

J1.5 In delivering the Services, the Supplier shall comply at all times with the requirements set out in Schedule 12 (Sustainable Development Requirements) or such other requirements as notified by the Authority to the Supplier from time to time.

J2. Assignment and Novation

J2.1 The Supplier 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.

J2.2 The Authority may at its discretion 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 the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause J2.2.

J2.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause J2.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

J2.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a "Successor Body"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under limb (k) of the definition of Supplier Termination Event (as if references in that limb (k) to the Supplier and the Guarantor were references to the Successor Body).

J3. Waiver and cumulative remedies

J3.1 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.

J3.2 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.

J4. Relationship of the Parties

Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

J5. Prevention of fraud and bribery

J5.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:

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- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- J5.2 The Supplier shall not during the term of this Agreement:**
- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- J5.3 The Supplier shall during the term of this Agreement:**
- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- (b) have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;
- (c) keep appropriate records of its compliance with its obligations under Clause J5.3(a) and make such records available to the Authority on request; and
- (d) take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.
- J5.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause J5.1 and/or J5.2, or has reason to believe that it has or any of the Supplier Personnel have:**
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- J5.5 If the Supplier makes a notification to the Authority pursuant to Clause J5.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause D2 (Records, Reports, Audits and Open Book Data).**
- J5.6 If the Supplier is in Default under Clauses J5.1 and/or J5.2, the Authority may by notice:**
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- (a) require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
 - (b) immediately terminate this Agreement.

J5.7 Any notice served by the Authority under Clause J5.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

J6. Severance

J6.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.

J6.2 In the event that any deemed deletion under Clause J6.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.

J6.3 If the Parties are unable to agree on the revisions to this Agreement within five (5) Working Days of the date of the notice given pursuant to Clause J6.2, the matter shall be dealt with in accordance with Paragraph 4 (Commercial Negotiation) of Schedule 8.3 (Dispute Resolution Procedure) except that if the representatives are unable to resolve the dispute within thirty (30) Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause J6.3.

J7. Further assurances

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Agreement.

J8. Entire agreement

J8.1 This Agreement, together with the CAEHRS, constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

J8.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.

J8.3 Nothing in this Clause J8 shall exclude any liability in respect of misrepresentations made fraudulently.

J9. Third party rights

- J9.1 The provisions of Clause F4.1 (IPRs Indemnity), Paragraphs 2.1 and 2.6 of Part A, Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, Paragraphs 2.1 and 2.3 of Part C, Part D and Paragraphs 1.4, 2.3 and 2.8 of Part E of Schedule 9.1 (Staff Transfer) and the provisions of Paragraph 6.9 of Schedule 8.5 (Exit Management) (together "**Third Party Provisions**") confer benefits on persons named in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- J9.2 Subject to Clause J9.1, a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- J9.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- J9.4 Any amendments or modifications to this Agreement may be made, and any rights created under Clause J9.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

J10. Notices

- J10.1 Any notices sent under this Agreement must be in writing.
- J10.2 Subject to Clause J10.4, 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:

Manner of Delivery	Deemed time of service	Proof of service
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 st 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) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt
E-Procurement	The earlier of 9.00am on	Dispatched as a pdf

System message	the next Working Day and the time that the E-Procurement System records the message as having been read, provided that such time is between 9.00am and 5.00pm on a Working Day. Otherwise, service will be deemed to occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	attachment to an E-Procurement System message to the other Party without any error message.
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- J10.3 Save for messages sent via the E-Procurement System (which shall be sent to the relevant contact(s) registered on the E-Procurement System at that time), 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:

	Supplier	Authority
Contact	[Redacted]	[Redacted]
Address	18c Merdan East, Meridian Business Park, Leicester, LE19 1WJ	Department for Work and Pensions, Caxton House, London. SW1H 9NA
Email	[Redacted]	[Redacted]

- J10.4 The following notices may only be served as an attachment to an email or as an E-Procurement System message if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause J10.2:
- (a) Step-In Notices;
 - (b) Force Majeure Notices;
 - (c) notices issued by the Supplier pursuant to Clause I1.3 (Termination by the Supplier);
 - (d) Termination Notices; and
 - (e) Dispute Notices.
- J10.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause J10.4 shall invalidate the service of the related e-mail or E-Procurement System transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause J10.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice or the time at which the E-Procurement System records that the message has been read (as appropriate).
- J10.6 This Clause J10 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.3 (Dispute Resolution Procedure)).

J11. Disputes

- J11.1** The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.
- J11.2** The Supplier shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.

J12. Governing law and jurisdiction

- J12.1** 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.
- J12.2** Subject to Clause J11 (Disputes) and Schedule 8.3 (Dispute Resolution Procedure) (including the Authority's right to refer the dispute to arbitration), 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.

SCHEDULE 1

DEFINITIONS

SCHEDULE 1

Definitions

Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below.

"Accounting Reference Date"	means the dates to which the Supplier prepares its audited financial statements;
"Acquired Rights Directive"	the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
"Affected Party"	the Party seeking to claim relief in respect of a Force Majeure Event;
"Affiliate"	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 with, that body corporate from time to time;
"Agreement"	this contract between the Authority and the Supplier (entered into pursuant to the CAEHRS) consisting of the Order Form, the Terms and Conditions, the Schedules and any Appendices or Annexes to the Terms and Conditions or any of the Schedules, the Tender, the Q&A, the Tender Clarification, the Provider Guidance and any other document referred to in any of these documents in respect of which either Party has rights and/or obligations;
"Annual Revenue"	<p>means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology:</p> <ul style="list-style-type: none"> (a) figures for accounting periods of other than twelve (12) months should be scaled pro rata to produce a proforma figure for a twelve (12) month period; and (b) where the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date;
"Anticipated Contract Life Profit Margin"	the anticipated Supplier Profit Margin over the Term;
"Anticipated Contract Value"	the sum set out at paragraph 1 of Section 3 of the Specification which relates to this Agreement;

"Approved Sub-Licensee"	any of the following: <ul style="list-style-type: none">(a) a Central Government Body;(b) any third party providing services to a Central Government Body; and/or(c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority;
"Approval"	the prior written consent of the Authority;
"Assessment Date"	the date on which a Holistic Assessment takes place;
"Assets"	all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Authority Assets;
"Associated Person"	has the meaning given to it in Section 44(4) of the Criminal Finances Act 2017;
"Associates"	means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between twenty percent (20%) and fifty percent (50%) of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;
"Assurance"	means written confirmation from a Relevant Authority to the Supplier that the CRP Information is approved by the Relevant Authority;
"AtW: HA Provider Guidance"	means the AtW Holistic Assessment Provider Guidance, as referred to in Annex 6 of the Specification;
"Audit"	any exercise by the Authority of its Audit Rights pursuant to Clause D2 (Records, Reports, Audit and Open Book Data) and Schedule 7.5 (Financial Transparency and Audit Rights);
"Audit Agents"	<ul style="list-style-type: none">(a) the Authority's internal and external auditors;(b) the Authority's statutory or regulatory auditors;(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;(d) HM Treasury or the Cabinet Office;(e) the European Commission;(f) the European Court of Auditors;(g) any party formally appointed by the Authority and/or by the Crown and/or by the European Commission and/or by the European Court of Auditors to carry out audit or similar review functions; and(h) successors or assigns of any of the above;

"Audit Rights"	the audit and access rights referred to in Schedule 7.5 (Financial Transparency and Audit Rights);
"Authority Assets"	the Authority Materials, the Authority infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services;
"Authority Background IPRs"	<p>(a) IPRs owned by the Authority before the Effective Date, including IPRs contained in any of the Authority's Know-How, documentation, processes and procedures;</p> <p>(b) IPRs created by the Authority independently of this Agreement; and/or</p> <p>(c) Crown Copyright which is not available to the Supplier otherwise than under this Agreement;</p> <p>but excluding IPRs owned by the Authority subsisting in the Authority Software;</p>
"Authority Cause"	<p>any material breach by the Authority of this Agreement, except to the extent that such breach is:</p> <p>(a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or</p> <p>(b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;</p>
"Authority Data"	<p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Supplier by or on behalf of the Authority; and/or</p> <p>(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or</p> <p>(b) any Personal Data for which the Authority is the Data Controller;</p>
"Authority Materials"	<p>the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority to the Supplier, the IPRs in which:</p> <p>(a) are owned or used by or on behalf of the Authority; and</p> <p>(b) are or may be used in connection with the provision or receipt of the Services,</p> <p>but excluding any Project Specific IPRs, Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third Party Software;</p>
"Authority Premises"	premises owned, controlled or occupied by the Authority and/or any Central Government Body which are made available for use by the

	Supplier or its Sub-contractors for provision of the Services (or any of them);
"Authority Representative"	the representative appointed by the Authority pursuant to Clause D1.4 (Representatives);
"Authority Requirements"	the requirements of the Authority set out in Schedules 2.1 (Services Description), 2.2 (Customer Service Standards and Performance Reviews), 2.3 (Standards), 2.4 (Security Requirements), 2.5 (Insurance Requirements), 6.1 (Implementation Plan), 8.4 (Reports and Records Provisions), 8.5 (Exit Management), 8.6 (Service Continuity Plan and Corporate Resolution Planning), 13 (Life Chances) and 16 (Welsh Language Scheme);
"Authority Software"	software which is owned by or licensed to the Authority (other than under or pursuant to this Agreement) and which is or will be used by the Supplier for the purposes of providing the Services;
"Authority System"	the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Agreement which is owned by the Authority or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Services;
"Baseline Security Requirements"	the Authority's security requirements as set out in Schedule 2.4 (Security Requirements);
"Board"	means the Supplier's board of directors;
"Board Confirmation"	means the written confirmation from the Board in accordance with paragraph 8 of Schedule 7.4 (Financial Distress);
"Breach of Security"	<p>the occurrence of:</p> <ul style="list-style-type: none"> (a) any unauthorised access to or use of the Services, the Authority Premises, the Sites, the Supplier System, the Authority System and/or any information or data (including the Confidential Information and the Authority Data) used by the Authority, the Supplier or any Sub-contractor in connection with this Agreement; and/or (b) the loss (physical or otherwise) and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including copies of such information or data, used by the Authority, the Supplier or any Sub-contractor in connection with this Agreement; and/or (c) Not used <p>in each case as more particularly set out in the security requirements in Schedule 2.1 (Services Description) and the Baseline Security Requirements;</p>

“Breakage Costs Payment”	has the meaning given in Schedule 7.2 (Payments on Termination);
“Bribery Act 2010”	the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant Central Government Body concerning the legislation;
“Cabinet Office Markets and Suppliers Team”	means the UK government’s team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;
“Central Government Body”	<p>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:</p> <ul style="list-style-type: none"> (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency;
“Change”	any change to this Agreement;
“Change Control Procedure”	the procedure for changing this Agreement set out in Schedule 8.2 (Change Control Procedure);
“Change in Law”	any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
“Change of Control”	means a change of control within the meaning of Section 1124 of the Corporation Tax Act 2010;
“Class 1 Transaction”	has the meaning set out in the listing rules issued by the UK Listing Authority;
“CNI”	means Critical National Infrastructure;
“Commercial Agreement for Employment and Health Related Services” or “CAEHRs”	the agreement dated 05 October 2020 for the provision of employment and health related services with contract reference number 2020/S207-506418 Lot 8 between the Authority and the Supplier, pursuant to which this Agreement has been entered into;
“Commercially Sensitive Information”	<p>the information listed in Schedule 4.2 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to –</p> <ul style="list-style-type: none"> (a) the pricing of the Services; (b) details of the Supplier’s IPRs; and

- (c) the Supplier's business and investment plans;
which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
- "Comparable Supply"** the supply of services to another customer of the Supplier that are the same or similar to any of the Services;
- "Compensation Payment"** has the meaning given in Schedule 7.2 (Payments on Termination);
- "Compliance Checks"** the checks carried out by the Authority under Clause C4.8 and paragraphs 20 and 21 of Part 4 of the Specification, to assess the performance of the Supplier and to ensure that the Supplier is adhering to the delivery model set out in this Agreement;
- "Condition Precedent"** has the meaning given in Clause B1.2 (Condition Precedent);
- "Confidential Information"**
- (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:
 - (i) the Disclosing Party Group; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;
 - (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;
 - (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
 - (d) Information derived from any of the above, but not including any Information which:
 - (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
 - (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;

	<ul style="list-style-type: none"> (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; (iv) was independently developed without access to the Confidential Information; or (v) relates to the Supplier's: <ul style="list-style-type: none"> 1. performance under this Agreement; or 2. failure to pay any Sub-contractor as required pursuant to Clause E2.15(a) (Supply Chain Protection);
"Contract Change"	any change, amendment, variation, restatement or supplement to this Agreement other than an Operational Change;
"Contracts Finder"	the online government portal which allows suppliers to search for information about contracts worth over ten thousand pounds (£10,000) (excluding VAT) as prescribed by Part 4 of the Public Contract Regulations 2015;
"Contract Performance Review" or "CPR"	has the meaning set out in Schedule 2.2 (Customer Service Standards and Performance Reviews);
"Contract Year"	<ul style="list-style-type: none"> (a) the first Contract Year shall be the period commencing on the Effective Date and ending at the expiry of the period of twelve (12) months commencing on the Referral Period Start Date; or (b) thereafter a period of twelve (12) months commencing on each anniversary of the Referral Period Start Date; <p>provided that the final Contract Year shall end on the expiry or termination of the Term;</p>
"Contracting Authority"	any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015, including the Authority;
"Control"	the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;
"Controller"	has the meaning given in the UK GDPR;
"Corporate Change Event"	<p>means:</p> <ul style="list-style-type: none"> (a) any Change of Control of the Supplier or a Parent Undertaking of the Supplier; (b) any Change of Control of any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services; (c) any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of

the Authority, could have a material adverse effect on the Services;

- (d) a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;
- (e) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;
- (f) payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding twenty-five percent (25%) of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any twelve (12) month period;
- (g) an order is made or an effective resolution is passed for the winding up of any member of the Supplier Group;
- (h) any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group;
- (i) the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or
- (j) any process or events with an effect analogous to those in paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;

**"Corporate
Resolution Planning
Information"**

means, together, the:

- a) Group Structure Information and Resolution Commentary; and
- b) UK Public Sector and CNI Contract Information;

"Costs"

the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:

- (a) the cost to the Supplier or the Key Sub-contractor (as the context requires) of engaging the Supplier Personnel, including:
 - (i) base salary paid to the Supplier Personnel;
 - (ii) employer's national insurance contributions;
 - (iii) employer pension contributions;
 - (iv) car allowances;
 - (v) any other contractual employment benefits;
 - (vi) staff training;

- (vii) work place accommodation;
 - (viii) work place IT equipment and tools reasonably necessary to perform the Services (but not including items included within limb (b) below); and
 - (ix) reasonable recruitment costs, as agreed with the Authority;
 - (b) costs incurred in respect of those Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Assets by the Supplier to the Authority or (to the extent that risk and title in any Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Assets;
 - (c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the delivery of the Services;
 - (d) Not used;
 - (e) Reimbursable Expenses to the extent these are incurred in delivering any Services where the Fees for those Services are to be calculated on a fixed price or firm price pricing mechanism;
- but excluding:
- (i) Overhead;
 - (ii) financing or similar costs;
 - (iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term, whether in relation to Assets or otherwise;
 - (iv) taxation;
 - (v) fines and penalties;
 - (vi) not used; and
 - (vii) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

"Critical National Infrastructure"

means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in:

- a) major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or

significant impact on national security, national defence, or the functioning of the UK;

"Critical Service Contract"

means the overall status of this Agreement as determined by the Authority and specified in paragraph 10.1 of Part 2 to Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);

“Crown”	the government of the United Kingdom (including the Northern Ireland Executive, the Scottish Government and the Welsh Government), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf and “Crown Body” shall be construed accordingly;
“CRP Information”	means the Corporate Resolution Planning Information;
“CRTPA”	the Contracts (Rights of Third Parties) Act 1999;
“CSS Measurement Period”	the period in respect of which the Supplier's achievement of the Customer Service Standards shall be measured by the Authority. Such period could be any month, three (3) month, twelve (12) month or other period at the absolute discretion of the Authority;
“CSS Measurement Point”	the point in time at which the Authority measures/reviews the Supplier's achievement of the Customer Service Standards, which will be the last day of a month or such other point in time as the Authority selects in its absolute discretion;
“CSS Measurement Review”	the Authority's review of the Supplier's achievement of the Customer Service Standards;
“Customer Service Standards”	the service levels to which the Services are to be supplied by the Supplier as set out in Schedule 2.2 (Customer Service Standards and Performance Reviews) and which shall include the Specification Customer Service Standards and the Tender Customer Service Standards;
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
“Data Protection Impact Assessment”	an assessment by the Controller carried out in accordance with Section 3 of the UK GDPR and sections 64 and 65 of the DPA;
“Data Protection Legislation”	(i) all applicable UK law relating to the processing of personal data and privacy, including but not limited to the UK GDPR, and the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (ii) (to the extent that it may be applicable) the EU GDPR. The UK GDPR and EU GDPR are defined in section 3 of the DPA;
“Data Protection Officer”	shall have the same meaning as given in the UK GDPR;
“Data Subject”	has the meaning given in the UK GDPR;
“Data Subject Request”	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to their Personal Data;

“Deductions”	any deduction which is paid or payable to the Authority under this Agreement;
“Default”	<p>any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:</p> <p>(a) in the case of the Authority, of its employees, servants, agents; or</p> <p>(b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel,</p> <p>in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other;</p>
“Delay”	<p>(a) Not used;</p> <p>(b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;</p>
“Deliverable”	an item, feature or service associated with the provision of the Services or a change in the provision of the Services which is required to be delivered by the Supplier at any stage during the performance of this Agreement;
“Delivery Model”	the structures and processes used by the Supplier to deliver the Services as described in Schedule 2.1 (Services Description);
“Dependent Parent Undertaking”	means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Agreement, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Agreement;
“Disallowed Financial Contribution”	<p>a direct or indirect contribution which:</p> <p>(a) is valued by the Authority in its absolute discretion at more than £1,000; or</p> <p>(b) is deemed by the Authority in its absolute discretion to not be a contribution towards working capital or equipment, or to be an inappropriate method of providing support to a self-employed Participant;</p>
“Disclosing Party”	has the meaning given in Clause F6.1 (Confidentiality);
“Disclosing Party Group”	(a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and

	(b) where the Disclosing Party is the Authority, the Authority and any Central Government Body with which the Authority or the Supplier interacts in connection with this Agreement;
"Dispute"	any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Dispute Notice"	a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
"Dispute Resolution Procedure"	the dispute resolution procedure set out in Schedule 8.3 (Dispute Resolution Procedure);
"Documentation"	<p>descriptions of the Services, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), 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 as:</p> <ul style="list-style-type: none">(a) is required to be supplied by the Supplier to the Authority under this Agreement;(b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services;(c) is required by the Supplier in order to provide the Services; and/or(d) has been or shall be generated for the purpose of providing the Services;
"DOTAS"	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
"DPA"	the Data Protection Act 2018;
"Due Diligence Information"	any information supplied to the Supplier by or on behalf of the Authority prior to the Effective Date;

**"DWP" or
"Department for Work
and Pensions"**

the Authority;

"Effective Date"

the later of:

- (a) the date on which this Agreement is executed by the last of the Parties to execute this Agreement; and
- (b) the date on which the Condition Precedent has been satisfied or waived in accordance with Clause B1.2 (Condition Precedent);

"EIRs"

the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;

**"Emergency
Maintenance"**

ad hoc and unplanned maintenance provided by the Supplier where:

- (a) the Authority reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or
- (b) the Supplier reasonably suspects that the IT Environment or the Services, or any part the IT Environment or the Services, has or may have developed a fault;

"Employee Liabilities"

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

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement,

	regulatory or supervisory body and of implementing any requirements which may arise from such investigation;
"Employment Regulations"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;
"Enhanced Holistic Assessment"	has the meaning given to it in the Specification;
"Enhanced Holistic Assessment Outcome"	an Outcome in respect of an Enhance Holistic Assessment;
"Enhanced Holistic Assessment Outcome Payment"	the fee as set out in Schedule 7.1 (Fees and Payment) payable by the Authority to the Supplier on achievement of an Enhanced Holistic Assessment Outcome and which shall be payable in accordance with the requirements of the Agreement;
"E-Procurement System"	the system used by the Authority for the procurement of this Agreement, or such replacement or successor system which the Authority may notify to the Supplier from time to time;
"ESF Co-Financing Organisation"	means designated bodies including the Authority which channel both ESF and match funding to meet ESF priorities;
"ESF Requirements"	the requirements set out or referred to in Schedule 15 for contracts which are, or may become during their term, funded using ESF monies and/or for contracts which are used as a match for contracts funded using ESF monies including but not limited to: <ul style="list-style-type: none"> (a) the common principles, rules and standards for the European Social Fund as defined by Regulation (EU) No 1303/2013 of 17 December 2013; and (b) the European Commission's requirements; (c) the Managing Authority's requirements; and (d) the Authority's requirements;
"Estimated Year 1 Fees"	the estimated Fees payable by the Authority during the first Contract Year, as set out in the Financial Model as "Year 0" and "Year 1" of the "Income Summary" of the "Declaration" tab;
"European Social Fund" or "ESF"	one of the five European Structural and Investment Funds for which common principles; rules and standards are defined by Regulation (EU) No 1303/2013 of 17 December 2013;
"Exit Management"	services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in Schedule 8.5 (Exit Management);
"Exit Plan"	the plan produced and updated by the Supplier during the Term in accordance with Paragraph 4 of Schedule 8.5 (Exit Management);

DWP EMPLOYMENT CATEGORY MODEL SERVICES CONTRACT – SCHEDULE 1

"Expedited Dispute Timetable"	the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 8.3 (Dispute Resolution Procedure);
"Expert"	has the meaning given in Schedule 8.3 (Dispute Resolution Procedure);
"Expert Determination"	the process described in Paragraph 6 of Schedule 8.3 (Dispute Resolution Procedure);
"Expiry"	the expiry of this Agreement, however arising;
"Extension Period"	a period following the Referral Period End Date for which the Referral Period is, or is proposed to be, extended, as specified by the Authority under Clause D3.7;
"Extension Period Financial Model"	the financial model that is to apply in respect an Extension Period, complying with the requirements of Clauses D3.7B and D3.7C;
"Extension Period Unit Prices"	the prices for each Enhanced Holistic Assessment Outcome Payment, Face-to-Face Standard Holistic Assessment Outcome Payment and Virtual Standard Holistic Assessment Outcome Payment during an Extension Period;
"Face-to-Face Standard Holistic Assessment"	has the meaning given to it in the Specification;
"Face-to-Face Standard Holistic Assessment Outcome"	an Outcome in respect of a Face-to-Face Standard Holistic Assessment;
"Face-to-Face Standard Holistic Assessment Outcome Payment"	the fee as set out in Schedule 7.1 (Fees and Payment) payable by the Authority to the Supplier on achievement of a Face-to-Face Standard Holistic Assessment Outcome and which shall be payable in accordance with the requirements of the Agreement;
"Fees"	the amounts (exclusive of any applicable VAT) as set out in Schedule 7.1 (Fees and Payment), payable by the Authority under the Agreement, including the Outcome Payments, to which the Supplier is entitled for the full and proper performance by the Supplier of its obligations under the Agreement;
"Financial Distress Event"	the occurrence of one or more of the events listed in Paragraph 3.1 or Paragraph 3.2 of Schedule 7.4 (Financial Distress);
"Financial Distress Remediation Plan"	a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that a Financial Distress Event occurs. The plan shall include the following information as a minimum:

- (a) management accounts (including profit and loss, balance sheet and cash flow forecasts);
- (b) draft or unaudited financial accounts (including profit and loss, balance sheet and cash flow statements);
- (c) evidence of parent company funding or support that is available to the Supplier;
- (d) evidence of any corporate loan facility that is available to the Supplier; and
- (e) any other information that the Authority requires the Supplier to include in the plan;

“Financial Model”	has the meaning given in Schedule 7.5 (Financial Transparency and Audit Rights);
“Financial Transparency Objectives”	has the meaning given in Schedule 7.5 (Financial Transparency and Audit Rights);
“FOIA”	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act;
“Force Majeure Event”	any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier’s or a Sub-contractor’s supply chain;
“Force Majeure Notice”	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
“Former Supplier”	has the meaning given in Schedule 9.1 (Staff Transfer);
“Formal Warning Notice”	a notice issued by the Authority under Clause B15 in respect of a Non Service Failure Default;
“General Anti-Abuse Rule”	<ul style="list-style-type: none"> (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

"General Change in Law"	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"Generic Guidance for DWP Providers"	means the DWP Generic Provider Guidance referred to in Annex 6 of the Specification;
"Good Industry Practice"	at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
"Goods"	has the meaning given in Clause B7.7 (Supply of Goods);
"Group Structure Information and Resolution Commentary"	means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Appendix 1 of Part 2 of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
"Guarantee"	the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of this Agreement (which is in the form set out in Schedule 10 (Guarantee)), or any guarantee acceptable to the Authority that replaces it from time to time;
"Guarantor"	Maximus Inc., a company registered in USA and whose registered office is at 1891 Metro Center Drive, Reston, Virginia, USA, 20190;
"Halifax Abuse Principle"	the principle explained in the CJEU Case C-255/02 Halifax and others;
"Health and Safety Policy"	the health and safety policy of the Authority and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;
"HMRC"	Her Majesty's Revenue and Customs;
"HMRC PAYE Data"	the real time information held by HMRC in respect of Participants and used by the Authority to determine and to verify Outcomes;
"Holistic Assessment"	has the meaning given to it in the Specification;
"Holistic Assessment Report"	has the meaning given to it in the Specification;
"ICE"	the independent case examiner who reviews complaints from Participants about certain government organisations, including Jobcentre Plus, that deal with benefits and financial support, details of which are set out at (or such other place as the Authority notifies the Supplier from time to time);

	<p>https://www.gov.uk/government/organisations/independent-case-examiner;</p>
"Implementation Plan"	<p>the Plan (which is set out at Schedule 6.1 (Implementation Plan)) prepared by the Supplier and agreed with the Authority detailing the arrangements and activities which the Supplier must implement and carry out in advance of commencement of supply of the Services, or such amended version as agreed with the Authority;</p>
"Indemnified Person"	<p>the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Agreement;</p>
"Independent Control"	<p>where either:</p> <ul style="list-style-type: none">(a) a Controller has provided Personal Data to another Party which is neither a Processor or Joint Controller because the recipient itself determines the purposes and means of processing but does so separately from the Controller providing it with Personal Data, or(b) a Party processes Personal Data as Controller, and the other Party does not process the Personal Data;
"Ineligible Outcome"	<p>any Outcome Payment, or part thereof, which has been paid to the Supplier by the Authority which is determined by the Authority not to have been eligible for payment in accordance with any provision of a Programme Agreement including, for the avoidance of doubt, Clause C4 (Validation);</p>
"Information"	<p>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);</p>
"Insolvency Event"	<p>with respect to any person, means:</p> <ul style="list-style-type: none">(a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:<ul style="list-style-type: none">(i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or(ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;(b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than

(in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that that person with one or more other companies or the solvent reconstruction of that person;

- (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;
- (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days;
- (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) where that person is a company, a LLP or a partnership:
 - (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
 - (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;
 - (iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or
 - (iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or
- (g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

"Intellectual Property Rights" or "IPRs"

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

	(c) all other rights having equivalent or similar effect in any country or jurisdiction;
"Intervention Cause"	has the meaning given in Clause H3.1 (Remedial Adviser);
"Intervention Notice"	has the meaning given in Clause H3.1 (Remedial Adviser);
"Intervention Period"	has the meaning given in Clause H3.2(c) (Remedial Adviser);
"Intervention Trigger Event"	<p>(a) any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event; and/or</p> <p>(b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;</p> <p>(c) Not used;</p> <p>(d) Not used;</p> <p>(e) Not used;</p>
"IPRs Claim"	any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Authority Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Agreement or for a purpose not reasonably to be inferred from the supply of the Services or the provisions of this Agreement;
"IT"	information and communications technology;
"IT Environment"	the Authority System and the Supplier System;
"ITT"	the suite of documents issued by the Authority through the E-Procurement System which formed the invitation to participate in the competition for the award of this Agreement for the provision of Services to the Authority;
"Joint Controllers"	has the meaning given in Article 26 of the UK GDPR;
"Key Performance Indicators" or "KPIs"	the key performance indicators applicable to performance of the Services, as set out at Section 4, paragraph 4 of the Specification as at the date of the Agreement;
"Key Personnel"	those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 9.2 (Key Personnel) against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses E1.5 and E1.6 (Key Personnel);
"Key Roles"	a role described as a Key Role in Schedule 9.2 (Key Personnel) and any additional roles added from time to time in accordance with Clause E1.4 (Key Personnel);

"Key Sub-contract"	each Sub-contract with a Key Sub-contractor;
"Key Sub-contractor"	any Sub-contractor: <ul style="list-style-type: none"> (a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or (b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten percent (10%) of the aggregate Fees forecast to be payable under this Agreement (as set out in the Financial Model);
"Know-How"	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party's possession before this Agreement;
"KPI Target"	the minimum performance level in respect of a KPI, as set out as a "Target" in Section 4, paragraph 3 of the Specification as at the date of the Agreement;
"Landed Resources"	when the Supplier or its Sub-contractor causes foreign nationals to be brought to the United Kingdom to provide the Services;
"Law"	any law, statute, legislation, legislative provision, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
"Law Enforcement Processing"	processing under Part 3 of the DPA;
"Licensed Software"	all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to the Authority for the purposes of or pursuant to this Agreement, including any Supplier Software, Third Party Software and/or any Specially Written Software;
"Losses"	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
"Maintenance Schedule"	shall have the meaning set out in Clause B7.4 (Maintenance);
"Malicious Software"	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

"Management Information"	the management information specified in Clause F10 and Schedule 8.8 (Management Information) to be provided by the Supplier to the Authority;
"Managing Authority" or "MA"	the Authority's managing authority (within the Authority's European Social Fund Division operating on behalf of the Secretary of State which is the managing authority responsible for administering European Social Fund funds by means of which this Agreement is funded (where applicable);
"MI Admin Fees"	the costs incurred by the Authority in dealing with MI Failures calculated in accordance with the tariff of administration charges published by the Crown Commercial Service at the following link (or such other place as the Authority notifies the Supplier from time to time); https://www.gov.uk/guidance/current-crown-commercial-service-suppliers-what-you-need-to-know ;
"MI Failure"	when an MI Report: <ul style="list-style-type: none"> (a) contains any material errors or material omissions or a missing mandatory field; or (b) is not submitted by the Reporting Date (including where a Nil Return should have been filed);
"MI Report"	a report containing Management Information submitted to the Authority pursuant to Clause F10 and Schedule 8.8 (Management Information);
"month"	a calendar month and "monthly" shall be interpreted accordingly;
"Multi-Party Dispute Resolution Procedure"	has the meaning given in Paragraph 9.1 of Schedule 8.3 (Dispute Resolution Procedure);
"Multi-Party Procedure Initiation Notice"	has the meaning given in Paragraph 9.2 of Schedule 8.3 (Dispute Resolution Procedure);
"New Releases"	an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
"Nil Return"	has the meaning given in paragraph 3.3 of Schedule 8.8 (Management Information);
"Non-trivial Customer Base"	a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;
"Non Service Failure Default"	a Default by the Supplier other than a Service Failure;

“Object Code”	software and/or data in machine-readable, compiled object code form;
“Occasion of Tax Non-Compliance”	<p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 01 October 2012 is found on or after 01 April 2013 to be incorrect as a result of:</p> <p>(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</p> <p>(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or</p> <p>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 01 October 2012 gives rise on or after 01 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;</p>
“Open Book Data”	has the meaning given in Schedule 7.5 (Financial Transparency and Audit Rights)
“Open Source”	computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;
“Operating Environment”	the Authority System and the Sites;
“Operational Change”	<p>any change in the Supplier's operational procedures which in all respects, when implemented:</p> <p>(a) will not affect the Fees and will not result in any other costs to the Authority;</p> <p>(b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services;</p> <p>(c) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and</p> <p>(d) will not require a change to this Agreement;</p>
“Optional Services”	any services described as such in Schedule 2.1 (Services Description) and/or Schedule 4.1 (Supplier Solution) which are to be provided by the Supplier if required by the Authority in accordance with Clause B2.10 (Optional Services);

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"Optional Services Implementation Plan"	the implementation plan to effect the Optional Services agreed between the Parties prior to the Effective Date and, if not agreed prior to the Effective Date, to be developed by the Supplier and approved by the Authority;
"Order"	the order for the Services in accordance with the provisions of the CAEHRS;
"Order Form"	the order form set out at the beginning of this Agreement setting out the details of the Order;
"Other Supplier"	any supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
"Outcome"	<p>an "Outcome" occurs when the following conditions have been satisfied:</p> <ul style="list-style-type: none">(a) a compliant Holistic Assessment Report (as defined in the Specification) is delivered by the Supplier to the Authority, in respect of a Referral to the Supplier by the Authority via a Holistic Assessment Referral Form (as defined in the Specification) and PRaP during the Referral Period;(b) the relevant Holistic Assessment Report successfully passes the Quality Standards Check in accordance with Clause C4.2A (whether or not following a Rework); and(c) a claim for an Outcome Payment is subsequently submitted via PRaP prior to the end of the Run-Off Period. <p>This includes, for the avoidance of doubt, each and any (as the context requires) of:</p> <ul style="list-style-type: none">(a) a Face-to-Face Standard Holistic Assessment Outcome;(b) a Virtual Standard Holistic Assessment Outcome; and(c) an Enhanced Holistic Assessment Outcome;
"Outcome Fail"	an Outcome in respect of which the Authority in its absolute discretion determines that not all of the relevant qualifying criteria and requirements (in respect of that Outcome) have been satisfied;
"Outcome Pass"	an Outcome in respect of which the Authority in its absolute discretion determines that all of the relevant qualifying criteria and requirements (in respect of that Outcome) have been satisfied;
"Outcome Payment"	each and any (as the context requires) of the Face-to-Face Standard Holistic Assessment Outcome Payment, the Virtual Standard Holistic Assessment Outcome Payment and the Enhanced Holistic Assessment Outcome Payment;
"Outcome Technical Fail"	an Outcome in respect of which, arising in a difference in information that the Participant supplies to the Authority and information and details recorded on the Authority System by the Supplier, the Authority determines (in its absolute discretion)

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	that the relevant qualifying criteria, standards and requirements in this Agreement (in respect of that Outcome) have not been satisfied;
"Outcomes Sample"	shall have the meaning given to it in Clause C4.3;
"Outline Implementation Plan"	the outline plan set out at Annex 1 of Schedule 6.1 (Implementation Plan);
"Overhead"	those amounts which are intended to recover a proportion of the Supplier's or the Key Sub-contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel;
"Paid Unable to Validate Outcome"	an Outcome in respect of which the Authority has paid an Outcome Payment to the Supplier but which the Authority was unable to verify that all of the relevant qualifying criteria and requirements in respect of that Outcome have been satisfied prior to making the relevant Outcome Payment;
"Parent Undertaking"	has the meaning set out in section 1162 of the Companies Act 2006;
"Partial Termination"	the partial termination of this Agreement to the extent that it relates to the provision of any part of the Services as further provided for in Clause 11.2(b) (Termination by the Authority) or 11.3(b) (Termination by the Supplier) or otherwise by mutual agreement by the Parties;
"Participant"	an individual in respect of whom the Supplier provides Services who has been Referred to the Supplier by the Authority pursuant to the Agreement;
"Parties" and "Party"	have the meanings respectively given on page 1 of this Agreement;
"Payment Validation Period"	such period of time as the Authority notifies the Supplier from time to time for which period the Authority shall validate payments made to the Supplier in accordance with Clause C4. For the avoidance of doubt such notification may be made before or after the Authority takes any action pursuant to Clause C4;
"Performance Improvement Admin Fees"	means the sum of £2,500 (two thousand five hundred pounds), amounting to an estimate of the cost incurred by the Authority in initiating and managing the Performance Improvement Process.
"Performance Improvement End Date"	the date set out in the Performance Improvement Notice;
"Performance Improvement Notice"	a written notice given by the Authority to the Supplier pursuant to Clause B5;
"Performance Improvement Period"	the period from the date of issue of the Performance Improvement Notice until the Performance Improvement End Date;

"Performance Improvement Plan"	the plan agreed in accordance with Clause B5;
"Performance Improvement Plan Failure"	has the meaning set out in Clause B5.11;
"Performance Improvement Process"	the process set out in Clause B5;
"Performance Measurement Period"	the period in respect of which the Supplier's achievement of the KPI Targets shall be measured by the Authority. Such period could be any month, three (3) month, twelve (12) month or other period at the absolute discretion of the Authority;
"Performance Measurement Point"	the last day of the Performance Measurement Period or such other day as the Authority in its absolute discretion selects;
"Permitted Maintenance"	has the meaning given in Clause B7.4 (Maintenance);
"Personal Data"	has the meaning given in the UK GDPR;
"Personal Data Breach"	has the meaning given in the UK GDPR;
"Plans"	any plan referred to in the Agreement which the Supplier is required to submit in connection with this Agreement;
"PRaP"	DWP's prescribed provider referral and payments system, which DWP uses to refer Participants and pay providers, or such replacement or successor system which the Authority may notify to the Supplier from time to time. For the avoidance of doubt, where PRaP is not available, a clerical system may be adopted by the Authority in its place;
"Preceding Services"	has the meaning given in Clause B2.2(b) (Standard of Services);
"Processor"	has the meaning given to it under the UK GDPR;
"Processor Personnel"	means all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement;
"Programme Agreement"	any Access to Work: Holistic Assessment agreement entered into between the Authority and the Supplier;
"Prohibited Act"	<p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:</p> <p>(i) induce that person to perform improperly a relevant function or activity; or</p>

- (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK
- (e) to:
 - (i) directly or indirectly;
 - (ii) submit a claim for, or agree to receive, or accept;
 - (iii) any Outcome Payment, or Delivery Fee, or financial or other advantage;
 - (iv) in connection with this Agreement, or any other Programme Agreement;
 - (v) which becomes the subject of an investigation by the Audit Agents;
 - (vi) which the Audit Agents find was more likely than not;
 - (vii) deliberately or negligently;
 - (viii) based on invalid, or erroneous, or false information, or documentation;

“Project Specific IPRs”

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

but shall not include the Supplier Background IPRs or the Specially Written Software;

“Property”

the property, other than real property, issued or made available to the Supplier by the Authority in connection with the Agreement;

"Protective Measures:	appropriate technical and organisational measures designed to ensure compliance with the obligations of the Parties arising under Data Protection Legislation and this Agreement, which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;
"Provider Guidance"	the instructions and recommended practices, including any instructions of an operational nature, and/or relating to sustainable development and promotion of race equality and non-discrimination, copies of which have been provided by the Authority to the Supplier prior to the Effective Date, and any other instructions and recommended practices as updated by the Authority to the Supplier from time to time, including the AtW: HA Provider Guidance and the Generic Guidance for DWP Providers;
"Public Sector Dependent Supplier"	means a supplier where that Supplier, or that Supplier Group has Annual Revenue of fifty million pounds (£50m) or more of which over fifty percent (50%) is generated from UK Public Sector Business;
"Public Sector and CNI Contract Information"	means the information requirements set out in accordance with Paragraphs 11 to 13 and Appendix II of Part 2 of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
"Purchase Order"	any purchase order issued by the Authority to the Supplier in relation to the Services, as referred to in Schedule 7.1 (Fees and Payment);
"Q&A"	the response to the Q&A Log (as defined in Schedule 2.1 (Services Description)) published by the Authority prior to the deadline for submission of Tenders;
"Quality Plans"	has the meaning given in Clause B3.1 (Quality Plans);
"Quality Standards Check"	the checks that are specified paragraph 18 in Section 2 of the Specification to ensure Holistic Assessment Reports meet the requirements set out in Annex 4 of the Specification;
"Quarter"	the first three Service Periods and each subsequent three Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement);
"Recipient"	has the meaning given in Clause F6.1 (Confidentiality);
"Records"	has the meaning given in Schedule 8.4 (Reports and Records Provisions);
"Registers"	has the meaning given in Schedule 8.5 (Exit Management);

"Referral"	the referral of an individual by the Authority to the Supplier under the Agreement with the intention that a Holistic Assessment Report will be produced, and "Referred" shall be construed accordingly;
"Referral Period"	the period from and including the Referral Period Start Date until the Referral Period End Date when the Authority may make Referrals;
"Referral Period Start Date"	means 5 June 2023 ;
"Referral Period End Date"	means: <ul style="list-style-type: none"> (a) 4 June 2027; or (b) such later date no more than 2 years later than (a) following any extension of the Referral Period End Date pursuant to Clause D3.7;
"Reimbursable Expenses"	reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Authority's expenses policy current from time to time, but not including: <ul style="list-style-type: none"> (a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Authority otherwise agrees in advance in writing; and (b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;
"Reporting Date"	means the seventh (7 th) day of each month following the month to which the relevant Management Information relates, or such other date as may be agreed between the Authority and the Supplier from time to time;
"Requests for Information"	a request for information or an apparent request under the FOIA or the Environmental Information Regulations;
"Relevant Authority"	means the Authority or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;
"Relevant IPRs"	IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority or a third party in the fulfilment of the Supplier's obligations under this Agreement including IPRs in the Specially Written Software, the Supplier Non-COTS Software, the Supplier Non-COTS Background IPRs, the Third Party Non-COTS Software and the Third Party Non-COTS IPRs but excluding any IPRs in the Authority Software, the Authority

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	Background IPRs, the Supplier COTS Software, the Supplier COTS Background IPRs, the Third Party COTS Software and/or the Third Party COTS IPRs;
"Relevant Preceding Services"	has the meaning given in Clause B2.2(b) (Standard of Services);
"Relevant Requirements"	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
"Relevant Tax Authority"	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
"Relevant Transfer"	a transfer of employment to which the Employment Regulations applies;
"Relief Notice"	has the meaning given in Clause H5.2 (Authority Cause);
"Remedial Adviser"	the person appointed pursuant to Clause H3.2 (Remedial Adviser);
"Remedial Adviser Failure"	has the meaning given in Clause H3.6 (Remedial Adviser);
"Replacement Services"	any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Agreement, whether those services are provided by the Authority internally and/or by any third party;
"Replacement Supplier"	any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);
"Request For Information"	a Request for Information under the FOIA or the EIRs;
"Required Action"	has the meaning given in Clause H4.1(a) (Step-In Rights);
"Rework"	has the meaning given to it in the Specification;
"Run-Off Period"	the period of 28 days starting immediately after the Referral Period End Date;
"Schedule"	a schedule attached to, and forming part of, the Agreement;
"Security Policies"	the Authority's security policies published by the Authority from time to time and shall include any successor, replacement or additional security policies. The security policies are set out in Annex A to Schedule 2.4 (Security Requirements);

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“Security Policies and Standards”	the Security Policies and the Security Standards;
“Security Standards”	the Authority’s security standards published by the Authority from time to time and shall include any successor, replacement or additional security standards. The security standards are set out in Annex A and Annex B to Schedule 2.4 (Security Requirements);
“Service Continuity Plan”	any plan prepared pursuant to Paragraph 2 of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning) as may be amended from time to time;
“Service Continuity Services”	the business continuity, disaster recovery and insolvency continuity services set out in Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
“Service Failure”	<p>a failure by the Supplier to:</p> <ul style="list-style-type: none">(a) pass any Compliance Check, which shall include where a Compliance Check identifies any failure by the Supplier to adhere to the delivery model set out in this Agreement; and/or(b) supply any part of the Services in accordance with any of the Customer Service Standards; and/or(c) achieve a KPI Target;
“Service Period”	<p>a calendar month, save that:</p> <ul style="list-style-type: none">(a) the first service period shall start at the beginning of the Services Delivery Period and shall expire at the end of the calendar month in which the Services Delivery Period began; and(b) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term;
“Services”	any and all of the services to be provided by the Supplier under this Agreement, including those set out in Schedule 2.1 (Services Description) and Schedule 4.1 (Supplier Solution);
“Service Transfer Date”	has the meaning given in Schedule 9.1 (Staff Transfer);
“Services Delivery Period”	the period from and including the Effective Date until the end of the Run-Off Period, during which the Supplier shall supply the Services;
“Sites”	<p>any premises (including the Authority Premises, the Supplier’s premises or third party premises):</p> <ul style="list-style-type: none">(a) from, to or at which:<ul style="list-style-type: none">(i) the Services are (or are to be) provided; or(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or

(b) where:

- (i) any part of the Supplier System is situated; or
- (ii) any physical interface with the Authority System takes place;

"SME"	an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 06 May 2003 concerning the definition of micro, small and medium-sized enterprises;
"Software"	Specially Written Software, Supplier Software and Third Party Software;
"Software Supporting Materials"	has the meaning given in Clause F2.1(b) (Specially Written Software and Project Specific IPRs);
"Source Code"	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
"Specially Written Software"	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-contractor or other third party on behalf of the Supplier) specifically for the purposes of this Agreement, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Agreement.
"Special Categories of Personal Data"	Personal Data which falls into the categories described in Article 9(1) of the UK GDPR;
"Special Customer Record Participant"	a Participant whom the Authority designates is subject to Special Customer Record Procedures. Personal Data of Special Customer Record Participants must not be held in the IT Environment. The Authority will notify the Supplier of any Participants who are Special Customer Record Participants;
"Special Customer Record Procedures"	the paper-based processes, as set out by the Authority in the Provider Guidance, which must be used by the Supplier when the Supplier submits any claim for an Outcome Payment, notifies the Authority, or carries out any other process in respect of any Special Customer Record Participant;
"Specification"	the Authority's specification for the Services as set out in Annex A to Schedule 2.1 (Services Description) (including all amendments to, variations of, or supplements to such specification);
"Specification Customer Service Standards"	any Customer Service Standards set out by the Authority in the Specification;

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"Specific Change in Law"	a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
"Staffing Information"	has the meaning given in Schedule 9.1 (Staff Transfer);
"Standards"	the standards, policies and/or procedures identified in Schedule 2.3 (Standards);
"Start Cohort"	the Participant Starts recorded on the PRaP system in each Service Period;
"Step-In Notice"	has the meaning given in Clause H4.1 (Step-In Rights);
"Step-In Trigger Event"	<ul style="list-style-type: none">(a) any event falling within the definition of a Supplier Termination Event;(b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;(c) the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Agreement;(d) the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause H4 (Step-In Rights) is necessary;(e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or(f) a need by the Authority to take action to discharge a statutory duty;
"Step-Out Date"	has the meaning given in Clause H4.5(b) (Step-In Rights);
"Step-Out Notice"	has the meaning given in Clause H4.5 (Step-In Rights);
"Step-Out Plan"	has the meaning given in Clause H4.6 (Step-In Rights);
"Strategic Supplier"	means those suppliers to government listed at https://www.gov.uk/government/publications/strategic-suppliers ;
"Sub-contract"	any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
"Sub-contractor"	any third party with whom: <ul style="list-style-type: none">(a) the Supplier enters into a Sub-contract; or(b) a third party under (a) above enters into a Sub-contract,

	or the servants or agents of that third party;
"Sub-processor"	any third party appointed to process Personal Data on behalf of the Supplier related to this Agreement;
"Subsidiary Undertaking"	has the meaning set out in section 1162 of the Companies Act 2006;
"Successor Body"	has the meaning given in Clause J2.4 (Assignment and Novation);
"Supplier Background IPRs"	<p>(a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or</p> <p>(b) Intellectual Property Rights created by the Supplier independently of this Agreement,</p> <p>which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;</p>
"Supplier Code of Conduct" or "Code"	the code of conduct as set-out at Schedule 14 (DWP Supplier Code of Conduct);
"Supplier COTS Background IPRs"	<p>Any embodiments of Supplier Background IPRs that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p>
"Supplier COTS Software"	<p>Supplier Software (including open source software) that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p>
"Supplier Equipment"	the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from the Authority) for the provision of the Services;
"Supplier Group"	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
"Supplier Non-COTS Background IPRs"	Any embodiments of Supplier Background IPRs that have been delivered by the Supplier to the Authority and that are not Supplier COTS Background IPRs;

"Supplier Non-COTS Software"	Supplier Software that is not Supplier COTS Software;
"Supplier Non-Performance"	has the meaning given in Clause H5.1 (Authority Cause);
"Supplier Personnel"	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier's obligations under this Agreement;
"Supplier Profit"	the difference between the total Fees (in nominal cash flow terms but excluding any deductions paid or payable to the Authority under this Agreement) and total Costs (in nominal cash flow terms) paid or payable to the Supplier under this Agreement;
"Supplier Profit Margin"	in relation to a period, the Supplier Profit for the relevant period divided by the total Fees over the same period and expressed as a percentage;
"Supplier Representative"	the representative appointed by the Supplier pursuant to Clause D1.3 (Representatives);
"Supplier Software"	software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services;
"Supplier Solution"	the Supplier's solution for the Services set out in Schedule 4.1 (Supplier Solution) including any Annexes of that Schedule;
"Supplier System"	the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);
"Supplier Termination Event"	<ul style="list-style-type: none"> (a) the occurrence of three (3) Defaults in any six (6) month period; (b) the Supplier committing a material Default which is irremediable; (c) as a result of the Supplier's Default, the Authority incurring Losses in any Contract Year which exceed eighty percent (80%) of the value of the aggregate annual liability cap for that Contract Year as set out in Clause G1.6(a) (Financial Limits); (d) a Remedial Adviser Failure; (e) a Performance Improvement Plan Failure; (f) where a right of termination is expressly reserved in this Agreement, including pursuant to: <ul style="list-style-type: none"> (i) Clause F4 (IPRs Indemnity); (ii) Clause J5.6(b) (Prevention of Fraud and Bribery); and/or (iii) Paragraph 6 of Schedule 7.4 (Financial Distress);

- (iv) Paragraph 12 of Part 2 to Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
- (g) the representation and warranty given by the Supplier pursuant to Clause A3.2(i) (Warranties) being materially untrue or misleading;
- (h) the Supplier committing a material Default under Clause C10 (Promoting Tax Compliance) or failing to provide details of steps being taken and mitigating factors pursuant to Clause C10 (Promoting Tax Compliance) which in the reasonable opinion of the Authority are acceptable;
- (i) the Supplier committing a material Default under any of the following Clauses:
 - (i) Clause B2.5(j) (Services);
 - (ii) Clause F8 (Protection of Personal Data);
 - (iii) Clause F7 (Transparency and Freedom of Information);
 - (iv) Clause F6 (Confidentiality); and
 - (v) Clause J1 (Compliance); and/or

in respect of any security requirements set out in Schedule 2.1 (Services Description) or the Baseline Security Requirements; and/or

in respect of any requirements set out in Schedule 9.1 (Staff Transfer);
- (j) Not used;
- (k) an Insolvency Event occurring in respect of the Supplier or the Guarantor;
- (l) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority with the Guarantor or with another guarantor which is acceptable to the Authority);
- (m) a Change of Control of the Supplier or a Guarantor unless:
 - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within six (6) months of the later of the date on which the Change of Control took place or the date on which the Authority was given notice of the Change of Control;
- (n) a Change of Control of a Key Sub-contractor unless, within six (6) months of being notified by the Authority that it objects to such Change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Authority pursuant to Clause E2.10 (Appointment of Key Sub-contractors);

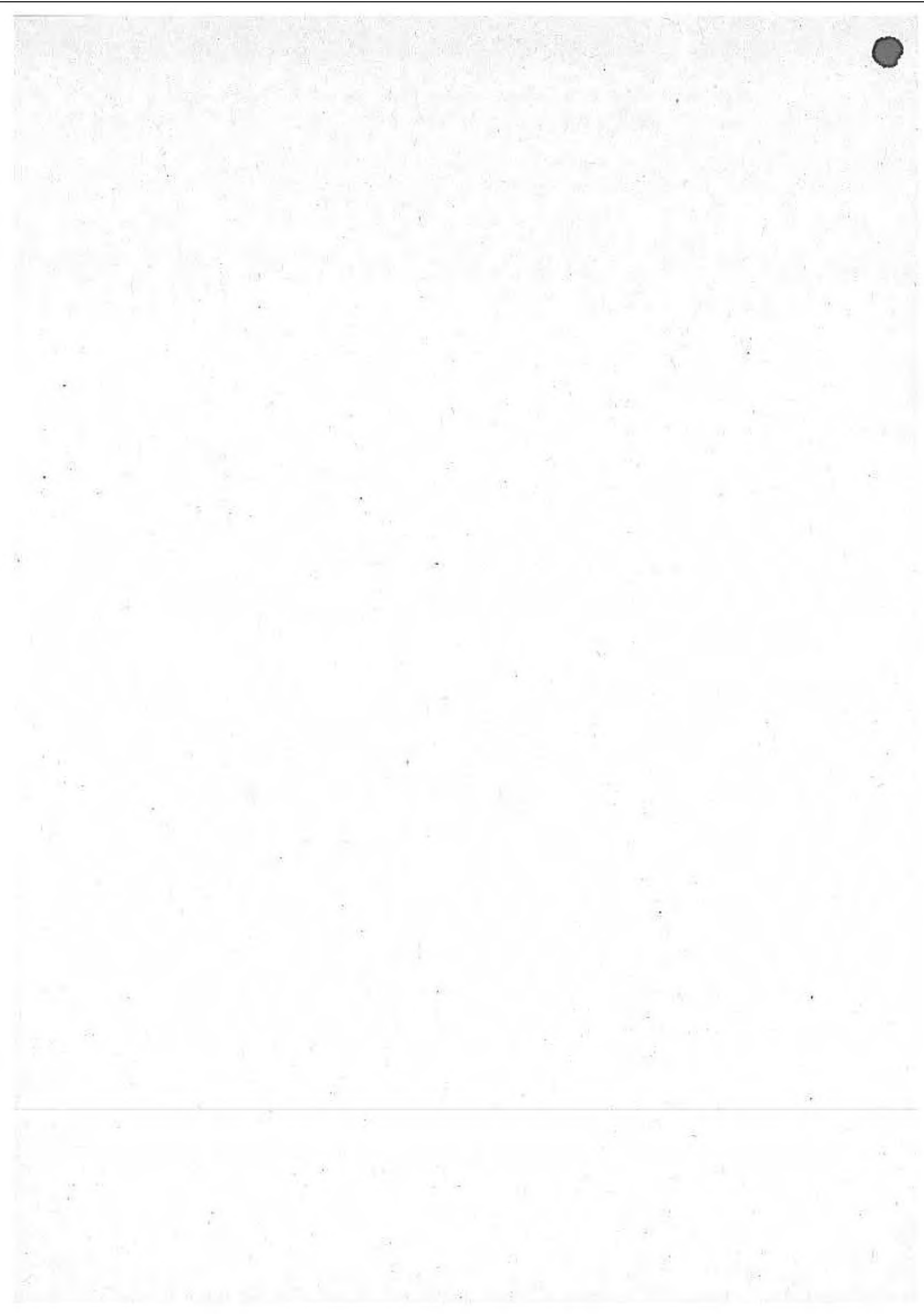
- (o) any failure by the Supplier to enter into or to comply with an Admission Agreement under the Annex to either Part A or Part B of Schedule 9.1 (Staff Transfer);
- (p) the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Agreement; or
- (q) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law.

"Supply Chain Transparency Report"	means the report provided by the Supplier to the Authority in the form set out in Annex 4 of Schedule 8.4 (Reports and Records Provisions);
"Tender"	the Supplier's response to the ITT and which, for the avoidance of doubt, includes any post-tender clarifications made by the Supplier to the Authority prior to the Effective Date ("Tender Clarification");
"Tender Customer Service Standards"	any Customer Service Standards proposed by the Supplier in the Tender which must be equal to or greater than the Specification Customer Service Standards;
"Term"	the period described in Clause B1.1.
"Termination Assistance Notice"	has the meaning given in Paragraph 5.1 of Schedule 8.5 (Exit Management);
"Termination Assistance Period"	in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 5.2 of Schedule 8.5 (Exit Management);
"Termination Date"	the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;
"Termination Notice"	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement (or any part thereof) on a specified date and setting out the grounds for termination;
"Termination Payment"	the payment determined in accordance with Schedule 7.2 (Payments on Termination);
"Termination Services"	the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 8.5 (Exit Management), and any other services required pursuant to the Termination Assistance Notice;

"Terms and Conditions"	these terms and conditions of contract and its accompanying schedules and any appendices or annexes to the terms and conditions and schedules which form part of the Agreement;
"Third Party Beneficiary"	has the meaning given in Clause J9.1 (Third Party Rights);
"Third Party COTS IPRs"	Third Party IPRs that: <ul style="list-style-type: none"> (a) the supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and (b) has a Non-trivial Customer Base;
"Third Party COTS Software"	Third Party Software (including open source software) that: <ul style="list-style-type: none"> (a) the supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and (b) has a Non-trivial Customer base;
"Third Party IPRs"	Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
"Third Party Non-COTS IPRs"	Third Party IPRs that are not Third Party COTS IPRs;
"Third Party Non-COTS Software"	Third Party Software that is not Third Party COTS Software;
"Third Party Provisions"	has the meaning given in Clause J9.1 (Third Party Rights);
"Third Party Software"	software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services;
"Transferring Assets"	has the meaning given in Paragraph 6.2(a) of Schedule 8.5 (Exit Management);
"Total Outcome Fails"	in respect of Outcome Payments, shall be the total number of Outcome Fails, Outcome Technical Fails and Paid Unable to Validate Outcomes identified by the Authority in the relevant Outcomes Sample or Compliance Check (as determined by the Authority);
"Transferring Authority Employees"	has the meaning given in Schedule 9.1 (Staff Transfer);
"Transferring Former Supplier Employees"	has the meaning given in Schedule 9.1 (Staff Transfer);

"Transferring Supplier Employees"	has the meaning given in Schedule 9.1 (Staff Transfer);
"Transparency Information"	has the meaning given in Clause F7.1 (Transparency and Freedom of Information);
"Transparency Reports"	has the meaning given in Schedule 8.4 (Reports and Records Provisions);
"UK"	the United Kingdom;
"UK GDPR"	the UK General Data Protection Regulation;
"UK Public Sector Business"	means any goods, service or works provision to UK public sector bodies, including Central Government Departments and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations;
"UK Public Sector / CNI Contract Information"	means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Appendix II of Part 2 of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
"Universal Credit"	the Government initiative of that name;
"Unrecovered Payment"	has the meaning given in Schedule 7.2 (Payments on Termination);
"Unsupported Services"	shall have the meaning set out in Clause C9.2;
"Updates"	in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome defects in, or to improve the operation of, that item;
"Valid"	in respect of an Assurance, has the meaning given to it in Paragraph 11.7 of Part 2 to Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
"Virtual Standard Holistic Assessment"	has the meaning given to it in the Specification;
"Virtual Standard Holistic Assessment Outcome"	an Outcome in respect of a Virtual Standard Holistic Assessment;
"Virtual Standard Holistic Assessment Outcome Payment"	the fee as set out in Schedule 7.1 (Fees and Payment) payable by the Authority to the Supplier on achievement of a Virtual Standard Holistic Assessment Outcome and which shall be payable in accordance with the requirements of the Agreement;
"Universal Credit"	the government initiative of that name;

"Upgrades"	any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term;
"VAT"	value added tax as provided for in the Value Added Tax Act 1994;
"VCSE"	means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
"Working Day"	any day other than a Saturday, Sunday or public holiday in England and Wales.





**Department
for Work &
Pensions**

SCHEDULE 2

SERVICE REQUIREMENTS

- 2.1 Services Description (Specification)**
- 2.2 Customer Service Standards and Performance Reviews**
- 2.3 Standards**
- 2.4 Security Requirements**
- 2.5 Insurance Requirements**

SCHEDULE 2.1 - SERVICES DESCRIPTION (SPECIFICATION)

Description of the Services

The Supplier will comply with the detail set out within the following additional documents which shall be deemed to be incorporated into this Agreement;

Document	Description
Specification	Dated 2 December 2022 and issued on the E-Procurement System as part of the ITT on 5 December 2022, a copy of which is attached at Annex A to this Schedule 2.1.
Q&A Log (Q&A)	Response to the Q&A Log during the period 5 December 2022 to 14 December 2022, as posted by the Authority on the E-Procurement System on 16 December 2022 at 13:27, a copy of which is attached at Annex B to this Schedule 2.1.

Annex A: Specification



Department
for Work &
Pensions

Specification for AtW Holistic Assessments

Date: 2 December 2022

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Section 1: Overview

Definitions and Interpretation

Unless the context otherwise requires, the following shall apply in this Specification:

- the definitions set out in Annex 5 to this Specification
- the definitions and rules of interpretation set out in the Section A and Schedule 1 of the Agreement.

Introduction to Access to Work

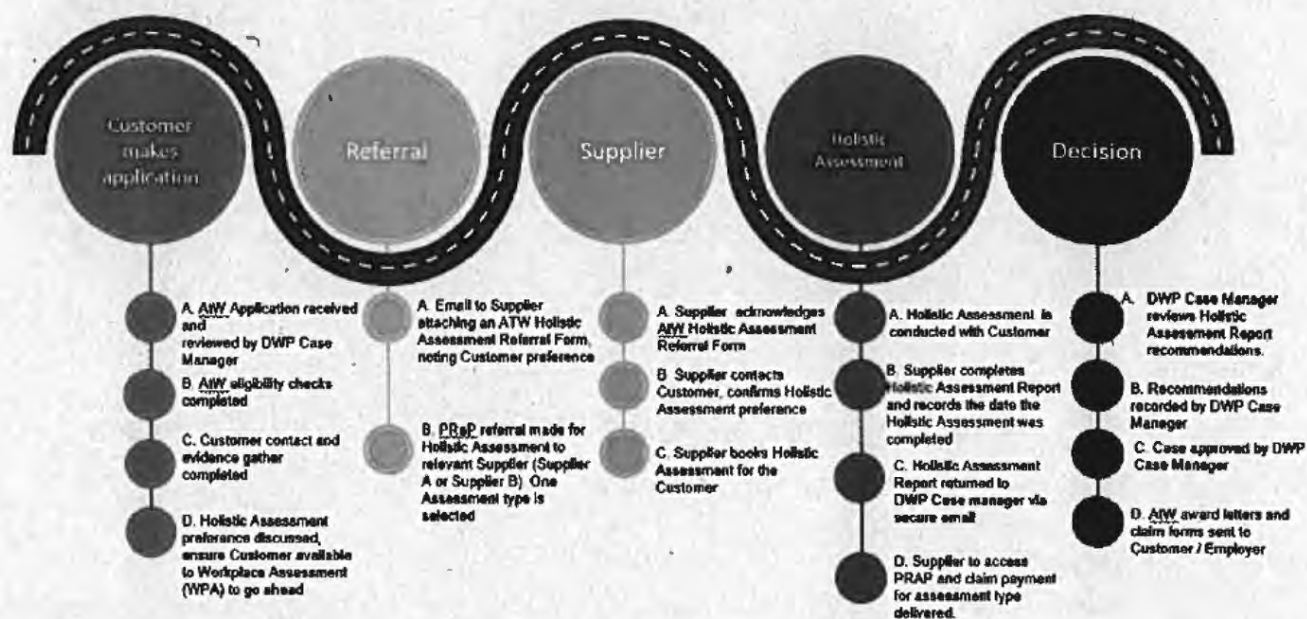
1. The Access to Work (AtW) programme is a Jobcentre Plus discretionary grant scheme that has been in existence since 1994. It assists disabled people who are in paid employment, self-employed or participating in a Jobcentre Plus agreed Job/Work Trial which may have already commenced or is due to commence, by providing practical support to overcome work related obstacles resulting from their disability. Support is also available for young disabled people to enable them to take up an offer of a work experience placement.
2. The AtW programme provides advice, a possible assessment of a person's disability needs in the workplace and, if required, a financial grant towards the cost of any necessary support.
3. AtW is not means tested and can fund up to £65,180 (2022/23) worth of flexible, personalised support per person per year towards disability related extra costs in the workplace that are beyond standard reasonable adjustments. It does not replace an Employer's duty under the Equality Act to make reasonable adjustments.
4. Disabled people across England, Scotland and Wales form a highly diverse population from all age groups and across the income and education spectrum. The effect a disability has on a person is also very subjective so everyone should be treated on an individual basis.
5. Where further information is required prior to a decision on awarding a grant, a DWP Case Manager may seek a Holistic Assessment Report through the Holistic Assessment.
6. Prior to the Covid-19 pandemic, all assessments were conducted face-to-face in the workplace. In response to the pandemic, it was agreed in April 2020 to allow assessments to be conducted virtually via telephone and/or video link, in addition to the face-to-face assessment, to ensure service delivery continued safely and effectively. Virtual assessments have been retained in addition to face-to-face assessment delivery.

7. The AtW: HA Contracts will ensure Customers make informed choices on their preference for assessment type (Virtual Standard Holistic Assessment or Face-to-Face Standard Holistic Assessment).
8. In June 2022, DWP commenced a proof of concept called Access to Work Plus (AtW+); supporting disabled people who have high in-work support needs that are in excess of the current scheme, and for the first time, offering support to Employers who are willing to adapt workplaces and / or job roles. As part of the AtW: HA Contracts this will be a new assessment type (Enhanced Holistic Assessment). All Enhanced Holistic Assessments will need to be conducted face-to-face with the Customer and Employer.
9. To receive AtW support the Customer must meet the AtW eligibility criteria. Further information on eligibility to AtW can be found at <https://www.gov.uk/access-to-work>.
10. A DWP Case Manager will check the eligibility of all Customers applying for Access to Work.

Customer Journey through Access to Work

11. The diagram below provides high level customer journey through Access to Work from initial contact to grant payment. More detail is provided in Annex 1.

Access to Work Holistic Assessment Customer Journey



Critical Success Factors

DWP EMPLOYMENT CATEGORY MODEL SERVICES CONTRACT – SCHEDULE 2.1

12. Below are DWP's internal Critical Success Factors (CSFs) for the Programme which will be used by DWP to determine the overall effectiveness of the Programme,

CSF 1	The Holistic Assessment provides an efficient and effective service, delivering high quality recommendations and support mechanisms to address workplace needs for people who have a disability or health condition, tailored to each Customer's circumstances.
CSF 2	Recommendations deliver clear, suitable, and expert solutions which demonstrate value for money, and support customers to start, stay and succeed in work; contributing towards reducing the Disability Employment Gap. Recommendations are over and above the Employer's obligation within the Equality Act.
CSF 3	Customers will be able to make an informed choice on the delivery mode of their Holistic Assessment, ensuring all Access to Work Customers receive an excellent service from DWP and the Supplier.
CSF 4	The DWP and Supplier will maximise return on the spend by ensuring value for money is achieved during the life of each commercial contract.
CSF 5	The service will meet Cabinet Office requirements applicable for all grants, ensuring all funding is used as intended and any misuse of funding or fraudulent activity is identified.
CFS 6	The service will be evaluated and monitored to ensure Customers have been supported to start, stay, and succeed in work, increasing their financial resilience

Delivery Location

13. DWP are looking to award two AtW: HA Contracts covering England, Scotland, and Wales.

Volumes

14. **Previous volumes:** The total number of Assessments for the period from April 2017 up to the end of March 2022 are as follows.

	Apr 17 to Mar 18	Apr 18 to Mar 19	Apr 19 to Mar 20	Apr 20 to Mar 21	Apr 21 to Mar 22
No. Of Assessments Completed	14,140	15,150	16,980	13,610	12,530

N.B. Figures taken from AtW Statistics. Years 'Apr 20 to Mar 21' and 'Apr 21 to Mar 22' impacted by response to Covid 19.

15. More detail and breakdown of historic applications and referrals to Access to Work is available on Access to Work statistics - GOV.UK (www.gov.uk).

DWP EMPLOYMENT CATEGORY MODEL SERVICES CONTRACT – SCHEDULE 2.1

16. **Future volumes:** Indicative four-year annual volumes for the whole AtW: HA service are included in the table below. It should be noted that the demand led nature of the AtW programme means volumes may fluctuate and the successful AtW: HA Suppliers will need to be capable of managing such fluctuations and unpredictable demand.

Total volumes for the initial 4 Years Split by contract year	Yr1 June 23- May 24	Yr2 June 24- May 25	Yr3 June 25- May 26	Yr4 June 26 May 27	Total
Standard Virtual Holistic Assessment	15,837	16,394	16,954	17,536	66,721
Standard Face-to-Face Holistic Assessment	3,959	4,098	4,238	4,384	16,679
Enhanced Holistic Assessment	650	1,100	1,540	1,710	5,000
Total	20,446	21,592	22,732	23,630	88,400

17. Indicative four-year annual volumes per each AtW: HA Contract are included in the table below (the Authority will endeavour to refer equal numbers of customers to each AtW: HA Supplier, according to National Insurance Number (subject to paragraph 4 of Section 2, as set out in paragraph 3 Section 2, and so these represent the numbers in the table at paragraph 16 above divided by two).

Total volumes for the initial 4 years per Contract Split by contract year	Yr1 June 23- May 24	Yr2 June 24- May 25	Yr3 June 25- May 26	Yr4 June 26 May 27	Total
Standard Virtual Holistic Assessment	7,919	8,197	8,477	8,768	33,361
Standard Face-to-Face Holistic Assessment	1,980	2,049	2,119	2,192	8,340
Enhanced Holistic Assessment	325	550	770	855	2,500

Total	10,223	10,796	11,366	11,815	44,200
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18. The Authority does not guarantee any volumes of work within either AtW: HA Contract.

Section 2: Service Requirements

Design and content

1. A Holistic Assessment shall be undertaken and consider all aspects of the Customer's disability and explore all relevant factors that impact on their Workplace barriers. The Holistic Assessment shall document how to overcome these by providing a range of solutions for the individual's needs.
2. The Authority shall enter into two AtW: HA Contracts that together, will deliver the specified services in **England, Scotland and Wales**.
3. The Authority will endeavour to refer Customers in equal numbers to each of the two AtW: HA Suppliers. Subject to paragraph 4 of this Section 2, Referrals will be split based on the last two digits of a Customers' National Insurance Number; Customers with a National Insurance number ending between 00 to 49 will be referred to Supplier A and Customers with a National Insurance number ending between 50 to 99 will be referred to Supplier B.
4. In exceptional circumstances, the Customer may request the DWP Case Manager to make the referral to the alternative ATW: HA Supplier.
5. A summary of the scope of the services required is as follows;
 - By providing the Supplier with a Holistic Assessment Referral Form (see Annex 2), the Authority will instruct the Supplier to conduct a Holistic Assessment within the specified timescale. A Holistic Assessment can be one of the following;
 - Virtual Standard Holistic Assessment
 - Face-to-Face Standard Holistic Assessment
 - Face-to-Face Enhanced Holistic Assessment
 - During the Assessment, the Supplier will complete a Holistic Assessment Report for either a Standard Holistic Assessment (see Annex 3a) or for an Enhanced Holistic Assessment (see Annex 3b) and forward to the Authority following Assessment within the specified timescale.

- The Supplier will ensure that Assessors carrying out Holistic Assessments are suitably qualified, have appropriate impairment expertise and are able to assess Customers' varying needs.
- The Supplier will collate and supply Management Information as specified in this Agreement.
- The Holistic Assessment Report (see example templates at Annex 3a and Annex 3b) is the basis on which the Authority's DWP Case Manager decides the best possible solution for the Customer. It must therefore meet the minimum standards specified at Annex 4.

Types of Holistic Assessment

6. Under the AtW: HA Contracts, there will be a delivery model of both Virtual Standard Holistic Assessment and Face-to-Face Standard Holistic Assessments that allows preference for the Customer.
7. Under the AtW: HA Contracts, unless an Enhanced Holistic Assessment is required, Customers are able to indicate their preferred assessment delivery method, which offers freedom and flexibility and empowers Customers to make decisions that impact their needs and deliver the right outcomes. If the Customer cannot decide on the assessment type, Virtual Standard Holistic Assessment will be selected as default.
8. This blended approach using two types of standard Holistic Assessments will have beneficial outcomes for Customers and the Authority as it is anticipated that more assessments will be able to be conducted within shorter timeframes.
9. **Standard Holistic Assessment:** The Standard Holistic Assessment Report (see Annex 3a) is to be used for either a;
 - Virtual Standard Holistic Assessment; or a
 - Face-to-Face Standard Holistic Assessment.
10. Following receipt of the Holistic Assessment Referral Form (see Annex 2) from the Authority, the Assessor must discuss the type of Assessment with the Customer and confirm whether the Customer's choice of a Virtual Standard Holistic Assessment Report or Face-to-Face Standard Holistic Assessment is most appropriate.

11. **Enhanced Holistic Assessment:** The Enhanced Holistic Assessment Report (Annex 3b) is required for Customers who have the greatest barriers to work and require greater in-depth conversations with Employers due to their complex needs and support requirements.
12. In addition to the activity that would be carried out as part of a Standard Holistic Assessment, the Enhanced Holistic Assessment entails the Assessor reviewing and discussing how the Customer's job role and/or work environment has been adapted already. The Enhanced Holistic Assessment will involve mandatory conversations with Employers and a review of the whole work environment (a Standard Holistic Assessment only assesses the individual's workstation area).
13. The groups of existing Customers that will be covered by Enhanced Holistic Assessment include Customers who are admitted to the following schemes/arrangements:
 - **AtW Transitional Employment Support Grant (TESG):** Since 1 April 2019, the AtW Transitional Employer Support Grant (TESG) has been available to each employee who was in a Work Choice Protected Place on 31st March 2019 and continued in employment within a Supported Business.
 - **Access to Work Plus (AtW+):** AtW+ is an extension of AtW to open up employment opportunities for disabled people who have the greatest barriers to employment and to encourage Employers to think differently about their vacancies and how they could be flexed to open up employment opportunities for disabled people. AtW+ provides additional support for Employers who are willing to do more and adapt Workplaces and flex job roles; and/or introduces new personal support elements that are in excess of standard AtW.
 - **Supported Internship (SI):** Supported Internships are a structured, work-based study programme for 16 to 24-year-olds with Special Educational Needs or Disability (SEND), who have an education, health and care (EHC) plan. The core aim of a Supported Internship study programme is a substantial work placement, facilitated by the support of an expert job coach. Supported interns are enrolled and supported by a learning provider, for example, a school or college, but spend most of their learning time - typically around 70% - in a Workplace. For the AtW: HA Contracts the referrals for SI will be for Wales only where a Statement of Special Needs is not currently issued.

During the term of this Agreement, the Authority reserves the right to include additional groups of Customers for whom an Enhanced Holistic Assessment is required, in addition to those above.

14. A high-level overview of the three Holistic Assessment types is provided in the table below.

DWP EMPLOYMENT CATEGORY MODEL SERVICES CONTRACT – SCHEDULE 2.1

Virtual Standard Holistic Assessment	Face-to-Face Standard Holistic Assessment	Enhanced Holistic Assessment
The Customer provides their own representative who will assist where required during the Holistic Assessment e.g. to take workstation measurements	The Assessor visits the Workplace to examine the workstation and is required to take measurements, anthropometrics and environment dimensions e.g. wheelchairs, powered chair, scooters, ergonomic seating/specialist chairs and desk or workstation requirements	The Assessor visits the Workplace to understand and review the Customer's workstation and the whole working environment
Employer conversation is voluntary	Employer conversation is voluntary	Employer conversation is mandatory to enable the Assessor to ascertain reasonable adjustments already in place and consider job carving or additional job task support to support the Customer
The Customer can clearly articulate the impact their disability or health condition has on their ability to carry out their job role	The Customer has multiple and/or complex Workplace needs and is not able to articulate the impacts of their disability or health condition	The Customer has multiple and complex Workplace needs and the Assessor requires additional time to undertake the assessment
	<p>To be considered in circumstances where the working environment is perceived to be 'non uniform' such as Agricultural / Farming, Fishery or Coastal and Outdoor or Physical Tasking</p> <p>To be considered for assessments involving hearing conditions / impairment / deaf in circumstances where a Customer is not able to access captioning on video calls and/or technology or</p>	<p>For all Supported Internships where the Customer requires additional advice where a Statement of Special Educational Needs is not issued.</p> <p>For all new and review applications to the Transitional Employer Support Grant (TESG)</p> <p>For all applications to Access to Work Plus</p>

	human support not available	
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Out of Scope of this Specification

15. As part of the AtW: HA Contract, the Supplier must not:

- Perform AtW: Holistic Assessments in any geographical territory other than England, Scotland and Wales;
- Comment upon or provide advice to the Customer about any aspect of the AtW programme or potential decision on their pending application as to what the outcome may be;
- Provide work related support for Customers with regard to mental health provision. Mental health support will not be covered by the AtW: HA Contracts;
- Deliver any equipment or any training that may be recommended within the Holistic Assessment Report;
- Provide driving assessments;
- Directly or indirectly market or promote any services to Customers.

Assessors

16. The Authority will require the Assessors to:

- contact the Customer and Employer (unless otherwise indicated on the Holistic Assessment Referral Form) to make an appointment and record the appointment on PRaP within two (2) Working Days of Referral;
- undertake Holistic Assessments. Recommendations made must be designed to overcome work-related barriers relevant to the Customer's disability;
- demonstrate a sound understanding of the disability issues experienced by Customers and be able to identify appropriate options for support to address the barriers in Customers' Workplace;
- provide advice and guidance on technical and ergonomic issues;
- have a thorough understanding of what the Customer can be expected to do independently and record such advice in the 'Progression planning' section of the Holistic Assessment Report;

- have a thorough understanding of the range of solutions available to support the Customer in the Workplace. The Assessor needs to have the knowledge to be able to provide three quotes for the recommended solutions in the Holistic Assessment Report;
- produce a Holistic Assessment Report that must be received by the Authority within;
 - eight (8) Working Days of Referral (Virtual Standard Holistic Assessment);
 - ten (10) Working Days of Referral (Face-to-Face Standard Holistic Assessment);
 - twelve (12) Working Days of Referral (Enhanced Holistic Assessment).

Supplier's Staff

17. The Supplier shall;

- provide suitably qualified Assessors with appropriate expertise. Assessors must have a minimum of one (1) year's relevant experience delivering similar services in a vocational setting. The Supplier is responsible for ensuring that Assessors engaged on this Agreement have the necessary competencies including, but not limited to;
 - excellent communication skills, both written and verbal;
 - proven skills and knowledge to deal effectively with people with disabilities;
 - the ability to work under instruction and within a team;
 - the ability to establish appropriate relationships with Customers and Employers;
 - the ability to understand and follow policies and procedures relating to confidentiality;
 - an awareness of safeguarding vulnerable adults;
 - a basic understanding of health and safety issues.
- ensure that Assessors are screened and vetted in accordance with the HMG requirements described in HMG personnel security controls - GOV.UK (www.gov.uk).

- ensure that Assessors and other staff that have direct dealings with Customers comply with legislation relating to safeguarding and protecting vulnerable groups. The Supplier must ensure and provide evidence that such staff are fully vetted and have passed a Disclosure Barring Service check prior to commencing working with AtW Customers;
- provide and fund appropriate Continuing Professional Development (CPD) of Assessors in their area of expertise at no extra cost to the Authority. Such activity must not interfere with or interrupt the Supplier's obligations and delivery. The Supplier must have systems in place to share and improve best practice and shall make available on request by the Authority evidence of their Staff's CPD;
- undertake the Assessments and provide a single Holistic Assessment Report for each Referral within the timescales specified by the Authority;
- be able to respond to the fact a Customer's Workplace could be, depending on the type of employment, at an office, a factory or the Customer's home (this list is not exhaustive). Details of the location where the Holistic Assessment is to take place will be provided on the Holistic Assessment Referral Form;
- be able to respond to the fact that a Customer may have more than one regular place of work e.g. hybrid working or split-site offices. Wherever possible, the Holistic Assessment Report should capture requirements for the job role for all places of work in one Holistic Assessment Report. If a subsequent or additional visit to premises is necessary to enable full completion of the Holistic Assessment Report across all sites, the DWP Case Worker will provide instruction on what action to take. This may include the Authority providing the Supplier with another Referral for the alternative Workplace, with the second Assessment paid at the relevant rate;
- meet any reasonable requests made by Customers to accommodate additional needs at no extra cost to the Authority. Additional needs include but are not limited to, an Assessor of the same gender as the Customer; an interpreter or a signer capable of British Sign Language. When an additional need is identified at the initial contact meeting and it is not practical to accommodate it immediately, the Supplier shall ensure that an alternative appointment is arranged and held within two (2) Working Days and shall ensure that the Customer's additional need is accommodated at all relevant future scheduled appointments/ interventions;
- do the following within the specified timescales, should the Customer not attend their appointment;
 - record the reason given for the cancellation and report with MI, and;
 - notify the DWP Case Manager that the appointment has been cancelled, and;

- **schedule a new appointment with the Customer.**
- **ensure that all staff engaged on this Agreement are fully trained and capable to perform the work with which they are tasked. In particular, staff must be conversant with the operating procedures of the Authority and how to deal with Customers;**
- **ensure that Staff communicate in a professional, effective and courteous manner at all times when liaising with Customers;**
- **ensure that Staff do not use any prohibited or controlled substances on duty. Staff that are, or appear to be, under the influence of alcohol, prohibited substances or abusing controlled substances shall not be permitted to provide the Service. The Authority reserves the right to instruct the Supplier not to use an Assessor again. In the event of any dispute the decision of the Authority Representative shall be final;**
- **complete a single Holistic Assessment Report (irrespective of the number of Assessors involved in the Assessment) to the standard specified in Annex 4 and return it, electronically encrypted, to the Authority's specified e-mail address;**
- **be responsible for implementing a quality control process designed to ensure that Holistic Assessment Reports are completed to the standard specified;**
- **provide a telephone Help Desk that will be the contact point for the Authority and Customers. The Help Desk must;**
 - **provide an adequately staffed telephone service between the hours of 08:30 and 17:30 (Monday to Friday);**
 - **answer all telephone calls within ten rings;**
 - **call Customer or the Authority back within three hours if enquiries cannot be concluded immediately;**
 - **monitor their own response rates and be able to demonstrate that the specified levels of service are being met;**
 - **provide an electronic means of contact (i.e., an email address/es) for accessibility purposes and acknowledge receipt of enquiries.**
- **process requests made by Customers or the Authority and be able to demonstrate that they are prioritised and processed in an efficient, quick and customer-focused and cost-effective manner;**

- attend ad hoc meetings as and when required on the Authority's premises. At least three (3) Working Days' notice will be given by the Authority;
- attend periodic meetings with the Authority Representative to discuss performance (minimum monthly frequency);
- have a risk management process in place which is subject to review and approval by the Authority Representative on a monthly basis.

Quality

18. The Supplier shall ensure that each Holistic Assessment Report is to be completed to the specified standard in Annex 4 of this Specification;
19. Any Holistic Assessment Report supplied to the Authority that is deemed by the Authority as being not to the standard specified in Annex 4 of this Specification must be resubmitted at the Supplier's expense within one (1) Working Day of return by the Authority;
20. The Authority shall specify the reason for the Holistic Assessment Report being returned for re-work as not to the standard specified in Annex 4;
21. Holistic Assessment Reports returned for re-work shall be provided to the standard specified in Annex 4 and the specified timescales and returned by encrypted email to the DWP Case Manager;
22. The Supplier shall ensure that it has robust arrangements in place for managing and monitoring service delivery to ensure that the provision is of a sufficiently high quality.

Provider Referrals and Payment system (PRaP)

23. DWP Case Managers will be the sole source of referral, and Suppliers are not expected to recruit Customers externally.
24. Referrals will be received by the Supplier via PRaP and the Supplier will use PRaP to record Customer activity. The Supplier will therefore need to have met relevant security requirements before 5 June 2023.
25. Payment for the provision will be via the PRaP system. Information on referrals and payments is included in the Provider Guidance.

26. Direct access to PRaP will be limited to AtW: HA Suppliers. More information on PRaP can be found at:

<http://www.dwp.gov.uk/supplying-dwp/what-we-buy/welfare-to-work-services/prap/>

27. The Supplier should ensure that payment requests for approved Holistic Assessment Reports are input to the PRaP system within one month of approval being given.

Working with the Authority

Management Information

28. The Authority will use MI presented by PRaP for the on-going management of the Provision and for discussion with Providers. To further support active performance management of the contract, the Supplier will also be required to submit a Monthly Management Information Return (MMIR) to DWP.
29. The MMIR is likely to include, but is not limited to, information such as:
- For cancellations, a record of attempted Customer contact;
 - For cancellations, a record of all appointments offered to the Customer;
 - Details of the oldest case – number of days outstanding from referral and reasons for delay, and volumes outstanding at the end of each month;
 - The volume of cancellations made by the Provider in-month and year-to-date including reasons for cancellation and the date on which the Customer was re-booked;
 - The volume of cancellations made by Customers in-month and year-to-date including reasons for cancellation and the date on which the Customer was re-booked;
 - The top ten recommended solutions in-month and year-to-date;
 - The number of complaints handled by the Provider and time taken to resolve to Customer's satisfaction (In Working Days), in-month and year-to-date;
 - The number of complaints referred to the Authority in-month and year-to-date;
 - Anonymised details of the assessors engaged on the contract detailing their skills, experience, clearances and qualifications;
 - Details of the numbers and reasons where the Standard Holistic Assessment type has been changed from face-to-face to virtual or vice-versa.
30. The Authority may amend and / or supplement the information it requires in the MMIR at any time, including but not limited to amendments to cover the Supplier's organisational structures and mechanisms for delivery of the Services.

31. The Supplier shall allow DWP access to all MI throughout the life of this Agreement and maintain all data as specified in this Agreement.
32. As and when directed by the Authority or Authority Representative, a Supplier shall collect statistical data relevant to the Services being provided. The Staff shall make available for inspection all such records and work counts upon the request of the Authority within ten (10) Working Days.

Enquiries and Complaints

33. The Supplier must have an appropriate and effective complaints process across its whole supply chain to resolve Customers' complaints. The Supplier must explain its complaints process to the Customer in its first contact with them and make a clear reference to the Independent Case Examiner (ICE) and their role, including contact details. More information regarding the Independent Case Examiner can be found in the Generic Guidance for DWP Providers document - Generic guidance for DWP providers - GOV.UK (www.gov.uk). The Supplier must seek to resolve problems internally.
34. The Supplier should refer to the Complaint Resolution Core Briefing Pack for Providers (a link to this pack is given in the Generic guidance for DWP providers - GOV.UK (www.gov.uk)) and the DWP Customer Charter (see Section 2, paragraph 45 of this Specification) when reviewing its processes.
35. The Supplier must document any discussions and their outcomes, allowing the Customer to see and sign the record. The Customer will be told the outcome of issues raised by them through the complaints procedures.
36. Where a Customer is unhappy about the service they receive from the Supplier and raises a complaint, the Supplier should ensure that it follows each step of its detailed process robustly in order to bring the complaint to a satisfactory conclusion.
37. After following all steps in the Supplier's process, it must include in its final response to the Customer a standard text which signposts the Customer to contact ICE should they wish to pursue their complaint.
38. ICE will mediate between the Supplier and the participant to broker a resolution. If a resolution cannot be agreed between either party, ICE will undertake a full investigation of the complaint. To ensure that a thorough investigation can take place, the Supplier must provide all the paperwork which relates to the complaint. The ICE office will ask for these when required.

39. The Supplier shall forward any information required for the Authority in order to address or respond to the following;
- Treat Official correspondence (Public (or 'Treat Official') correspondence consists of letters or emails from members of the public or organisations and is replied to by officials rather than minister);
 - Ministerial correspondence;
 - Freedom of Information requests
 - Parliamentary questions;
 - Ministerial briefings;
 - Parliamentary Commissioner for Administration cases;
 - Press enquiries;
 - Other ad hoc queries from third parties.
40. Any requests for information made directly to the Supplier by any organisation will be forwarded to the Authority and not replied to by the Supplier.

Contract Management

41. Where the Supplier identifies problems relating to any aspects of the Services, they shall be responsible for ensuring that such problems are resolved in a manner approved by the Authority Representative.
42. The Supplier shall report in writing to the Authority Representative any proposed changes to the way in which the Services are accessed or suggestions for improving the efficiency of the Services provided. Any change in connection with this paragraph shall be made in accordance with the Change Control Procedure (as defined in Schedule 1 (Definitions) of this Agreement).

Security

43. DWP has legal and regulatory obligations to verify that the providers it works with have a reasonable standard of security in place to protect Authority data and assets. DWP is committed to the protection of its information, assets and personnel and expects the same level of commitment from its providers (and sub-contractors if applicable). In order to protect the Department appropriately, DWP has recently reviewed its Security Supplier Assurance process and requirements and has made

the applicable changes in line with industry good practice. These changes include but are not limited to:

- Updated 'Security Schedule' (see Schedule 2.4 of this Agreement);
- The completion of the 'Information Security Questionnaire' as part of the tender submission and annually thereafter;
- Compliance with the DWP's relevant policies and standards, found at gov.uk;
- Compliance to industry good practice such as 'ISO27001' and certification to 'Cyber Essentials'.

44. Further information about DWP's security safeguards and requirements can be found in this Agreement.

DWP Customer Charter

45. DWP is committed to providing high quality and efficient services to our customers. The DWP Customer Charter sets out the standards that Customers can expect and what their responsibilities are in return. DWP are dedicated to raising the standards of all our contracted provision and require all providers and sub-contractors to embed the principles of the Customer Charter into the services they deliver on DWP behalf. The customer charter can be found at:
<http://www.dwp.gov.uk/docs/customer-charter-dwp.pdf>

Social Value

46. The Supplier acknowledges that reduction of the disability employment gap is key to the Authority in the delivery of the Agreement.

47. The Supplier shall:

- carry out the actions and activities; and
- ensure that its conduct in providing the Services and any other actions in connection with Agreement are reflective of the principles,

set out in its response to question number 1.4.7 of the invitation to bidders for the procurement of this Agreement, as set out in the Tender.

Section 3: The Commercial Approach

Anticipated Contract Value

1. Anticipated value for the Programme for the initial four years will be £14,200,000 exc. VAT (£17,040,000 inc. VAT) across both AtW: HA Contracts. The "Anticipated Contract Value" for each AtW: HA Contract is therefore £7,100,000 exc. VAT (£8,520,000 inc. VAT).
2. Anticipated value for the Programme for the initial four years + additional two years will be £21,300,000 exc. Vat (£25,560,000 inc. VAT) across both AtW: HA Contracts.

Working with Small and Medium Enterprises

3. DWP is committed to supporting the Government's SME agenda by encouraging either direct or indirect spend with SME third party providers where it is relevant to the contractual requirement and provides value for money. DWP therefore actively encourages providers to make their sub-contracting opportunities (if applicable) accessible to SMEs and implement SME-friendly policies by:
 - opening their supply chain to SMEs by splitting requirements into smaller elements to make them more attractive to the SME market whilst bringing innovation, flexibility and value for money;
 - advertising any sub-contracting opportunities where appropriate and economical to do so, for example by using Contracts Finder or informing local networks/partners;
 - where possible paying SMEs earlier than the contractual requirement of 30 days from receipt of valid invoice; and
 - working with SMEs throughout the life of the contract to develop innovative and cost-effective solutions delivered through the supply chain.

Section 4: Delivery Expectations

Introduction

1. This section provides an overview of the delivery expectations relating to quality, performance and contract management for this Agreement. Supporting information will be detailed in the AtW: HA Provider Guidance.
2. DWP is committed to raising the standards of its contracted provision, making continuous improvement an integral part of its contracting arrangements.

Key Performance Indicators

3. The Key Performance Indicators are detailed below. The KPI Targets are minimum performance levels and the Authority expects them to be maintained for the duration of this Agreement. Where there is room for improvement, the Authority expects performance to improve over the course of this Agreement.

Key Performance Indicator	Description	Target	Cabinet Office 4 Tier Performance Levels*
KPI 1: Acknowledging the Referral	Referral acknowledged on PRaP within one (1) Working Day of receipt from DWP	99%	
KPI 2: Arranging the Holistic Assessment	Appointment made and recorded on PRaP within two (2) Working Days of receipt of Referral from DWP	96%	4 - Good = 96% and above 3 - Near Target = 93.5% to 95.9% 2 - Needs Improvement = 91% to 93.4% 1 - Inadequate = Less than 91%
KPI 3: Completing the Holistic Assessment Report	Holistic Assessment undertaken and Holistic Assessment Report received by DWP within: <ul style="list-style-type: none"> • eight (8) Working Days of receipt of Referral (Virtual Standard Holistic Assessment) • ten (10) Working Days of receipt of Referral (Face to Face Standard Holistic Assessment) 	96%	4 - Good = 96% and above 3 - Near Target = 93.5% to 95.9% 2 - Needs Improvement = 91% to 93.4% 1 - Inadequate = Less than 91%

DWP EMPLOYMENT CATEGORY MODEL SERVICES CONTRACT – SCHEDULE 2.1

	<ul style="list-style-type: none"> • twelve (12) Working days of receipt of Referral (Enhanced Holistic Assessment) 		
KPI 4: Quality of the Holistic Assessment Report	Holistic Assessment Report meets the standard specified in Annex 4	99%	4 - Good = 99% and above 3 - Near Target = 98% to 98.9% 2 - Needs Improvement = 97% to 97.9% 1 - Inadequate = Less than 97%
KPI 5: Reworking of the Holistic Assessment Report	Rework to be completed within one (1) Working Day upon receipt of notification by DWP	96%	
KPI 6: Social Value – Reducing the disability employment gap	Total percentage of full-time equivalent (FTE) disabled people employed under the AtW: HA Contract, as a proportion of the total FTE contract workforce	3%	4 - Good = 3% and above 3 - Near Target = 2.5% to 2.99% 2 - Needs Improvement = 2% to 2.49% 1 - Inadequate = Less than 2%

* (KPI 2, 3, 4 and 6 only – see paragraph 6)

Publication of Key Performance Indicators (KPIs)

4. Cabinet Office Civil Service Board requires that on a monthly basis all Government Departments capture the performance of their 'Gold' and 'Silver' tiered contracts by recording the achievements of the top three KPIs for each contract, plus any Social Value KPIs, with the performance data being reported to the Cabinet Office quarterly for publication on GOV.UK.
5. For this Agreement the top three KPIs are KPIs 2, 3 and 4 and the performance data will be reported on a rolling three-month basis (as referred to in paragraph 13 below). KPI 6 will be reported as the Social Value KPI and shall be reported quarterly.
6. For the avoidance of doubt, the Cabinet Office 4 tiers of performance levels are for reporting purposes only, and do not affect whether a KPI target has been met for performance purposes.

Customer Insight

7. Every month, the Supplier will be required to obtain information from Customers on the usefulness of the Programme. This will be done by the Supplier asking the specific question(s) and follow up (by email, link to a provider portal, website or on-line survey and where no other option available, by telephone) detailed below.

Question 1: "Thinking about your overall experience of the services provided, how satisfied are you with the AtW Holistic Assessment?"

Very satisfied;

Fairly satisfied;

Fairly dissatisfied;

Very dissatisfied.

Question 2: "Please can you tell us more about why you chose your response? Please be as detailed and specific as possible."

8. Customers will be required to record their response to the questions. Where Customers provide responses by telephone, the Supplier will create and maintain a detailed written record of the response. The Supplier is required to collate the Customer responses in the template to be provided by the DWP.
9. The Supplier will send the completed template to DWP by the 15th day of the following month. If the 15th day happens to be a non-Working Day, then the deadline shall move to the next Working Day. The Supplier will maintain each Customer response, which DWP may request to review in the future.
10. DWP reserves the right to publish Customer responses or a summary of Customer responses (either in the form provided, or in any other form it sees fit). The Authority also reserves the right to amend the specific questions or add additional questions that the Supplier asks Customers on a monthly basis.
11. Additionally, the Authority reserves the right to require the Supplier to ask the Customer the questions on a more or less regular basis. The frequency of collating Customer responses and the deadline for providing the Authority with the completed template can also be varied by the Authority. The Authority also reserves the right to amend the template.

Performance Management

12. The Authority intends to utilise (without being bound by) its Performance Management and Intervention Regime (PMIR) – see Appendix 1 of this Section 4. This will centre on monthly Contract Performance Review (CPR)

meetings which will be the key vehicle through which the Authority drives delivery of performance and service delivery through the AtW: HA Contracts.

13. CPRs will be conducted by the Authority with the Supplier and will focus on reviewing the Supplier's delivery of services against the contractual performance levels. Supplier performance will be managed on both quantitative and qualitative aspects of the contracts, including, but not limited to, an in-month, rolling three-month, rolling 12-month and cumulative basis from the Service Start Date.
14. An Action Plan will be submitted monthly by the Supplier to the Authority. The purpose of the Action Plan is to give assurance that the Supplier has identified the top areas for improvement and has documented specific actions they will take to improve those area. The Action Plan will be reviewed at each CPR.
15. The Authority will use MI presented by PRaP for the on-going management of the provision and for discussion with the Supplier. The Authority will also expect the Supplier to capture and use their own MI and retain evidence for contractual and performance purposes.
16. DWP's performance teams may visit Supplier premises or undertake assurance remotely on an ad hoc (announced and unannounced) basis to investigate performance, for example, under-performance or high performance.
17. As the Authority is committed to transparency on how its programmes are working, the Supplier needs to be aware that MI may be shared across AtW: HA Suppliers and may also be fed into published official statistics on DWP provision. The Supplier must treat information they have access to as restricted, and for their use only, ahead of formal publication. Official statistics may also cover the Authority's assessment of delivery of the services against the contractual KPIs at AtW: HA Supplier level.
18. At a national level, the Authority will host regular Operations, Partnership and Stakeholder Forums to give a strategic focus to Programme performance and delivery.
19. Where required, DWP will invoke the right to move through the four stages of intervention, as deemed appropriate by DWP according to the Supplier's level of performance and responsiveness to meeting requirements. This is in addition to any other rights or remedies available to the Authority under this Agreement.

20. The Authority will also conduct regular evidence-based compliance checks to assess the performance of the Supplier and to ensure that the Supplier is adhering to the delivery model set out in this Agreement. Checks will be conducted on the service delivery requirements as described in the Customer Journey (see Annex 1), the KPIs and in the MMIR. These measures, and the Suppliers ability to meet them, will be regularly assessed by DWP Performance Managers as part of business as usual.

21. The Supplier must have the necessary remote IT equipment, which must comply with the relevant DWP policies as defined in the appropriate section of this Agreement, to enable the Authority to carry out centralised checks of the Supplier's systems; this includes the provision of any necessary electronic evidence that is required to undertake the checks effectively.

Appendix 1 - Performance Management and Intervention Regime levels

The four Levels of the Performance Management and Intervention Regime are;

Level 1: Standard action – DWP Performance Manager led. Performance will be managed on both quantitative and qualitative aspects of the contract as detailed above.

Level 2: Enhanced action – DWP Performance Manager / DWP Senior Performance Manager led. An Action Plan will be used to capture all agreed actions for performance improvement including incremental performance and pipeline data that may lead to outcomes, review dates and the Management Information to inform the KPIs.

Level 3: Informal action – DWP Provision Lead or above led. Supplier will be invited to a meeting to discuss performance and will receive a management letter to request that performance improves. At this stage the Supplier will be informed that formal action could be taken in the event that performance doesn't improve.

Level 4: Formal action - DWP Provision Lead or above led. The Authority will take formal action by issuing a notice to address failure to respond to previous intervention activities undertaken. In the event that performance does not improve to the levels stipulated in the KPIs the Authority may take action to terminate the contract.

Section 5: The Funding Model

1. The AtW: HA payment model will be Payment by Results (PbR) with an Outcome Payment for each delivery by the Supplier to the Authority of a Holistic Assessment Report in accordance with the Specification, as more particularly described in the definition of "Outcome" in Schedule 1 (Definitions) of this Agreement.

Outcome Payment

2. Each Outcome Payment will be paid at the unit price relevant to the type of Assessment (Virtual Standard Holistic Assessment, Face-to-Face Standard Holistic Assessment or Enhanced Holistic Assessment), as more particularly described in this Agreement.
3. The unit price for each type of Assessment (Virtual Standard Holistic Assessment, Face-to-Face Standard Holistic Assessment, Enhanced Holistic Assessment) will be derived from the Supplier's financial proposal.

Section 6: Assurance and Governance

The Department's Code of Conduct

1. The Department's Code of Conduct spells out the key values and principles of behaviour which DWP expects of its providers which are essential for creating healthy, high performing supply chains. Suppliers that contract with the DWP will be expected to operate in accordance with the Code of Conduct.
2. The Code is in Annex 1 of the DWP Commissioning Strategy and can be found at: DWP Commissioning Strategy 2021 - GOV.UK (www.gov.uk)

The Disability Confident Scheme

3. Disability Confident is a condition of contract with the DWP and Level 3 accreditation must, unless already obtained, be obtained within 12 months of the commencement date of the CAEHRS between DWP and the CAEHRS provider. If a CAEHRS provider does not achieve Level 3 accreditation within 12 months of the commencement date of the CAEHRS between DWP and that CAEHRS provider, the CAEHRS provider will be Suspended (as defined in the CAEHRS) until they obtain such Level 3 accreditation.
4. More information can be found at: How to sign up to the Disability Confident employer scheme - GOV.UK (www.gov.uk)

Life Chances Through Procurement (LCTP)

5. DWP is committed to increasing the life chances for the whole country and LCTP supports and enhances DWP's progress against the sustainable development agenda.
6. The Supplier must adhere to the LCTP principles and comply with the LCTP requirements. Further information on LCTP Guidance for DWP providers can be found at: Life chances through procurement guidance for DWP contractors - GOV.UK (www.gov.uk)

Annex 1: Customer Journey

1. The (potential) Customer applies for Access to Work using the online service or by telephone.
2. The DWP Case Manager reviews the application and completes eligibility checks.
3. The DWP Case Manager will contact the Customer to provide an overview of the Assessment types (Virtual Standard Holistic Assessment, Face-to-Face Standard Holistic Assessment, Enhanced Holistic Assessment) and ensure the Customer is available for an assessment. If the Customer cannot decide on the Standard Assessment type, Virtual will be selected as default.
4. The DWP Case Manager completes a Holistic Assessment Referral Form and sends to the Supplier using encrypted email and makes the referral on PRaP.
5. The Supplier contacts the Customer to discuss the availability to attend an Assessment and confirms their Assessment preference.
6. The Supplier offers the Customer at least 5 appointment slots within the timeframe specified in this Agreement.
7. The Supplier makes at least 2 attempts within the first Working Day after Referral to contact the Customer to schedule the Assessment. If unsuccessful, a further attempt should be made on the second Working Day following Referral. In making these attempts, the Supplier will
 - Ensure that the attempts to contact the Customer are made at different times of the day so as to avoid conflicting with regular scheduled commitments the Customer may have (e.g. school run)
 - Use a variety of communication modes (e.g. mobile phone, landline, email, whichever is the Customer's preferred method)
8. The Supplier will book the Customer for a Holistic Assessment appointment.
9. The Supplier completes the Holistic Assessment Report and returns to the DWP Case Manager using encrypted email.

10. The DWP Case Manager makes the decision if an award is applicable and advises the Customer accordingly, sending written notification of the award to Customer and Employer.

Annex 2 – Holistic Assessment Referral Form

Example Holistic Assessment Referral Form is provided below – Latest version will be available in the AtW Holistic Assessment Provider Guidance

Access to Work

Holistic Assessment Referral Form

Customer Information

Name:			
URN:			
NINO:			
Contact information:	Personal Email:	Personal Mobile:	Personal other:
	Work Email:	Work Mobile:	Work other:
Reasonable adjustment agreed: (If none leave blank)			

Third Party Information - Leave blank if not applicable

Name:		
Contact information:	Personal Email:	Personal Mobile:
	Work Email:	Work Mobile:

The Customer/Third Party is available within the next 2 working days for contact:

Use 'X' to confirm

☐

Include any times the customer isn't available within the next 2 working days:

--

Assessment Preference

Assessment Type: (use X to indicate)	Standard:	Enhanced:	
Standard Assessments Only: (use X to indicate)	Standard Face-to-Face:	Standard Virtual:	
Enhanced Assessments Only: (use X to indicate)	TESG:	Supported Internship:	AtW Plus:

To note: All Enhanced Assessments must be completed Face-to-Face

Employment Details

Employer Name:	
Employer Contact & Position:	
Address:	
Telephone / Email:	

Location of Holistic Assessment if different from above

Employer Contact & Position:	
Address:	

Telephone / Email:	

Any additional ID required by Assessor?

Yes/No – (If yes please specify)

Customer's Declared Disability and/or Health Condition

--

Customer's Job Title / Job Type

--

Customer's declared impact on job role

--

Organisational Set Up

--

Additional information provided by customer:

e.g previous experience with special aids and equipment

--

DWP Case Manager Information

Name:	
Email address:	
Contact Telephone Number:	
Working Pattern: e.g. Mon – Fri 8am to 4pm	
Date of referral:	

Annex 3a – Holistic Standard Assessment Report

Example Holistic Standard Assessment Referral Report is provided below – Latest version will be available in the AtW Holistic Assessment Provider Guidance

Access to Work

Holistic Standard Assessment Report

Customer Information

Name:	
URN:	
NINO:	

Assessment Type Completed

Standard Assessments Only: (use X to indicate)	Standard Face-to-Face: <input type="checkbox"/>	Standard Virtual: <input type="checkbox"/>
--	---	--

The assessor must inform the DWP Case Manager immediately if they find that any information on the referral form is incorrect.

Employment Details

Job title only

--

The place of assessment (this could be more than one)

Customer's (i.e. employee's) employment address as stated on the referral form

Address other than employees' workplace (this must be authorised by DWP Case Manager in advance of the assessment)

Job analysis

To include, working pattern, office-based, mobile, and job description.

Disability/Health condition

Including any secondary disabilities not already identified.

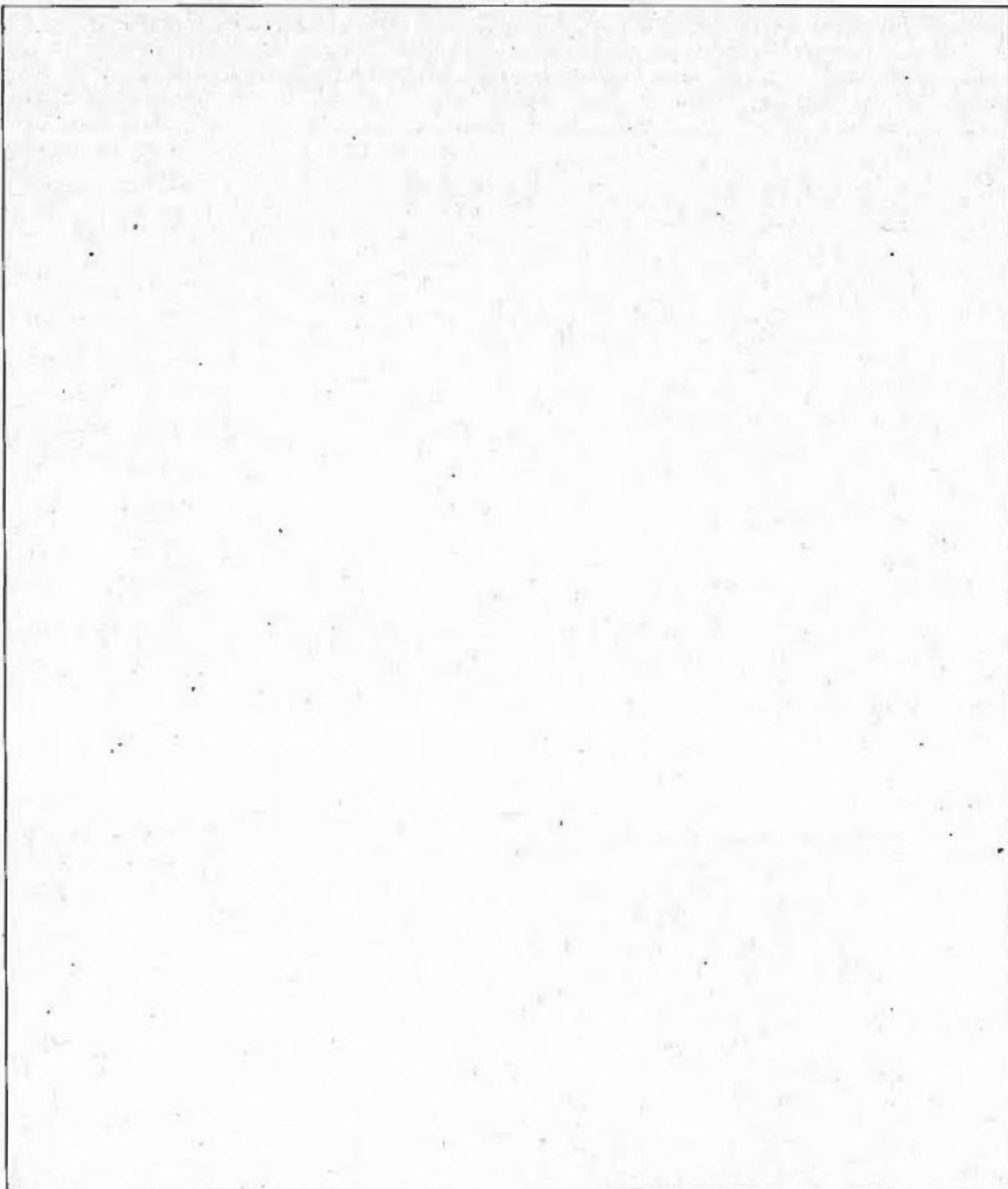
Include History, relevant medical details, medication and current professional help.

Assessment of needs

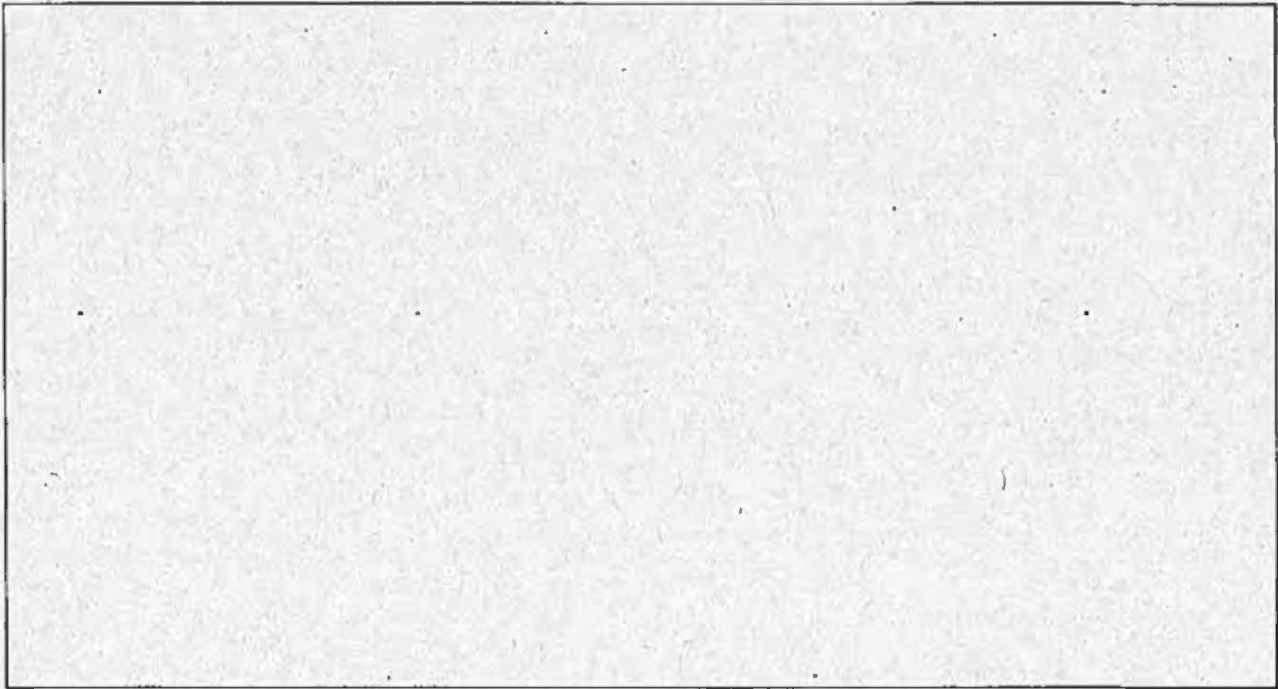
The holistic assessment must present the barriers and give subsequent solutions for each one with each recommendation highlighted in bold. The assessment must be Holistic. It must include details of why current equipment/solutions are not meeting the needs of the customer.

Employer Section - the assessment must detail the capacity and knowledge of the organisation to highlight any areas of awareness or training to be addressed. It must address the compatibility of solutions with the employer's IT.

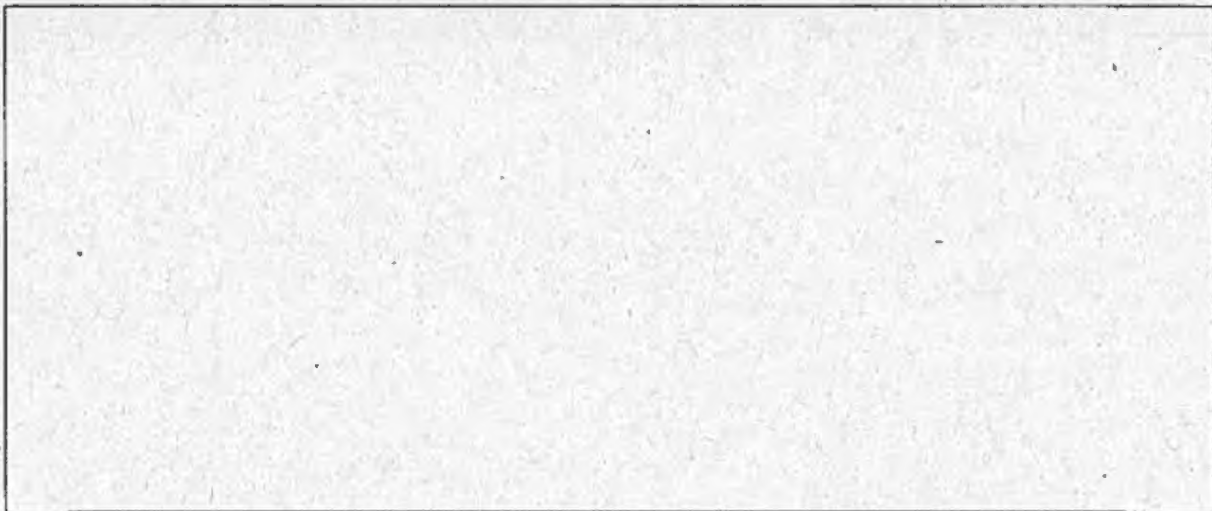
Recommendations to be completed for all assessment types - should not just be an equipment list but be specific on the specification and qualities required of a particular item and must meet the minimum need for the customer. For example, do not just list a specific magnifier but state what it needs to be able to do and why for this customer (barrier, requirement, possible solutions). This will facilitate comparisons and potentially allow employers to source best value. Full justification must be given for any recommendations.



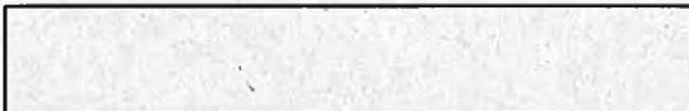
Quotes & Suppliers. Provide on a **separate page** three quotes for each item over £500 to assist the employer in purchasing.



Progression planning - Reports should include a prognosis for independence and a suggested programme of tapering withdrawal of people support as appropriate. For example, public transports increasing accessibility is reviewed in travel to work therefore we would consider technology reviews for support worker duties to facilitate independence if possible. You should detail steps being taken to support progression into mainstream employment if appropriate.



Supplier's Name



Name of Assessor

Assessor's Signature

Date of Assessment

If you have any queries on the content of this report, please refer back to your DWP Case Manager.

Sole Supplier Information

Customer Name Customer URN

Customer workplace barrier

What is the task that the customer cannot do, what has the item to overcome?

Proposed Solution

What does the solution need to do/provide?

Proposed Supplier

Why is this supplier the only person who can supply the item or solution? State clearly the specialist nature of the item.

Please provide contact details of three other companies in the same field of expertise who have been approached for quotes and have confirmed they are unable to provide the item or an alternative solution.

Annex 3b – Holistic Enhanced Assessment Report

Example Holistic Enhanced Assessment Report is provided below – Latest version will be available in the AtW Holistic Assessment Provider Guidance

Access to Work

Holistic Enhanced Assessment Report

Customer Information

Name:	
URN:	
NINO:	

Assessment Type Completed

Enhanced Assessments Only: (use X to indicate)	TESG: <input type="checkbox"/>	Supported Internship: <input type="checkbox"/>	AtW Plus: <input type="checkbox"/>
--	--	--	--

The assessor must inform the DWP Case Manager immediately if they find that any information on the referral form is incorrect.

Employment Details

Job title only

--

The place of assessment (this could be more than one)

Customer's employment address as stated on the referral form

Address other than employees' workplace

(This must be authorised by DWP Case Manager in advance of the assessment)

Job analysis

To include, working pattern, office based, mobile, and job description.

Disability/Health condition

Including any secondary disabilities not already identified.

Include History, relevant medical details, medication and current professional help.

Assessment of needs

The holistic assessment must present the barriers and give subsequent solutions for each one with each recommendation highlighted in bold. The assessment must be

holistic. It must include details of why current equipment/solutions are not meeting the needs of the customer.

This section should also present an assessment of needs - where individual support needs are in excess of 20% of the employee's role, including:

- job aide,
- on-going job coach support,
- extra supervision needed to enable the employee to deliver the job, and
- support that is not directly related to workplace activities (e.g., personal finances or handling difficult personal matters) but is necessary to sustain employment.

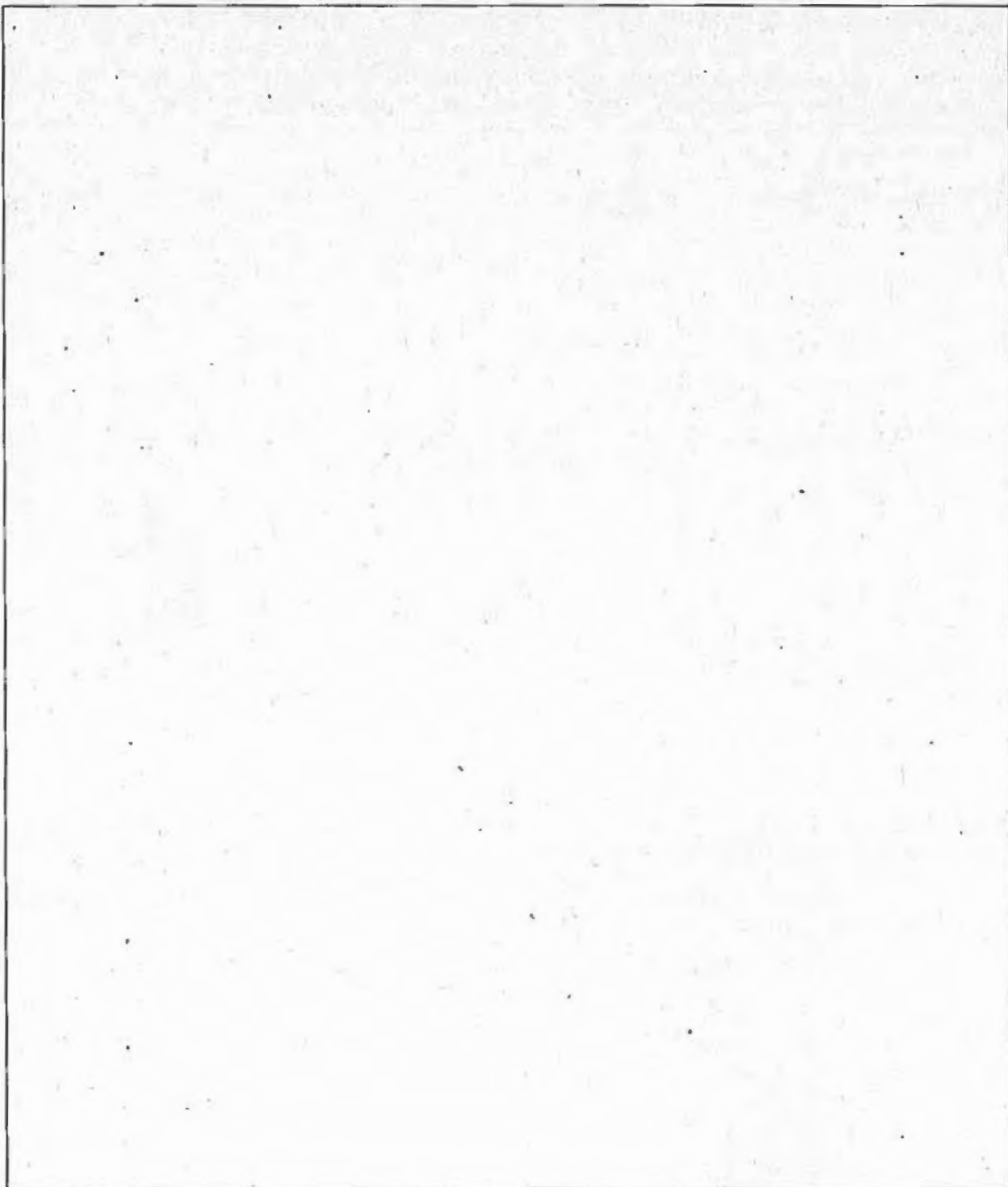
In addition to the information above, provide details of any adjustments the employer has made to the employee's job role, which could include performance requirements and the scope of the job. Identify if the employer has limited the work tasks and/or is allowing longer than that usually required for an employee to complete the work tasks.



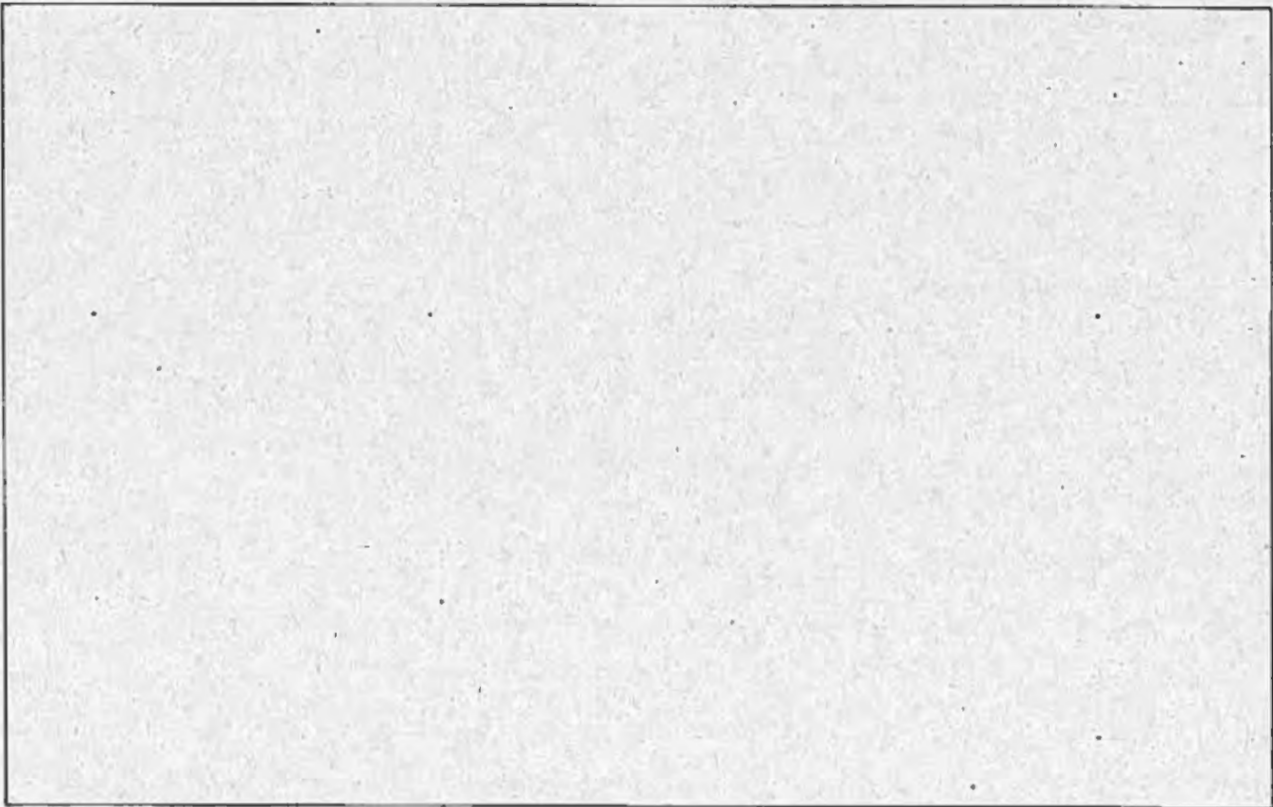
Employer Section - the assessment must detail the capacity and knowledge of the organisation to highlight any areas of awareness or training to be addressed. It must address the compatibility of solutions with the employer's IT.

It should also include details of employer, Health & Safety requirements and steps the employer is taking to accommodate the individual e.g. by tailoring the job to accommodate the employee's disability such as: adapting business processes, machinery, the pace of work expected and the extent of the job role (job carving).

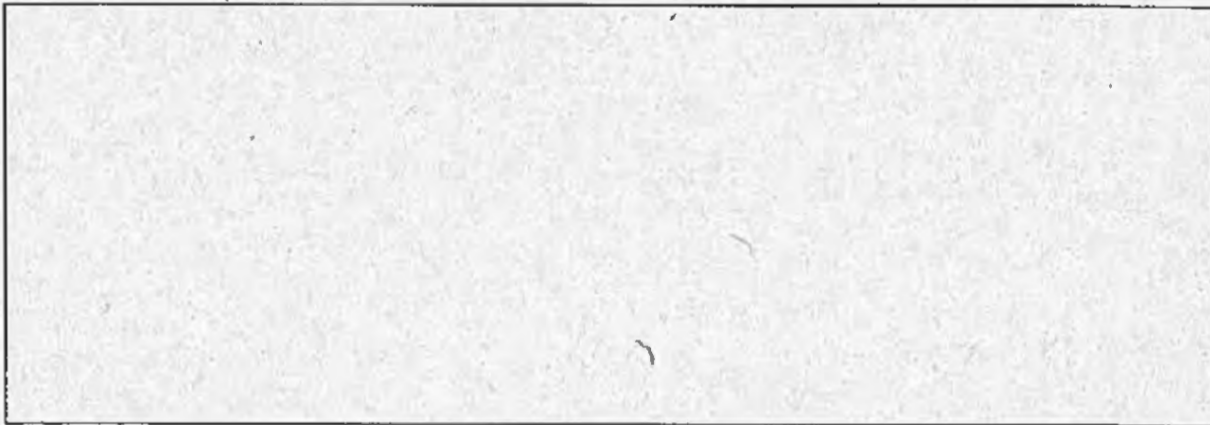
Recommendations to be completed for all assessment types - should not just be an equipment list but be specific on the specification and qualities required of a particular item and must meet the minimum need for the customer. For example, do not just list a specific magnifier but state what it needs to be able to do and why for this customer (barrier, requirement, possible solutions). This will facilitate comparisons and potentially allow employers to source best value. Full justification must be given for any recommendations.



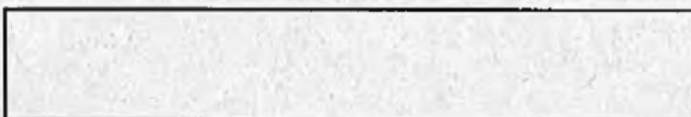
Quotes & Suppliers. Provide on a **separate page** three quotes for each item over £500 to assist the employer in purchasing.



Progression planning - Reports should include a prognosis for independence and a suggested programme of tapering withdrawal of people support as appropriate. For example, public transports increasing accessibility is reviewed in travel to work therefore we would consider technology reviews for support worker duties to facilitate independence if possible. You should detail steps being taken to support progression into mainstream employment if appropriate.



Supplier's Name



Name of Assessor

Assessor's Signature

Date of Assessment

If you have any queries on the content of this report, please refer back to your DWP Case Manager.

Sole Supplier Information

Customer Name Customer URN

Customer workplace barrier

What is the task that the customer cannot do, what has the item to overcome?

Proposed Solution

What does the solution need to do/provide?

Proposed Supplier

Why is this supplier the only person who can supply the item or solution? State clearly the specialist nature of the item.

Please provide contact details of three other companies in the same field of expertise who have been approached for quotes and have confirmed they are unable to provide the item or an alternative solution.

Annex 4 – Standards

Specified Standard

1. The Authority is keen to ensure that the quality of Access to Work provision provided by the Supplier is exemplary.
2. The Supplier is responsible for ensuring that Customers and their Employers have access to suitable and high-quality support in a way that provides a good service and an excellent Customer experience. For Access to Work to offer the most effective support possible to Customers, a number of key features are integral to delivery. In providing the Service the Supplier is required to:
 - focus strongly on speed and accuracy;
 - demonstrate a sound understanding of the breadth of disability issues which may be experienced by the Customer and the appropriate support options available to address the Customer's workplace barriers to meet each Customer's minimum needs;
 - provide advice and guidance on technical and ergonomic issues.
3. In particular, the Holistic Assessment Report (see Annex 3a and Annex 3b) shall be in the format specified below and be fit for purpose:
 - legible and in plain language;
 - checked for grammar, spelling and punctuation;
 - well-presented and of good quality;
 - In point 12 Arial font (unless alternative requirements are needed due to the Customer's disability);
 - logically sequenced, clear, informative and complete;
 - fully detailed and consistent (please note it will be seen by the Customer and/or their Employer);

- not prescriptive but provides recommendations based on evidence (terminology used should demonstrate an emphasis on independence and choice);
 - each recommended solution is detailed to ensure best value for the Authority that meets the Customer need (all recommendations and quotes should be ordered from cheapest to most expensive);
4. The Holistic Assessment Report templates (see Annex 3a and Annex 3b) shall be completed and used to enable a DWP Case Manager to determine the best possible solution for the Customer in question.
 5. It is important that the Holistic Assessment Report is of good quality in accordance with the standards specified in this Annex 4 and the DWP Case Manager will define whether Holistic Assessment Reports are to the 'specified standard', based on the criteria below:
 6. A Holistic Assessment Report may be deemed not to the standard specified in this Annex 4 and therefore rejected if one or more of the following applies:
 - there are insufficient quotations or no quotations have been provided;
 - there is no sole supplier stencil (if appropriate) completed. Sole supplier stencil is included within the Holistic Assessment Reports (see Annex 3a and Annex 3b);
 - three quotations are not provided for items over £500;
 - for training quotations – if a quotation is provided per training session instead of for the complete package to avoid providing three quotations (e.g. half day support costs £150 but the Customer needs ten (10) half days, taking the cost up to £1,500, we therefore would require three quotes as the item cost is over £500);
 - quotations provided are not for exact costs. All costs should be calculated and quoted accurately;
 - quotations do not include VAT/delivery costs (for VAT calculations, any part of a penny should be rounded up to the nearest whole penny);
 - quotes are not on a separate page;
 - it is apparent that value for money has not been considered (i.e. many cheaper quotations are available);
 - in regard to chairs, if the quotations are for different specifications;

- compatibility checks are not done before recommending equipment/software;
- incorrect information is reported;
- there are spelling and/or grammatical errors that have a material impact on the report;
- the recommendation for support is not available in the Customer's area;
- where human support is recommended but there is no indication of support required (e.g. hours etc) and/or there is no full justification for why that human support is recommended;
- there is no explanation of how recommendations will overcome the Customer's difficulties;
- it is evident that the Assessor has been influenced by Customer or their representee's preference and has not considered the minimum requirements (e.g. this is sometimes evident in reported conversations with DWP Case Managers which focus on what the Customer 'prefers' or 'wants');
- there is missing information as per the referral standards (e.g. progression planning, employer section) in the report;
- there is missing information regarding the Customer's condition/ support required (for example, if an element of support is discussed with the Assessor but has not been included in the Holistic Assessment Report, such as travel to work considerations);
- It contains personal/confidential information reported to the Assessor that the Customer did not want to be disclosed on the report (Assessors should ensure that they advise the Customer that they will report anything they tell them unless otherwise stated);
- the report indicates that the Employer is not sympathetic or making reasonable adjustments when this is not the case (i.e.: reporting that time off is needed for appointments, breaks required etc.);
- the report is too prescriptive in telling the Employer what they should be doing instead of suggesting under reasonable adjustments;
- there is no evidence that a holistic approach has been taken;
- the barriers are not fully explained;

- the report is too prescriptive in advising what Access to Work will or will not pay for;
 - no job analysis is contained in the Holistic Assessment Report;
 - a bundle price is provided for equipment and does not break down the exact, individual costs within that bundle;
 - the Holistic Assessment Report otherwise does not comply with the requirements for a Holistic Assessment Report set out in this Specification.
7. If the Holistic Assessment Report has been rejected, the Supplier will be notified by e-mail within five (5) Working Days of the receipt of the Holistic Assessment Report.
 8. If the Authority decides that a Holistic Assessment Report is not to the standard specified in this Annex 4 the Supplier will be notified of the reason and will be required to review and resubmit the report within one (1) Working Day of its return.
 9. If the Supplier is concerned about a Holistic Assessment Report that has been returned for Rework, it should refer to the Single Point Of Contact (SPOC) in the AtW Team. In the absence of the SPOC the Supplier should contact the AtW Business Support Team to determine the appropriate action to take.
 10. The AtW Team will monitor the quality of Holistic Assessment Reports and the number returned to the Supplier as unacceptable on a monthly basis.
 11. This information will be discussed formally as part of regular performance reviews led by the AtW Performance Manager.
 12. Customers and their Employers will be advised that they have a period of two weeks from receipt of the report in which to respond to the report and raise any concerns.
 13. In a small number of cases, the DWP Case Manager may reject a Holistic Assessment Report for Rework and request an additional Holistic Assessment Report from the Supplier if they have concerns about the recommendations included in the existing report. This situation could arise when, for example, a Customer's representative/interpreter assists them with the Access to Work application process and this person or their Employer may also be helping the Customer to identify types of support they require and offering to provide that support.

14. If recommendations are made for building adaptations (over and above those which are required by law) to enable access to premises, the Supplier will specify quantities and suggest specialist suppliers for the Employer to contact, to investigate the feasibility of removing the barriers, but the Supplier will not recommend specific works or contractors to carry out the works.

Annex 5: Definitions

Action Plan means the monthly assurance document sent by the Supplier to the Authority that details the top areas for improvement and documented specific actions the Supplier will take to improve performance.

Agreement means the contract of which this Specification forms part, as more particularly defined in Schedule 1 of that contract.

Assessment means a Holistic Assessment of a Customer in the Workplace.

Assessor means each member of Staff conducting the Holistic Assessment and completing the Holistic Assessment Report.

AtW means Access to Work.

AtW + means Access to Work Plus.

AtW Business Support Team means the team that provides business support to the AtW Team.

AtW: HA means Access to Work Holistic Assessments.

AtW: HA Bidder means a CAEHRS, Lot 8 (National) provider bidding or, where the context requires, considering to bid in the mini-competition to which this Specification relates.

AtW: HA Contract means a contract awarded by DWP to a successful AtW: HA Bidder following the conclusion of the mini-competition to which this Specification relates, including this Agreement.

AtW: HA Supplier means a supplier under an AtW: HA Contract, including the Supplier.

AtW Plus has the meaning given in Section 2 paragraph 13.

AtW Performance Manager means the individual within DWP responsible for monitoring performance of the AtW: HA Contract, or their deputy.

AtW Statistics means the official AtW statistics published in GOV.UK

AtW Team means the centralised team of individuals engaged by the Authority who are responsible for administering the AtW applications.

Authority as defined in the order form which forms part of this Agreement.

Authority Representative as defined in Schedule 1 of this Agreement.

CAEHRS means the Commercial Agreement for the provision of Employment and Health Related Services.

CPD means continuing professional development.

CPR means contract performance review.

CSF means critical success factor.

Customer means a "Participant", as defined in Schedule 1 of this Agreement.

DWP means the Authority.

DWP Case Manager means the members of the Authority's Access to Work Team dealing with the Customer's Access to Work case.

Employer means the employer of the Customer.

Enhanced Holistic Assessment means an enhanced Holistic Assessment in accordance with this Specification.

Equality Act means the Equality Act 2010.

Face-to-Face Standard Holistic Assessment means a face-to-face standard Holistic Assessment in accordance with this Specification conducted with the Customer in their Workplace.

Help Desk means the single contact point for DWP Case Manager and Customers.

Holistic Assessment means an Assessment undertaken by the Supplier which considers all aspects of an Access to Work Customer's disability and explores all factors that impact on their Workplace barriers offering solutions to overcome those barriers.

Holistic Assessment Referral Form means the form completed by the DWP Case Manager and sent to the Supplier to refer a Customer for a Holistic Assessment.

Holistic Assessment Report means the form completed by the Supplier following a Holistic Assessment and returned to the DWP Case Manager.

Hybrid Working means where the Customer has more than one regular place of work.

ICE as defined in Schedule 1 of this Agreement.

KPI means a key performance indicator, as set out in Section 4 paragraph 3 of this Specification.

LCTP means "Life Chances Through Procurement", as set out in Section 6 paragraph 5 of this Specification.

Management Information or **MI** means "Management Information", as defined in Schedule 1 of this Agreement.

Mini-Competition as defined in CAEHRS.

MMIR means the monthly management information return to be submitted pursuant to paragraphs 288 to 30 of Section 2.

Month means a calendar month.

Outcome Payment as defined in Schedule 1 of this Agreement.

Participant as defined in Schedule 1 of this Agreement.

PRaP as defined in Schedule 1 of this Agreement.

Programme refers to the services delivered under AtW Holistic Assessments.

Provider Guidance as defined in Schedule 1 of this Agreement.

Referral as defined in Schedule 1 of this Agreement.

Rework means an additional Holistic Assessment to be submitted by the Supplier following a rejected Holistic Assessment Report, as per Paragraph 8 of Annex 4 of this Agreement.

Services as defined in Schedule 1 of this Agreement.

Service Start Date means the date on which Services for AtW Holistic Assessments referrals will commence.

SI means a Supported Internship.

Single Point of Contact means the designated contact within the AtW Team.

SME means small and medium-sized enterprises as defined by the European Union. See SME definition (europa.eu).

Staff means all Supplier staff involved in delivery of this Agreement.

Standard Holistic Assessment means a Face-to-Face Standard Holistic Assessment or a Virtual Standard Holistic Assessment.

Supplier as defined in the order form which forms part of this Agreement.

Supported Business means social enterprises whose main aim is to integrate disabled people socially and professionally. Their workforce must be at least 30% disabled or disadvantaged.

Supported Internship has the meaning given in Section 2 paragraph 13.

Transitional Employer Support Grant (TESG) has the meaning given in Section 2 paragraph 13.

Virtual Standard Holistic Assessment means a virtual standard Holistic Assessment in accordance with this Specification.

Work Choice Protected Place means full-time employment places within Supported Businesses with guaranteed funding from DWP as a result of the Work Choice contract.

Working Day as defined in Schedule 1 of this Agreement.

Workplace means the Customers' place of work. This could be, depending on the type of employment, at an office, a factory or the Customer's home (this list is not exhaustive). Details of where the assessment is to take place will be provided on the Holistic Referral Form.

Annex 6: Other Additional Information

- **DWP Generic Provider Guidance**
Generic guidance for DWP providers - GOV.UK (www.gov.uk)
- **Jaggaer**
<https://dwp.bravosolution.co.uk/web/login.shtml>
- **AtW Holistic Assessment Provider Guidance**
Access to Work holistic assessments provider guidance - GOV.UK (www.gov.uk)
- **Equality Act 2010 Guidance**
<https://www.gov.uk/guidance/equality-act-2010-guidance>
- **AtW Statistics**
<https://www.gov.uk/government/collections/access-to-work-statistics>

3: Q&A Log

to Work: Holistic Assessment – Question and Answer Log –

Issue 5 (FINAL VERSION)

16 December 2022

Invitation to Tender

	Question	Answer
<p>Annex S - Contract Cost Register</p> <p>On Annex S, Tab 5a. Contractor Costs, bidders are asked to fill in the unit costs paid to sub-contractors for each of the assessments in columns H-J. Are we correct to assume these should be in the order Virtual, F2F, Enhanced respectively?</p>		<p>This area of Annex S is to capture the unit rates for different assessment types. It is suppliers' choice which column is used in columns H-J, but ensure the explained which figure relates to which assessment type.</p> <p>Suppliers can detail which column relates to the different assessment types in the Supporting Information section at Cell C53.</p>
<p>AtW:HA Specification</p> <p>HA Specification for Final Issue, section 16, Assessors: "The Authority will require the Assessors to: contact the Customer and Employer (unless otherwise indicated on the Holistic Assessment Referral Form) to make an appointment and record the appointment on PRaP within two (2) Working Days of Referral."</p>		<p>DWP would not require this to be the same person and this can be part of the provider's consideration in designing the service.</p>

	Please can the Authority confirm that it does not require the same Assessor who will be conducting the assessment to make initial contact, and this can be part of a supplier's consideration for designing the service?	
AtW 3	<p>AtW:HA Specification</p> <p>HA Specification for Final Issue – Annex 3a & 3b: forms have a place for Assessor signature - please can the Authority confirm digital signatures are accepted?</p>	An electronic / digital signature from the Assessor will be accepted for both the Annex 3a and Annex 3b.
AtW 4	<p>AtW: HA Specification</p> <p>In the 'HA Specification Final for Issue' document, under the heading 'Volumes' on page 6, DWP provides historical data on the number of assessments completed between April 2017 to March 2022. On page 7, DWP offer indicative volumes for four years, from June 2023 to May 2027, across two tables (whole and by each contract). Could DWP please clarify if the indicative volumes are for total number of referrals (anticipated) or the total number of assessments completed (anticipated)?</p>	The total number of assessments completed (anticipated).
AtW 5	<p>AtW: TUPE</p> <p>Can DWP confirm that all individuals listed in the TUPE spreadsheets are 100% dedicated to delivery of Access to Work, if not can information relating to the % of their time they spend delivering the service be provided as this can impact TUPE eligibility</p> <p>2. In the TUPE documentation, a number of individuals have their workplace listed as 'various', are bidders to assume this</p>	Please see a new document uploaded to the ITT section on Jaggaer named 'Updated TUPE data 12Dec22'.

	<p>means they are home/remote workers? Can more detail be provided as to their location of employment?</p> <p>3. On RBLI_Sub_AtTrain, there are some employees listed as Part-time without specifying working hours, can further detail be provided on working hours as this will impact TUPE calculations</p> <p>4. The TUPE spreadsheets appear to be missing detail on the hours worked of those in Full Time employment as well. Can the Department provide this detail to support TUPE and staffing calculations</p> <p>Specification</p> <p>HA Specification for Final Issue, section 17, Suppliers' Staff outline: the required opening hours and service levels for the Help Desk.</p> <p>Is the Authority able to provide details of call volumes and use of this service for bidders to assess necessary resources to meet the service levels?</p>	
	<p>TUPE</p> <p>Please could you confirm if the TUPE information provided within Annex H includes personnel for both Peopleplus Group Limited and Royal British Legion Industries Ltd?</p>	<p>Unfortunately, the Authority does not have this information. Bidders should use their previous knowledge and expertise when assessing the necessary resource required to meet the service levels.</p>
		<p>Please see a new document uploaded to the ITT section on Jaggaer named 'Updated TUPE data 12Dec22'. This information includes personnel for Peopleplus Group Limited and Royal British Legion Industries Ltd, and their AtW: HA supply chain.</p>
	<p>Annex S: CCR</p> <p>Ref: Annex S - CCR, Tab Cost Allocation, Row 53 (% TCV), Cells M53-P53</p> <p>Currently the above-mentioned cells are derived from the percentage allocation the Bidder enters in Columns H through</p>	<p>This is an error. Please see the new version of the CCR (version 12) uploaded to the ITT section of Jaggaer. Please use this version when submitting your bid.</p>

	to I in the same tab. Upon entering some percentages between Virtual, F2F and Enhanced, Row 53 only seems to be populating the Standard Virtual percentage whereas F2F and Enhanced remain as zero. Though this is not impacting the Unit Price Per Assessment, this seems to be an error. Can the Authority firstly confirm this to be true and secondly, if it is so, can the Authority correct this error and re-issue the CCR.	
AtW 9	TUPE Can the Department confirm bidders are able to share TUPE information with their supply chain partners to enable them to understand potential TUPE liability and costs?	Bidders are able to share TUPE information with their supply chain only for the purposes of this Invitation to Tender, subject to Section C, Paragraph 7.1 of the Instructions to Bidders.
AtW 10	Annex S: CCR On Annex S, tab 11 - Volumes we've noticed rounding differences between the monthly and annual volumes. Would it be possible to provide the monthly volume figures unprotected so that we can copy over the complete volume figures.	Please see a separate document uploaded to the ITT section in Jaggaer named 'Unrounded Volumes - FOR INFORMATION ONLY'. This is for information only and Bidders should still submit the latest version of the CCR with their bids.
AtW 11	AtW: HA ITB Are bidders permitted to use tables to present information in the written bid responses (using Arial 12)?	As per Section C, Paragraph 19.4 of the ITB, AtW: HA Tenders can be presented in tables but the typeface must use Arial font size 12 (English Language and black typeface). All words in tables (including Titles, Headings and Legends) will be included within the allocated word count.
AtW 12	Specification HA Specification; para 14; previous volumes – Is the Authority able to provide a breakdown of these previous volumes per each region?	No, but historical breakdown of Assessments by geographical areas can be found in the AtW Statistics published on GOV.UK. Link has been provided in Annex 6 of the Specification.
AtW 13	Specification	The Authority is unable to provide future volumes by region.

	HA Specification; para 16; future volumes – Is the Authority able to provide a breakdown of these future volumes per each region?	
	<p>KPIs</p> <p>HA Specification; pg. 21-22 KPI table - We note the future KPI 6 relating to employees with disabilities. Given that the TUPE data does not include this information on an individual basis, please could the Authority confirm the current % of employees servicing the contracts who have a disability(s)?</p>	Unfortunately, the Authority is not able to share this information. KPI 6 will apply to each AtW: HA Contract.
	<p>Supplier List</p> <p>I would be grateful if you could confirm if the Authority has a preferred supplier list of accredited Access to Work suppliers who would be expected to obtain quotes through please.</p> <p>If there is such a list would it be possible to have sight of this please?</p>	The Authority does not have a preferred supplier list of accredited AtW suppliers.
	<p>Volumes</p> <p>We note that DWP has provided previous volumes showing the total number of assessments completed for the period 2017 – 2022. Please could provide the previous contract targets (volumes) for this period, thank you?</p>	AtW is a demand led service and the original volume assumption was 34,500 Assessments per contract year which were flat-profiled over the initial term of the contract. As stated in Section 1 Para 14 of the Specification, Years 'Apr 20 to Mar 21' and 'Apr 21 to Mar 22' were impacted by the response to Covid 19. The Authority does not guarantee any volumes of work within either AtW: HA Contract.
	Attachments	Only PDF versions will be available for review.

	Would it please be possible for the authority to share Word versions of the draft contract term documents (currently provided as PDFs)?	
ATW 18	<p>Gantt Chart</p> <p>Question 2.4.10 states that bidders can provide a Gantt chart to accompany the response, but that this must be in PDF format. For the avoidance of doubt, can the authority please confirm whether bidders can use Microsoft Project to produce the chart as long as this is then uploaded to the portal as a PDF attachment on a single A3 page (as opposed to remaining in MS Project format)?</p>	Bidders can use Microsoft Project to produce the chart, but it will need to be converted to PDF before uploading.
ATW 19	<p>TUPE</p> <p>Thank you for the recently amended TUPE documentation. A number of individuals have their workplace listed as various or peripatetic - can more detail be provided as to the locations/regions that these employees operate in?</p>	The Authority does not hold this information. No further updates to the TUPE information will be provided.
ATW 20	<p>Local Authorities</p> <p>Would it be possible to provide a breakdown of the local authorities within each of the Access to Work regions please?</p>	AtW: HA is a national contract. The contract will cover all Local Authorities within England, Scotland and Wales.
AtW 21	<p>Volumes</p> <p>Could DWP please clarify if the contract value is capped, or if providers will be paid for any assessments completed in excess of the projected volumes?</p>	The Authority will pay a unit price for each completed Holistic Assessment Report that meets the standard specified in the Specification. The TCV is an estimated value at this stage.
ATW 22	<p>Volumes</p> <p>Regarding the indicative data provided in the table in section 17 (page 7) of the specification, there is a possibility that mix of</p>	See response to ATW 21

	<p>assessment types may vary considerably over the 4-year term. Can you confirm if the TCV is capped or if the contract awarded unit fee per assessment type would be payable? Therefore, adjusting the TCV to ensure the volume of 44,200 is achieved regardless of Assessment Mix. For your preferred option, please can you describe the process that will be used.</p>	
	<p>Volumes</p> <p>Please can you confirm if the indicative volumes provided in the table in section 17 (page 7) of the specification, factor in the clearing of the 'head of works' build-up of outstanding referrals? If not, please advise what your plan is regarding the additional volumes and how this may likely impact the successful providers</p>	<p>There is ongoing work by DWP to clear the 'head of works' build-up of outstanding referrals. This work has been taken into account when devising the indicative referral volumes in paragraph 17 of Section 1 of the Specification.</p>
	<p>T&Cs</p> <p>For clarity, can you confirm if there will be any opportunity to suggest amendments to the proposed contract, and if so, what is your preferred process for doing so?</p> <p>Holistic Assessments</p> <p>Is there any scope for the assessment type (including enhanced) to be driven based on clinical need, rather than recommendation of a DWP advisor or customer choice, possibly once the referral has reached the provider, to prevent changes being requested?</p>	<p>Please see Section C paragraph 4.1 of the AtW ITB. AtW: HA Bidders are not permitted to submit their own terms and conditions.</p> <p>The workplace Holistic Assessment is an objective analysis of how the customer's condition will affect their ability to do a job; it includes recommendations for the provision and purchase of specialist equipment, workplace adaptations or a remote support worker. The Holistic Assessment is not an assessment to identify or diagnose an individual's condition or causes; for this reason there is no scope for the assessment type to be driven based on clinical need. The preferred driver for the assessment type is customer choice; offering freedom and flexibility to empower customers to make decisions that meet their needs.</p>

AtW 26	<p>Specification - KPIs</p> <p>Could enhanced assessment have a longer duration in KPI 3 (for example 21 days) to ensure that the needs of the customer can be met more fully? This would at least allow for arranging for multiple parties and shift patterns to be accommodated and specialists such as BSL experts to be available for a specific date.</p>	<p>The Authority is confident that the current KPIs strike the right balance between maintaining performance and meeting the needs of the customer. Bidders should note that the timeframes listed in Section 4, paragraph 3 of the Specification are measured in Working Days, not calendar days.</p>
ATW 27	<p>TUPE</p> <p>The TUPE data received thus far includes only permanent staffing on the current contract, can the department confirm if this is the case?</p>	<p>The Authority's understanding is that all staff in scope for TUPE have been included in the latest TUPE data. No further updates to the TUPE information will be provided.</p>
AtW 28	<p>Assessors</p> <p>Can the department please provide data on the level of freelance/temporary assessors that are used, currently and historically on the contract, where possible please?</p>	<p>The Authority does not hold data on this.</p>
AtW 29	<p>Annex S: CCR</p> <p>Would the department consider providing a partially, or fully, unprotected Contract Cost Register (CCR)? In the current format it is difficult to understand the error checks included in the document.</p>	<p>An unprotected CCR will not be provided. Please use Annex S: CCR Version 12 provided and the guidance in Section G of the ITB.</p>
ATW 30	<p>TUPE</p> <p>Could the department please provide monthly attrition data, for each role type, for the current incumbents including the methodology of calculation for this data?</p>	<p>The Authority does not hold data on this.</p>
ATW 31	<p>Volumes</p>	<p>The current contracts do not currently contain Enhanced assessments and therefore the Authority</p>

	Would the department please provide a breakdown of the current and historical data and split of Virtual/F2F/Enhanced for completed assessments?	cannot provide this data. Bidders should use the information provided in the current ITB and Specification to write their bids.
	KPIs Could the department please provide historical data on KPI performance on the current contract, such as the performance against the Quality of the Holistic Assessment reports	All historical data has been provided in the 'MI D' folder attached to this ITT (in the section marked 'Visible to Suppliers'). The Authority will not be providing any further data on historical performance.
	Quotes Can the authority please clarify whether quotes for items that are required by the provider above £500 includes any human support quotes (interpreters, support workers) and any transport costs that may be funded by DWP?	<p>The £500.00 includes human support and transport costs as well as special aids and equipment.</p> <p>For example, if the suggested recommendation is 10 hours of support worker time and a quote is available at £45.00 per hour, then DWP would need one quote as the total support cost is £450.00 but if 20 hours of support worker time were being recommended, then DWP would need three quotes as the total cost would be above the £500.00 threshold.</p>
	Technical Envelope In Question 2.4.3 Customer Service, what does the Authority mean by the final bullet (Potential Workplace locations) within the context of the question? Do you want potential providers to explain how they will ensure excellent customer service across different types of work place locations? Or are you looking for us to detail the different potential workplace locations?	In answering this question, responses should cover how the Services will be provided in a range of workplace locations, as defined in the Specification.
	Technical Envelope Please could the Authority consider increasing the maximum word count for question 2.4.4 KPIs (Performance) to allow	The Authority considers the original maximum word limits in the Technical Envelope to be sufficient for Bidders to be able to provide full responses to each question.

	bidders to adequately respond to each of the KPIs, as well as the other elements of the question.	
ATW 36	<p>TUPE</p> <p>I would be grateful if you could confirm how the Authority would assign the TUPE list to a new prime provider please. For instance as Supplier A all people on the transfer list would only come from PeoplePlus and its subcontractors and Supplier B would only receive transfers from RBLI and its subcontractors?</p>	Please see Section C, Paragraph 27.4 of the AtW: HA ITB.
ATW 37	<p>T &Cs</p> <p>We have noted within the Instructions to Tender that HA Bidders are not permitted to submit their own Terms and Conditions, however, noting that the Terms and Conditions shared with tender documentation are 'draft', we would like to ask if it is possible to 'mark-up' or negotiate on any key areas and return with our tender submission?</p>	Please see Section C Paragraph 4.1 of the AtW: HA ITB. AtW: HA Bidders are not permitted to submit their own terms and conditions. Any documents not specifically requested as part of the tender response will not be reviewed or considered by the Authority.
ATW 38	<p>Specification: Encryption</p> <p>Could DWP provide all the technical details that relate to the encryption requirements for the receiving of the Holistic Assessment Referral Form from the DWP Case manager, referred in Annex 1, point 4 of the HA Specification Final (and the returning of it)?</p>	Bidders shall have policies and guidelines in place to manage the use of encryption. The Supplier shall ensure that the level of encryption is appropriate to the information held. This should be of a minimum standard (FIPS140-2) and be compatible with PGP Desktop Professional Version 9.6 or any subsequent upgrades the Authority may introduce. Any upgrades or changes to the Supplier's encryption software required as a result shall be at no additional cost to the Authority.
ATW 39	<p>Specification</p> <p>Section 27 – please can the authority confirm how it informs the supplier that a Holistic Assessment report has been approved so that a claim for payment can be submitted.</p>	Please see Annex 4 paragraph 7 of the Specification. If a Holistic Assessment Report has been rejected, the Supplier will be notified by e-mail within five (5) Working Days of the receipt of the Holistic Assessment Report. If no rejection has been received within this timescale, a Supplier may submit a claim

		for an Outcome Payment, subject to the provisions of the contract. For the avoidance of doubt, this provision is without prejudice to any of the Authority rights in the contract, including but not limited to those in Section 4.1 - Payment, Taxation and Value for Money Provisions. See response to Question ATW 38
	<p>Specification: Encryption</p> <p>Can the authority please confirm what protocol will be used for the encrypted inbox?</p>	
	<p>T&Cs</p> <p>Clause B2.5(g) and (h) require the Supplier, to the extent it is legally able to do so, to:</p> <ul style="list-style-type: none"> (i) hold on trust for the sole benefit of the Authority (and assign to the Authority if requested) all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services; and (ii) enforce such warranties in accordance with the Authority's reasonable directions, at the Supplier's cost. <p>Given that the Supplier has sole responsibility for agreeing those terms with any third party or Subcontractor, for managing those relationships and for any legal or financial consequences arising from them, it does not seem appropriate or practical for the Supplier to hand over the benefit of all indemnities or warranties from third parties or Subcontractors to the Authority. Would the Authority consider removing these provisions from the Agreement?</p>	<p>Please see Section C Paragraph 4.1 of the ATW ITB. ATW: HA Bidders are not permitted to submit their own terms and conditions.</p>

ATW 42	<p>T&Cs</p> <p>Could the Authority please clarify in Clause B4.6 that any changes to KPI Targets and / or Customer Service Standards need to be reasonable, evidence based, and capable of being met by the Supplier without major expenditure or changes to operations? Otherwise, we would propose that the Change Procedure should be used to make these changes – which are fundamental to the contract and its performance.</p>	Please see Section C Paragraph 4.1 of the AtW: HA ITB. AtW: HA Bidders are not permitted to submit their own terms and conditions.
ATW 43	<p>T&Cs</p> <p>Can the Authority please clarify in Clause B5.1 that it must have reasonable grounds for its belief that a Service Failure has occurred?</p>	Please see Section C Paragraph 4.1 of the AtW: HA ITB. AtW: HA Bidders are not permitted to submit their own terms and conditions.
ATW 44	<p>T&Cs</p> <p>Can the Authority please clarify in Clause B5.2(a) that its right to invoice the Supplier for Performance Improvement Admin Fees only applies where it is found that a Service Failure has occurred and where such failure is not due to an Authority Cause?</p>	Please see Section C Paragraph 4.1 of the AtW: HA ITB. AtW: HA Bidders are not permitted to submit their own terms and conditions.
ATW 45	<p>T&Cs</p> <p>There are a number of other clauses in the Agreement which currently give the Authority absolute discretion to decide something where it would be more equitable for it to act reasonably:</p> <ul style="list-style-type: none"> • Outcome Pass, Outcome Fail, Outcome Technical Fail – absolute discretion to determine whether qualifying criteria have been met • B4.2 – absolute discretion to choose Performance Measurement Point/Period and CSS Measurement Point/Period) 	Please see Section C Paragraph 4.1 of the AtW: HA ITB. AtW: HA Bidders are not permitted to submit their own terms and conditions.

<ul style="list-style-type: none"> • B5.1 – absolute discretion to give a PIN where the Authority believes that a Service Failure has occurred • B5.3(d) –absolute discretion to determine the actions the Supplier has to take to address a Service Failure • B5.12 – sole discretion to determine whether any subsequent Service Failure is substantially the same as one occurring in the previous 6 months • B9.5 – sole discretion to uphold any Participant complaint and take further action against the Supplier • C4.5 – sole discretion to determine whether any error or over claim has been identified in an Outcomes Sample • C7.2 – sole discretion to determine what may be charged to a Participant • C9.1 – absolute discretion to determine and alter the method of payment • F4A.1 - sole discretion to publish as Open Source Software all or part of the Specially Written Software and any software element of the Project Specific IPRs • F7.2 – absolute discretion to make a final decision about publication of Transparency Information • F7.8 - absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs <p>Can the Authority please consider qualifying the exercise of its discretion in the above circumstances by reference to a requirement of reasonableness?</p>	
<p>T&Cs</p> <p>Under Clause D3.7, the Authority may require the Contractor to extend the contract for a further period of up to 24 months. Clause D3.7H(b) then states that the Authority may in its absolute discretion amend the funding and payment model for</p>	<p>Please see Section C Paragraph 4.1 of the AtW ITB. AtW: HA Bidders are not permitted to submit own terms and conditions.</p>

	<p>the extended Term, including but not limited to introducing a delivery fee and amending the proportion of Fees constituted by each of the delivery fee and the Outcome Payments. Can the Authority please confirm that this clause does not allow the Authority to reduce the overall funding envelope (without issuing a Change) – but just the relevant payment model and amounts of different payments?</p>	
ATW 47	<p>T&Cs</p> <p>E1.9 – Staff Transfer and Schedule 9 Schedule 9 – Part A (Transferring Authority Employees at commencement of Services) : we note that this section of Schedule 9 is stated to be “Not Used”. Are bidders to understand from this that there are no Transferring Authority Employees? If that is the case, is the Authority willing to include a positive statement in the contract to that effect? In addition, is the Authority willing to include in the contract provisions equivalent to paragraphs 2.3 to 2.8 of Part A (i.e. as they appear when Part A does apply) to address the eventuality that anyone’s contract of employment in fact transfers from the Authority to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive?</p>	<p>Please see Section C Paragraph 4.1 of the AtW: HA ITB. AtW: HA Bidders are not permitted to submit their own terms and conditions.</p>
ATW 48	<p>T&Cs</p> <p>Clauses F2.4, F2.7 and F2.16 require suppliers to grant a perpetual, royalty free licence in their Non-COTS Background IPR to (1) the Authority, (2) any other provider of the Services and (3) for use in any Central Government programmes. We query the fairness of this clause and question its enforceability under competition law. Where suppliers have spent substantial sums on developing valuable proprietary technology, it is</p>	<p>Please see Section C Paragraph 4.1 of the AtW: HA ITB. AtW: HA Bidders are not permitted to submit their own terms and conditions.</p>

	<p>inequitable to require them to license it to competitors, or to license it indefinitely to HMG for free. Please could the Authority consider rewording this clause to require the Authority and its sub-licensees to (1) pay a reasonable licence fee to use supplier Non-COTS Background IPR after the contract ends and (2) use such licence only in connection with the Services.</p>	
	<p>T&Cs</p> <p>Clause F8.32 contains an unlimited indemnity from [Supplier] (including all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss) arising from any breach by [Supplier] of the Data Protection provisions in clause F8. (This indemnity is specifically stated in clause G1.2 to be unlimited.) We query the reasonableness of this provision, exposing, as it does, Suppliers to unlimited, uninsurable losses for any breach of clause F8. Please could the Authority consider rewording this clause to remove the reference to "all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss" and to introduce a sensible cap on liability e.g. £10m per claim and/or in aggregate.</p>	<p>Please see Section C Paragraph 4.1 of the AtW ITB. AtW: HA Bidders are not permitted to submit own terms and conditions.</p>
	<p>T&Cs</p> <p>Clause G1.4(d)(ii) provides that "...the Supplier's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed:</p> <p>(ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to one hundred and fifty percent (150%) of the Fees paid and/or due to be paid to the Supplier under this Agreement in the Contract Year immediately preceding the occurrence of the Default:..."</p>	<p>Please see Section C Paragraph 4.1 of the AtW ITB. AtW: HA Bidders are not permitted to submit own terms and conditions.</p>

	<p>Please can the Authority confirm whether, in this context, the reference to "...Fees paid and/or due to be paid to the Supplier under this Agreement in the Contract Year immediately preceding the occurrence of the Default" should in fact be a reference to fees paid etc. "in the Contract Year in which the Default occurs"?</p>	
ATW 51	<p>T&Cs</p> <p>Please can the Authority confirm the rationale for the maximum amount of the Unrecovered Payment, Breakage Costs Payment and Compensation Payment that the DWP is liable to pay to [Supplier] pursuant to Schedule 7.2 of the Agreement?</p>	<p>The Authority has used its past experience and 'Should Cost' modelling to derive the maximum values listed at Annex 1 of Schedule 7.2. The intention of these values is to strike a balance between the rights of the Supplier and the Authority in the event of termination pursuant to Clause 12.3(a) (Payments by the Authority) and the Authority is satisfied that this has been achieved.</p>
ATW 52	<p>Technical Envelope</p> <p>In Question 2.4.3 Customer Service, the last bullet point states 'Potential Workplace Locations'. We are not entirely sure what information is being sought here. Please could the Authority provide a little more context on this part of the question?</p>	<p>In answering this question, responses should consider how the Services will be provided in a range of workplace locations, as defined in the Specification.</p>
ATW 53	<p>ISQ</p> <p>All suppliers on the CAEHRS framework completed an ISQ during the initial CAEHRS bidding stage. From our understanding that ISQ would be used by the Authority during call-off tenders to ascertain ISQ information. Please could the Authority clarify whether or not separate ISQs will continue to be required on call-offs?</p>	<p>It is a requirement that an ISQ is submitted as part of any call-off competition.</p>
ATW 54	<p>TUPE</p> <p>Can the authority please provide job descriptions for the Junior Psychologists & Senior Psychologist roles listed in the TUPE data?</p>	<p>The Authority does not hold this information. No further updates to the TUPE information will be provided.</p>

TUPE	Can the authority please confirm with the incumbent providers what the redundancy terms are for each individual listed in the TUPE info provided?	The Authority does not hold this information. No further updates to the TUPE information will be provided.
ISQ	Question B11, on the Background Information tab has been pre-answered 'No' and we are unable to change this answer because we do not have the password. The service will be supported by IT components which are hosted in Microsoft Azure. Please can you provide either the password or a revised questionnaire which will allow us to select the appropriate response?	Question B11 would only be answered with 'Yes' where a Supplier were actually providing cloud services to the Authority, not where they work with or utilise cloud environments to carry out work.
T&Cs	The terms and conditions refer to payments being made in terms of an ineligible outcome. Can the Department define what would constitute an ineligible outcome?	Ineligible Outcome is a defined term. The definition can be found in Schedule 1 of the Contract.
T&Cs	The Ts&Cs also include sections on performance improvement plans in the event of a 'Service Failure'. Can the department define what would constitute such a failure?	Service Failure is a defined term. The definition can be found in Schedule 1 of the Contract.
Annex J	Please could the Authority confirm what the Unique Reference Number on Annex J refers to?	The Authority does not require bidders to provide names of the key staff but to include a 'Unique Reference Number' instead. Suppliers can use their own 'Unique Reference Number' to identify their key staff.

Annex C: Not used

SCHEDULE 2.2 – CUSTOMER SERVICE STANDARDS AND PERFORMANCE REVIEWS

1 Not used

1.1 Not used.

1.2 Not used.

1.3 Not used.

2 Customer Service Standards

CUSTOMER SERVICE STANDARDS	
Specification CSSs	
Not used.	
Tender CSSs	
Not Used	

3 Contract Performance Reviews

3.1 The Authority will conduct regular formal Contract Performance Review meetings ("CPRs") at a frequency determined by the Authority from time to time to monitor, measure and review the Supplier's performance, utilising (but without being bound by) the Authority's Performance Management and Intervention Regime ("PMIR"), which is described in the Specification. CPRs will encourage an open and regular dialogue between the Authority and the Supplier with the purpose of ensuring that the Services are being supplied in accordance with the Customer Service Standards and that the KPI Targets are being achieved. CPRs will be formally conducted and documented.

3.2 The Supplier shall:

- (a) co-operate fully with the Authority; and
 - (b) supply all information requested by the Authority; and
 - (c) arrange access to Sites requested by the Authority,
- for the purposes of conducting the CPRs.

4 Supplier Systems Assurance

4.1 The Supplier shall comply with the Authority's requirements for Supplier Systems Assurance as described in this paragraph 4 of Schedule 2.2 and notified to the Supplier by the Authority from time to time.

4.2 The primary purpose of the Supplier Systems Assurance is to provide the Authority with an assurance that payments to Suppliers are in accordance with the Authority and HM

Treasury policies, that public funds are protected and that value for money has been obtained.

- 4.3 Provider Assurance Review(s) ("**PAT Reviews**") will be carried out on the Suppliers' internal control systems to assess the Suppliers' ability to manage risk across three key areas:
- a) Governance Arrangements – covering the Supplier's governance arrangements, systems for tracking and reporting performance and their anti-fraud measures;
 - b) Service Delivery – includes the Supplier's systems for starting, ending and moving Participants through the Services and generally looks to ensure that the Authority is getting the services for which it is paying. This section also covers management of the supply chain; and
 - c) Claim Procedures and Payments – looks to ensure that Suppliers have in place effective systems to support their claims for payment, including appropriate segregation of duties.
- 4.4 On completion of each review by the Authority, the Supplier will be awarded an assurance rating in one of the following four categories – (i) weak; (ii) limited; (iii) reasonable; or (iv) strong (each a "**Supplier Assurance Rating**"). The Authority shall also send a formal report to the Supplier which details the PAT Review findings including key strengths and areas for improvement; where weaknesses have been identified the Supplier will be asked to complete an action plan setting out appropriate steps for improvement (a "**PAT Action Plan**") and this is followed up at an agreed point.
- 4.5 The timescale for a subsequent review is determined at the sole discretion of the Authority.
- 4.6 If the Supplier is attributed a "Weak" or "Limited" Supplier Assurance Rating, as notified to the Supplier by the Authority from time to time, 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.
- 4.7 If in the opinion of the Authority, the Supplier has failed to deploy the required additional resources and to take the remedial action in accordance with the PAT Action Plan by the date specified by the Authority, the Authority may treat such failure as a Non Service Failure Default and issue a Formal Warning Notice in accordance with Clause B15.
- 4.8 The Authority shall be entitled to terminate the Agreement by issuing a Termination Notice to the Supplier in the following circumstances:
- a) where the Supplier has been awarded a Supplier Assurance Rating of "Weak" or "Limited", as notified to the Supplier by the Authority from time to time, in two (2) separate consecutive PAT Reviews for reasons which the Authority regards, at its sole discretion, as similar reasons; or
 - b) where the Supplier has been awarded a Supplier Assurance Rating of "Weak" or "Limited" as notified to the Supplier by the Authority from time to time, 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.
- 4.9 Notwithstanding any other term of this Agreement the Supplier hereby gives its consent for the Authority to publish from time to time any of the Supplier's Supplier Assurance

Ratings to the general public and to provide the Supplier's Supplier Assurance Ratings to any person as the Authority deems appropriate. The Supplier shall assist and cooperate with the Authority to enable the Authority to publish and provide the Supplier's Supplier Assurance Ratings to any person the Authority deems appropriate in accordance with this paragraph.

- 4.10 The Authority will from time to time publish the Supplier's Supplier Assurance levels and will identify the Supplier by name and the Supplier hereby consents to such publication.
- 4.11 Further information regarding to the PAT Reviews can be found in the Provider Guidance:
Generic guidance for DWP providers - GOV.UK

5 Not used

5.1 Not used.

5.2 Not used.

a) Not used.

b) Not used.

5.3 Not used

a) Not used.

b) Not used.

c) Not used.

5.4 Not used.

5.5 Not used.

5.6 Not used.

5.7 Not used.

5.8 Not used.

5.9 Not used.

SCHEDULE 2.3 - STANDARDS

Standards

1 Definitions

In this Schedule, the following definitions shall apply:

- “Standards Hub”** the Government’s open and transparent standards adoption process as documented at <http://standards.data.gov.uk/>; and
- “Suggested Challenge”** a submission to suggest the adoption of new or emergent standards in the format specified on Standards Hub.

2 General

- 2.1 Throughout the term of this Agreement, the Parties shall monitor and notify each other of any new or emergent standards which could affect the Supplier’s provision, or the Authority’s receipt, of the Services. Any changes to the Standards, including the adoption of any such new or emergent standard, shall be agreed in accordance with the Change Control Procedure.
- 2.2 Where a new or emergent standard is to be developed or introduced by the Authority, the Supplier shall be responsible for ensuring that the potential impact on the Supplier’s provision, or the Authority’s receipt, of the Services is explained to the Authority (in a reasonable timeframe), prior to the implementation of the new or emergent standard.
- 2.3 Where Standards referenced conflict with each other or with Good Industry Practice, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require the prior written agreement of the Authority and shall be implemented within an agreed timescale.

3 Technology and digital services practice

The Supplier shall (when designing, implementing and delivering the Services) adopt the applicable elements of HM Government’s Technology Code of Practice as documented at <https://www.gov.uk/service-manual/technology/code-of-practice.html>.

4 Open data standards & Standards Hub

- 4.1 The Supplier shall comply to the extent within its control with UK Government’s Open Standards Principles as documented at <https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles>, as they relate to the specification of standards for software interoperability, data and document formats in the IT Environment.
- 4.2 Without prejudice to the generality of Paragraph 2.2, the Supplier shall, when implementing or updating a technical component or part of the Software or Supplier Solution where there is a requirement under this Agreement or opportunity to use a new or emergent standard, submit a Suggested Challenge compliant with the UK Government’s Open Standards Principles (using the process detailed on Standards Hub and documented at <http://standards.data.gov.uk/>). Each Suggested Challenge submitted by the Supplier shall detail, subject to the security and confidentiality provisions in this Agreement, an illustration of such requirement or opportunity within the IT Environment, Supplier Solution and Government’s IT infrastructure and the suggested open standard.

- 4.3 The Supplier shall ensure that all documentation published on behalf of the Authority pursuant to this Agreement is provided in a non-proprietary format (such as PDF or Open Document Format (ISO 26300 or equivalent)) as well as any native file format documentation in accordance with the obligation under Paragraph 4.1 to comply with the UK Government's Open Standards Principles, unless the Authority otherwise agrees in writing.

5 Technology architecture standards

The Supplier shall produce full and detailed technical architecture documentation for the Supplier Solution in accordance with Good Industry Practice. If documentation exists that complies with TOGAF 9.1 or its equivalent, then this shall be deemed acceptable.

6 Accessible digital standards

The Supplier shall comply with (or with equivalents to):

- (a) the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.0 Conformance Level AA; and
- (b) ISO/IEC 13066-1: 2011 Information Technology – Interoperability with assistive technology (AT) – Part 1: Requirements and recommendations for interoperability.

7 Service management software & standards

- 7.1 Subject to Paragraphs 2 to 4 (inclusive), the Supplier shall reference relevant industry and HM Government standards and best practice guidelines in the management of the Services, including the following and/or their equivalents:

- (a) ITIL v3 2011;
- (b) ISO/IEC 20000-1 2011 "ITSM Specification for Service Management";
- (c) ISO/IEC 20000-2 2012 "ITSM Code of Practice for Service Management";
- (d) ISO 10007 "Quality management systems – Guidelines for configuration management"; and
- (e) BS25999-1:2006 "Code of Practice for Business Continuity Management" and, ISO/IEC 27031:2011, ISO 22301 and ISO/IEC 24762:2008 in the provision of "IT Service Continuity Strategy" or "Disaster Recovery" plans.

- 7.2 For the purposes of management of the Services and delivery performance the Supplier shall make use of Software that complies with Good Industry Practice including availability, change, incident, knowledge, problem, release & deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management. If such Software has been assessed under the ITIL Software Scheme as being compliant to "Bronze Level", then this shall be deemed acceptable.

8 Environmental standards

- 8.1 The Supplier warrants that it has obtained ISO 14001 (or equivalent) certification for its environmental management and shall comply with and maintain certification requirements throughout the Term. The Supplier shall follow a sound environmental management policy, ensuring that any Goods and the Services are procured, produced, packaged, delivered, and are capable of being used and ultimately disposed of in ways appropriate to such standard.

- 8.2 The Supplier shall comply with relevant obligations under the Waste Electrical and

Electronic Equipment Regulations 2006 in compliance with Directive 2002/96/EC and subsequent replacements (including those in compliance with Directive 2012/19/EU).

- 8.3 The Supplier shall (when designing, procuring, implementing and delivering the Services) ensure compliance with Article 6 and Annex III of the Energy Efficiency Directive 2012/27/EU and subsequent replacements.
- 8.4 The Supplier shall comply with the EU Code of Conduct on Data Centres' Energy Efficiency. The Supplier shall ensure that any data centre used in delivering the Services are registered as a Participant under such Code of Conduct.
- 8.5 The Supplier shall comply with the Authority and HM Government's objectives to reduce waste and meet the aims of the Greening Government: IT strategy contained in the document "Greening Government: ICT Strategy issue (March 2011)" at <https://www.gov.uk/government/publications/greening-government-ict-strategy>.

9 Hardware safety standards

- 9.1 The Supplier shall comply with those BS or other standards relevant to the provision of the Services, including the following or their equivalents:
- (a) any new hardware required for the delivery of the Services (including printers), shall conform to BS EN 60950-1:2006+A12:2011 or subsequent replacements. In considering where to site any such hardware, the Supplier shall consider the future working user environment and shall position the hardware sympathetically, wherever possible;
 - (b) any new audio, video and similar electronic apparatus required for the delivery of the Services, shall conform to the following standard: BS EN 60065:2002+A12:2011 or any subsequent replacements;
 - (c) any new laser printers or scanners using lasers, required for the delivery of the Services, shall conform to either of the following safety Standards: BS EN 60825-1:2007 or any subsequent replacements; and
 - (d) any new apparatus for connection to any telecommunication network, and required for the delivery of the Services, shall conform to the following safety Standard: BS EN 41003:2009 or any subsequent replacements.
- 9.2 Where required to do so as part of the Services, the Supplier shall perform electrical safety checks in relation to all equipment supplied under this Agreement in accordance with the relevant health and safety regulations.

SCHEDULE 2.4 - SECURITY REQUIREMENTS

General

The Supplier shall, and shall procure that any Sub-contractor (as applicable) shall, comply with the Authority's security requirements as set out in the Agreement which include the requirements set out in this Schedule 2.4 to the Agreement (the "**Authority's Security Requirements**"). The Authority's Security Requirements include, but are not limited to, requirements regarding the confidentiality, integrity and availability of Authority Assets, the Authority System and the Supplier System.

Terms used in this Schedule 2.4 which are not defined below shall have the meanings given to them in Schedule 1 (Definitions) of the Agreement.

1. Definitions

1.1 In this Schedule 2.4, the following definitions shall apply:

"Authority Personnel"	shall mean all persons employed by the Authority including directors, officers, employees together with the Authority's servants, agents, consultants, contractors and suppliers but excluding the Supplier and any Sub-contractor (as applicable).
"Availability Test"	shall mean the activities performed by the Supplier to confirm the availability of any or all components of any relevant ICT system as specified by the Authority.
"CHECK"	shall mean the scheme for authorised penetration tests which scheme is managed by the NCSC.
"Cloud"	shall mean an off-premise network of remote ICT servers on the Internet to store, process, manage and transmit data.
"Cyber Essentials Plus"	shall mean the Government-backed, industry-supported scheme managed by the NCSC with higher level of security requirements to help organisations to protect themselves against online threats or the relevant successor or replacement scheme which is published and/or formally recommended by the NCSC.
"Cyber Security Information Sharing Partnership" or "CISP"	shall mean the cyber security information sharing partnership established by the NCSC or the relevant successor or replacement scheme which is published and/or formally recommended by the NCSC.
"Good Security Practice"	shall mean: <ol style="list-style-type: none"> the technical and organisational measures and practices that are required by, or recommended in, nationally or internationally accepted management standards and codes of practice relating to Information Security (such as published by the International Organization for Standardization or the National Institute of Standards and Technology); security standards and guidelines relating to Information Security (including generally accepted principles regarding

the segregation of the duties of governance, implementation and control) provided to the general public or Information Security practitioners and stakeholders by generally recognised authorities and organisations; and

- c) the Government's security policies, frameworks, standards and guidelines relating to Information Security.

"Information Security"

shall mean:

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

"Information Security Manager"

shall mean the person appointed by the Supplier with the appropriate experience, authority and expertise to ensure that the Supplier complies with the Authority's Security Requirements.

"Information Security Management System ("ISMS")"

shall mean the set of policies, processes and systems designed, implemented and maintained by the Supplier to manage Information Security Risk as certified by ISO/IEC 27001.

"Information Security Questionnaire"

shall mean the Authority's set of questions used to audit and on an ongoing basis assure the Supplier's compliance with the Authority's Security Requirements.

"Information Security Risk"

shall mean any risk that might adversely affect Information Security including, but not limited to, a Breach of Security.

"ISO/IEC 27001, ISO/IEC 27002 and ISO 22301"

shall mean:

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

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

"NCSC"

shall mean the National Cyber Security Centre or its successor entity (where applicable).

"Penetration Test"

shall mean a simulated attack on any Authority Assets, the Authority System (or any part thereof) or the Supplier System (or any part thereof).

"PCI DSS"	shall mean the Payment Card Industry Data Security Standard as most recently published by the PCI Security Standards Council, LLC or its successor entity (the "PCI").
"Risk Profile"	shall mean a description of any set of risks. The set of risks can contain those that relate to a whole organisation, part of an organisation or as otherwise applicable.
"Security Test"	shall include, but not be limited to, Penetration Test, Vulnerability Scan, Availability Test and any other security related test and audit.
"Tigerscheme"	shall mean a scheme for authorised penetration tests which scheme is managed by USW Commercial Services Ltd.
"Vulnerability Scan"	shall mean an ongoing activity to identify any potential vulnerability in any Authority Assets, the Authority System (or any part thereof) or the Supplier System (or any part thereof).

- 1.2 Reference to any notice to be provided by the Supplier to the Authority shall be construed as a notice to be provided by the Supplier to the Authority Representative.

2 Principles of security

- 2.1 The Supplier shall at all times comply with the Authority's Security Requirements and provide a level of security which is in accordance with the Security Policies and Standards, Good Security Practice and Law.

3 ISO/IEC 27001 compliance, certification and Audit

- 3.1 The Supplier shall, and shall procure that any Sub-contractor (as applicable) shall, obtain and maintain certification to ISO/IEC 27001 (the "ISO Certificate") in relation to the Services during the Term. The ISO Certificate shall be provided by the Supplier to the Authority on the dates as agreed by the Parties.

- 3.2 The Supplier shall appoint:

- a) an Information Security Manager; and
- b) a deputy Information Security Manager who shall have the appropriate experience, authority and expertise to deputise for the Information Security Manager when s/he is on leave or unavailable for any period of time.

The Supplier shall notify the Authority of the identity of the Information Security Manager on the Effective Date and, where applicable, within five (5) Working Days following any change in the identity of the Information Security Manager.

- 3.3 The Supplier shall ensure that it operates and maintains the Information Security Management System during the Term and that the Information Security Management System meets the Security Policies and Standards, Good Security Practice and Law and includes:
- a) a scope statement (which covers all of the Services provided under this Agreement);
 - b) a risk assessment (which shall include any risks specific to the Services);

- c) a statement of applicability;
- d) a risk treatment plan; and
- e) an incident management plan

in each case as specified by ISO/IEC 27001.

The Supplier shall provide the Information Security Management System to the Authority upon request within ten (10) Working Days from such request.

- 3.4 The Supplier shall notify the Authority of any failure to obtain an ISO Certificate or a revocation of an ISO Certificate within two (2) Working Days of confirmation of such failure or revocation. The Supplier shall, at its own expense, undertake those actions required in order to obtain an ISO Certificate following such failure or revocation and provide such ISO Certificate within one calendar month of the initial notification of failure or revocation to the Authority or on a date agreed by the Parties. For the avoidance of doubt, any failure to obtain and/or maintain an ISO Certificate during the Contract Period after the first date on which the Contractor was required to provide the ISO Certificate in accordance with paragraph 3.1 shall be deemed to be irremediable shall constitute a material Default entitling the Authority to exercise its rights under Clause 11.1(b).
- 3.5 The Supplier shall carry out regular Security Tests in compliance with ISO/IEC 27001 and shall within ten (10) Working Days after completion of the relevant audit provide any associated security audit reports to the Authority.
- 3.6 Notwithstanding the provisions of paragraph 3.1 to paragraph 3.5, the Authority may, in its absolute discretion, notify the Supplier that it is not in compliance with the Authority's Security Requirements and provide details of such non-compliance. The Supplier shall, at its own expense, undertake those actions required in order to comply with the Authority's Security Requirements within one calendar month following such notification or on a date as agreed by the Parties. For the avoidance of doubt, any failure to comply with the Authority's Security Requirements within the required timeframe shall be deemed to be irremediable and shall constitute a material Default entitling the Authority to exercise its rights under Clause 11.1(b).

4 Cyber Essentials Plus scheme

- 4.1 The Supplier shall, and shall procure that any Sub-contractor (as applicable) shall, obtain and maintain certification to Cyber Essentials Plus (the "Cyber Essentials Plus Certificate") in relation to the Services during the Term. The Cyber Essentials Plus Certificate shall be provided by the Supplier to the Authority annually on the dates as agreed by the Parties.
- 4.2 The Supplier shall notify the Authority of any failure to obtain, or the revocation of, a Cyber Essentials Plus Certificate within two (2) Working Days of confirmation of such failure or revocation. The Supplier shall, at its own expense, undertake those actions required in order to obtain a Cyber Essentials Plus Certificate following such failure or revocation. For the avoidance of doubt, any failure to obtain and/or maintain a Cyber Essentials Plus Certificate during the Contract Period after the first date on which the Contractor was required to provide a Cyber Essentials Plus Certificate in accordance with paragraph 4.1 shall be deemed to be irremediable and shall constitute a material Default entitling the Authority to exercise its rights under Clause 11.1(b).

5 Risk Management

- 5.1 The Supplier shall operate and maintain policies and processes for risk management (the

Risk Management Policy) during the Term which includes standards and processes for the assessment of any potential risks in relation to the Services and processes to ensure that the Authority's Security Requirements are met (the **Risk Assessment**). The Supplier shall provide the Risk Management Policy to the Authority upon request within ten (10) Working Days of such request. The Authority may, at its absolute discretion, require changes to the Risk Management Policy to comply with the Authority's Security Requirements. The Supplier shall, at its own expense, undertake those actions required in order to implement the changes required by the Authority within one calendar month of such request or on a date as agreed by the Parties.

5.2 The Supplier shall carry out a Risk Assessment:

- (i) at least annually;
- (ii) in the event of a material change in the Supplier System or in the threat landscape; or
- (iii) at the request of the Authority.

The Supplier shall provide the report of the Risk Assessment to the Authority, in the case of at least annual Risk Assessments, within five (5) Working Days of completion of the Risk Assessment or, in the case of all other Risk Assessments, within one calendar month after completion of the Risk Assessment or on a date as agreed by the Parties. The Supplier shall notify the Authority within five (5) Working Days if the Risk Profile in relation to the Services has changed materially, for example, but not limited to, from one risk rating to another risk rating.

5.3 If the Authority decides, at its absolute discretion, that any Risk Assessment does not meet the Authority's Security Requirements, the Supplier shall repeat the Risk Assessment within one calendar month of such request or as agreed by the Parties.

5.4 The Supplier shall, and shall procure that any Sub-contractor (as applicable) shall, co-operate with the Authority in relation to the Authority's own risk management processes regarding the Services.

5.5 For the avoidance of doubt, the Supplier shall pay all costs in relation to undertaking any action required to meet the requirements stipulated in this paragraph 5. Any failure by the Contractor to comply with any requirement of this paragraph 5 (regardless of whether such failure is capable of remedy), shall be deemed to be irremediable and shall constitute a material Default entitling the Authority to exercise its rights under Clause 11.1(b).

6 Security Audit and Assurance

6.1 The Supplier shall, and shall procure that any Sub-contractor (as applicable) shall, complete the information security questionnaire in the format stipulated by the Authority (the "Information Security Questionnaire") at least annually or at the request by the Authority. The Supplier shall provide the completed Information Security Questionnaire to the Authority within one calendar month from the date of request.

6.2 The Supplier shall conduct Security Tests to assess the Information Security of the Supplier System and, if requested, the Authority System. In relation to such Security Tests, the Supplier shall appoint a third party which:

- i) in respect of any Penetration Test, is duly accredited by CHECK, CREST (International), or Tigerscheme; and

- ii) in respect of any Security Test to which PCI DSS apply, is an approved scanning vendor duly accredited by the PCI.

Such Security Test shall be carried out:

- i) at least annually;
- ii) in the event of a material change in the Supplier System or in the Authority System; or
- iii) at the request of the Authority which request may include, but is not limited to, a repeat of a previous Security Test.

The content, and format of any report of such Security Tests shall be approved in advance of the Security Test by the Authority. The Supplier shall provide any report of such Security Tests within one calendar month following the completion of such Security Test or on a date agreed by the Parties. The Supplier shall, at its own expense, undertake those actions required to rectify any risks identified by any Security Test in the manner and within the timeframe required by the Authority in its absolute discretion.

- 6.3 The Authority shall be entitled to send the Authority Representative to witness the conduct of any Security Test. The Supplier shall provide to the Authority notice of any Security Test at least one month prior to the relevant Security Test.
- 6.4 Where the Supplier provides code development services to the Authority, the Supplier shall comply with the Authority's Security Requirements in respect of code development within the Supplier System and the Authority System.
- 6.5 Where the Supplier provides software development services, the Supplier shall comply with the code development practices specified in the Specification or in the Authority's Security Requirements.
- 6.6 The Authority, or an agent appointed by it, may undertake Security Tests in respect of the Supplier System after providing advance notice to the Supplier. If any Security Test identifies any non-compliance with the Authority's Security Requirements, the Supplier shall, at its own expense, undertake those actions required in order to rectify such identified non-compliance in the manner and timeframe as stipulated by the Authority at its absolute discretion. The Supplier shall provide all such co-operation and assistance in relation to any Security Test conducted by the Authority as the Authority may reasonably require.
- 6.7 The Authority shall schedule regular security governance review meetings which the Supplier shall, and shall procure that any Sub-contractor (as applicable) shall, attend.

7 PCI DSS compliance and certification

- 7.1 Where the Supplier obtains, stores, processes or transmits payment card data, the Supplier shall comply with the PCI DSS.
- 7.2 The Supplier shall obtain and maintain up-to-date attestation of compliance certificates ("AoC") provided by a qualified security assessor accredited by the PCI and up-to-date reports on compliance ("RoC") provided by a qualified security assessor or an internal security assessor, in each case accredited by the PCI (each with the content and format as stipulated by the PCI and such reports the "PCI Reports"), during the Term. The Supplier shall provide the respective PCI Reports to the Authority upon request within ten (10) Working Days of such request.

- 7.3 The Supplier shall notify the Authority of any failure to obtain a PCI Report or a revocation of a PCI Report within two (2) Working Days of confirmation of such failure or revocation. The Supplier shall, at its own expense, undertake those actions required in order to obtain a PCI Report following such failure or revocation within one calendar month of such failure or revocation.

8 Security policies and standards

- 8.1 The Supplier shall, and shall procure that any Sub-contractor (as applicable) shall, comply with the Security Policies and Standards set out Annex A and B.
- 8.2 Notwithstanding the foregoing, the Authority's Security Requirements applicable to the Services may be subject to change following certain events including, but not limited to, any relevant change in the delivery of the Services. Where any such change constitutes a Change to the Agreement, any change in the Authority's Security Requirements resulting from Change (if any) shall be agreed by the Parties in accordance with the Change Control Procedure. Where any such change constitutes an Operational Change, any change in the Authority's Security Requirements resulting from such Operational Change (if any) shall be implemented in accordance with the paragraphs in Schedule 8.2 (Change Control Procedure) concerning Operational Changes.
- 8.3 The Supplier shall, and shall procure that any Sub-contractor (as applicable) shall, maintain appropriate records and is otherwise able to demonstrate compliance with the Security Policies and Standards.

9 Cyber Security Information Sharing Partnership

- 9.1 The Supplier may require a nominated representative of the Supplier to join the Cyber Security Information Sharing Partnership on behalf of the Supplier during the Term, in which case the Supplier's nominated representative. The Supplier shall participate in the Cyber Security Information Sharing Partnership for the exchange of cyber threat information.
- 9.2 If the Supplier elects a nominated representative to join the Cyber Security Information Sharing Partnership in accordance with Paragraph 9.1 above, it shall review the NCSC weekly threat reports on a weekly basis and implement recommendations in line with the Supplier's Risk Management Policy.

ANNEX A – AUTHORITY SECURITY POLICIES AND STANDARDS

The Security Policies are published on:

<https://www.gov.uk/government/publications/dwp-procurement-security-policies-and-standards> unless specified otherwise:

- a) Acceptable Use Policy
- b) Information Security Policy
- c) Physical Security Policy
- d) Information Management Policy
- e) Email Policy
- f) Technical Vulnerability Management Policy
- g) Remote Working Policy
- h) Social Media Policy
- i) Forensic Readiness Policy
- j) SMS Text Policy
- k) Privileged Users Security Policy
- l) User Access Control Policy
- m) Security Classification Policy
- n) Cryptographic Key Management Policy
- o) HMG Personnel Security Controls – May 2018
(published on <https://www.gov.uk/government/publications/hmg-personnel-security-controls>)
- p) NCSC Secure Sanitisation of Storage Media (published on <https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media>)

ANNEX B – SECURITY STANDARDS

The Security Standards are published on:

<https://www.gov.uk/government/publications/dwp-procurement-security-policies-and-standards>:

- a) SS-001 - Part 1 - Access & Authentication Controls
- b) SS-001 - Part 2 - Privileged User Access Controls
- c) SS-002 - PKI & Key Management
- d) SS-003 - Software Development
- e) SS-005 - Database Management System Security Standard
- f) SS-006 - Security Boundaries
- g) SS-007 - Use of Cryptography
- h) SS-008 - Server Operating System
- i) SS-009 - Hypervisor
- j) SS-010 - Desktop Operating System
- k) SS-011 - Containerisation
- l) SS-012 - Protective Monitoring Standard for External Use
- m) SS-013 - Firewall Security
- n) SS-014 - Security Incident Management
- o) SS-015 - Malware Protection
- p) SS-016 - Remote Access
- q) SS-017 - Mobile Devices
- r) SS-018 - Network Security Design
- s) SS-019 - Wireless Network
- t) SS-022 - Voice & Video Communications
- u) SS-023 - Cloud Computing
- v) SS-025 - Virtualisation
- w) SS-027 - Application Security Testing
- x) SS-028 - Microservices Architecture
- y) SS-029 - Securely Serving Web Content
- z) SS-030 - Oracle Database
- aa) SS-031 - Domain Management
- bb) SS-033 - Patching

SCHEDULE 2.5 - INSURANCE REQUIREMENTS

1 Obligation to maintain Insurances

- 1.1 Without prejudice to its obligations to the Authority under this Agreement, including its indemnity and liability obligations, the Supplier shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 and any other insurances as may be required by applicable Law (together the "Insurances"). The Supplier shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are:
 - (a) of good financial standing;
 - (b) appropriately regulated;
 - (c) regulated by the applicable regulatory body and is in good standing with that regulator; and
 - (d) except in the case of any Insurances provided by an Affiliate of the Supplier, of good repute in the international insurance market.
- 1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Agreement and for which the Supplier is legally liable.

2 General obligations

Without limiting the other provisions of this Agreement, the Supplier shall:

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

3 Failure to insure

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the

Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

4 Evidence of Insurances

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

5 Cancellation

- 5.1 Subject to Paragraph 5.2, the Supplier shall notify the Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 5.2 Without prejudice to the Supplier's obligations under Paragraph 4, Paragraph 5.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

6 Insurance claims, premiums and deductibles

- 6.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Agreement for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services and/or this Agreement, the Supplier shall co-operate with the Authority and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.
- 6.2 The Supplier shall maintain a register of all claims under the Insurances in connection with this Agreement and shall allow the Authority to review such register at any time.
- 6.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 6.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.

ANNEX 1: Required Insurances

Part A: Insurance claim notification

Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of ten thousand pounds (£10,000) relating to or arising out of the provision of the Services or this Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

Part B: Third party public and products liability insurance

1 Insured

The Supplier

2 Interest

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

(a) death or bodily injury to or sickness, illness or disease contracted by any person; and

(b) loss of or damage to physical property;

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

3 Limit of indemnity

Not less than ten million pounds (£10,000,000) in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but ten million pounds (£10,000,000) in the aggregate per annum in respect of products and pollution liability.

4 Territorial limits

England, Wales and Scotland

5 Period of insurance

From the date of this Agreement for the Term and renewable on an annual basis unless agreed otherwise by the Authority in writing.

6 Cover features and extensions

6.1 Indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Agreement and for which the Supplier is legally liable.

7 Principal exclusions

- 7.1 War and related perils.
- 7.2 Nuclear and radioactive risks.
- 7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.
- 7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

8 Maximum deductible threshold

Not to exceed the applicable maximum deductible threshold in the insurance policy that Insured has in place as at the Effective Date for each and every claim.

Part C: United Kingdom compulsory insurances

The Supplier shall meet its insurance obligations under applicable Law in full, including, United Kingdom employers' liability insurance and motor third party liability insurance.

Part D: Professional indemnity insurance

1 Insured

The Supplier

2 Interest

To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the Insured during the period of insurance (as specific in paragraph 5) by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Services.

3 Limit of indemnity

Not less than the limits of the indemnity under the insurance policy that the Insured has in place as at the Effective Date in respect of any one claim and in the aggregate per annum, exclusive of defence costs which are payable in addition.

4 Territorial limits

As in the insurance policy that Insured has in place as at the Effective Date.

5 Period of insurance

From the Effective Date and renewable on an annual basis unless agreed otherwise by the Authority in writing (a) throughout the Term or until earlier termination of this Agreement and (b) for a period of six (6) years thereafter.

6 Cover features and extensions

Retroactive cover to apply to any "claims made policy wording" in respect of this Agreement or retroactive date to be no later than the Effective Date.

7 Principal exclusions

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

8 Maximum deductible threshold

Not to exceed the applicable maximum deductible threshold in the insurance policy that Insured has in place as at the Effective Date for each and every claim.



Department
for Work &
Pensions

SCHEDULE 4

SUPPLIER MATTERS

- 4.1 Supplier Solution (Tender)
- 4.2 Commercially Sensitive Information
- 4.3 Notified Key Sub-Contractors
- 4.4 Not used

SCHEDULE 4.1 - SUPPLIER SOLUTION (TENDER)

The Supplier will comply with the detail set out within the following additional documents which shall be deemed to be incorporated into this Agreement;

Document	Description
Tender	Received through the E-Procurement System on 8 January 2023 a copy of which is attached at Annex A to this Schedule 4.
Tender Clarification	The following, a copy of which is attached at Annex B to this Schedule. Financial clarification information received through the E-Procurement System on 25 January 2023 at 16:29. Further financial clarification information received through the E-Procurement System on 26 January 2023 at 13:17.

Annex A: Supplier's Tender

Service Delivery

Delivery	
The AtW: HA Bidder MUST answer ALL the following questions	
Question number	Question Word limit: 1000 Relevant question weighting = 10
2.4.1	<p>Delivery model</p> <p>Please explain for each Assessment type (Virtual Standard Holistic Assessment, Face-to-Face Standard Holistic Assessment and Enhanced Holistic Assessment Assessment) how your proposed delivery model will deliver the Services. Your response should cover as a minimum:</p> <ul style="list-style-type: none"> • The key contact points with Customers and the Authority; • How Assessments will be delivered nationally, including in rural areas and areas with poor transport links; • A description of how your delivery model will be structured, including any Sub-contractors that will be used. <p>The Authority will reject and will not continue to evaluate any AtW: HA Tender whose response to this question attracts a score of 0.</p>
	[Redacted]

[Redacted]

[Redacted]

[Redacted]

Delivery**The AtW: HA Bidder MUST answer ALL the following questions****Question
number****Question**

Word limit: 800

Relevant question weighting = 9

2.4.2**Holistic assessment**

Please explain for each Assessment type (Virtual Standard Holistic Assessment, Face-to-Face Standard Holistic Assessment and Enhanced Holistic Assessment Assessment) how your organisation will ensure that Assessments:

(a) identify all the Customer's workplace barriers; and

(b) are conducted in such a way so that a range of solutions that will meet the Customer's needs are explored.

The Authority will reject and will not continue to evaluate any AtW: HA Tender whose response to this question attracts a score of 0.

[Redacted]



[Redacted]

[Redacted]

Delivery**The AtW: HA Bidder MUST answer ALL the following questions****Question
number****Question****Word limit: 500****Relevant question wording = 4****2.4.3****Customer service**

Please explain for each Assessment type (Virtual Standard Holistic Assessment, Face-to-Face Standard Holistic Assessment and Enhanced Assessment) how you will deliver excellent customer service to the Customer when conducting the Assessments. Your response should cover as a minimum:

- How you will ensure safeguarding, empathy and respect for the Customer;
- How consideration will be given to the Customer's preferred Standard Assessment type (Virtual or Face-to-Face);
- How you will ensure respect and understanding of the diverse demographics that make up the AtW: HA customer base;
- Potential Workplace locations.

The Authority will reject and will not continue to evaluate any AtW: HA Tender whose response to this question attracts a score of 0.

[Redacted]

[Redacted]

DWP EMPLOYMENT CATEGORY MODEL SERVICES CONTRACT – SCHEDULE 4.1

	[Redacted]
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Key Performance Indicators	
The AtW: HA Bidder MUST answer ALL the following questions	
Question number	Question Word limit: 500 Relevant question weighting = 6
2.4.4	<p>Performance</p> <p>Please outline how your proposal will result in each of the Key Performance Indicators in the AtW: HA Specification (with the exception of the Social Value KPI) being met or exceeded. Your response should cover as a minimum:</p> <ul style="list-style-type: none"> • How you will maintain specified performance levels should there be fluctuations in Customer volumes; • Performance improvement processes should Key Performance Indicators not be met. <p>The Authority will reject and will not continue to evaluate any AtW: HA Tender whose response to this question attracts a score of 0.</p>
	[Redacted]

[Redacted]

Staffing**The AtW: HA Bidder MUST answer ALL the following questions****Question
number****Question**

Word limit: 400

Relevant question weighting = 4

2.4.5**Management structure**

Please provide a description of the proposed management structure and staffing resource required to deliver the contract, including any Sub-contractors.

	<p>Your response should cover as a minimum:</p> <ul style="list-style-type: none">• reporting lines from corporate to operational levels and throughout your proposed supply chains;• the number of staff involved;• roles and responsibilities; and• how the proposed staffing resource will be spread nationally. <p>A single (A4) page organogram can be attached to support the response to this question This should be in PDF format. Files submitted in any other format will not be accepted. Please Upload to Q2.4.5.2 in the Technical Envelope).</p> <p>The organogram is to support your response to this question and will not count towards the total word count.</p> <p>The Authority will reject and will not continue to evaluate any AtW: HA Tender whose response to this question attracts a score of 0.</p>
	[Redacted]

[Redacted]

	[Redacted]
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Staffing	
The AtW: HA Bidder MUST answer ALL the following questions	
Question number	Question Word limit: 600 Relevant question weighting =7
2.4.6	<p>Recruitment and retention</p> <p>Please describe how you will attract, recruit, retain and develop suitably qualified staff to deliver Assessments nationally.</p> <p>Your response should cover as a minimum:</p> <ul style="list-style-type: none"> • Your recruitment strategy; • How your organisation and supply chain will support workforce development e.g. additional training and development for existing employees, supporting qualifications, mentoring and support. • Any contingency plans to ensure there is adequate staffing resource to ensure the demand led services are delivered and how your organisation will respond flexibly to variations in terms of (a) the volume of referrals and (b) the type of Assessment. <p>The Authority will reject and will not continue to evaluate any AtW: HA Tender whose response to this question attracts a score of 0.</p>
	[Redacted]

[Redacted]

[Redacted]

Staffing**The AtW: HA Bidder MUST answer ALL the following questions**

Question number	Question Word limit: 1200 Relevant question weighting = 10
2.4.7	<p>Social value – Theme 4: Equal opportunity</p> <p>Policy outcome: Reduce the disability employability gap</p> <p>Please describe the commitment you will make to ensure that opportunities under the AtW: HA Contract deliver the policy outcome above by increasing the representation of disabled people in the contract workforce (being the staff of the AtW: HA Bidder who will be involved in the delivery of the AtW: HA Contract).</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • A method statement, stating how you will achieve the policy outcome; • A timed project plan and process, including how you will implement your commitment, by when and how you will monitor, measure and report on your commitments and the impact of your proposals. <p>Your project plan and process should include as a minimum:</p> <ul style="list-style-type: none"> ○ Timed action plan; ○ Use of metrics; ○ Tools/processes used to gather data; ○ Detail on reporting, feedback and improvement, and transparency. <ul style="list-style-type: none"> • How you will influence staff, suppliers, customers and communities through the delivery of the contract to support the policy outcome, e.g.

engagement, co-design/creation, training and education, partnering/collaborating, volunteering.

The "Social Value Award Criteria" against which this question will be assessed are:

Effective measures to deliver the following benefits through the contract:

- Demonstrate action to increase the representation of disabled people in the contract workforce.

The "Social Value Sub-Criteria" against which this question will be assessed are:

- Activities that demonstrate and describe the AtW: HA Bidder's existing or planned:
- Understanding of the issues affecting the representation of disabled people in the workforce in the market, industry or sector relevant to the contract, and in the tenderer's own organisation and those of its key sub-contractors;
- Measures to reduce barriers to securing more jobs for disabled people in the contract workforce. Illustrative examples:
 - Inclusive and accessible recruitment practices, and retention-focussed activities, including those provided in the Guide for line managers: Recruiting, managing and developing people with a disability or health condition - GOV.UK (www.gov.uk);
 - Working conditions which promote an inclusive working environment and promote retention and progression;
 - Other measures to provide equality of opportunity for disabled people into employment, including becoming a Disability Confident employer (Disability Confident employer scheme - GOV.UK (www.gov.uk)) and inclusion of Supported Businesses in the contract supply chain.

The Authority will reject and will not continue to evaluate any AtW: HA Tender whose response to this question attracts a score of 0.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Management: Quality and Control**The AtW: HA Bidder MUST answer ALL the following questions**

Question number	Question Word limit: 400 Relevant question weighting = 3
2.4.8	Quality controls Please describe the quality control systems used by your organisation and those of your Sub-contractors. Your response should cover as a minimum: <ul style="list-style-type: none"> • Details of how these systems will work throughout the supply chain if your delivery model includes the use of Sub-contractors;

	<ul style="list-style-type: none">• How you will evaluate, monitor and act upon findings to ensure provision is maintained to a consistently high standard;• Details of your customer complaints procedures;• How you will continuously improve service delivery. <p>The Authority will reject and will not continue to evaluate any AtW: HA Tender whose response to this question attracts a score of 0.</p>
	[Redacted]

[Redacted]

Management: Quality and Control**The AtW: HA Bidder MUST answer ALL the following questions**

Question number	Question Word limit: 500 Relevant question weighting = 3
2.4.9	<p>Resilience</p> <p>Please provide detail on how you will ensure resilience and business continuity in the event of business disruption, including but not limited to information technology failure. Your response should cover all Assessment types (Virtual Standard Holistic Assessment, Face-to-Face Standard Holistic Assessment and Enhanced Assessment).</p> <p>The Authority will reject and will not continue to evaluate any AtW: HA Tender whose response to this question attracts a score of 0.</p>
	[Redacted]

[Redacted]

Implementation	
The AtW: HA Bidder MUST answer ALL the following questions	
Question number	Question Word limit: 500 Relevant question weighting = 2
2.4.10	<p>Implementation Plan</p> <p>Please detail your Implementation Plan that demonstrates how you will implement the Services should you be successful. Your response should include as a minimum:</p> <ul style="list-style-type: none"> • Key milestones; • Timescales for activities; and • How implementation will be managed and monitored. <p>A separate Gantt document can be attached to support the response (Upload to Q2.4.10.1 in the Technical Envelope). This should be a maximum of 1 x A3 in size and in PDF format. Files submitted in any other format (including but not limited to Microsoft Project) will not be accepted. The Gantt document will not count within the question word limit of 500.</p> <p>The Authority will reject and will not continue to evaluate any AtW: HA Tender whose response to this question attracts a score of 0.</p>
	[Redacted]

[Redacted]

Contract Cost Register
[Redacted]

Other ITT Documents

[Redacted]

3: Tender Clarification

[Redacted]

DWP EMPLOYMENT CATEGORY MODEL SERVICES CONTRACT – SCHEDULE 4.1

[Redacted]

DWP EMPLOYMENT CATEGORY MODEL SERVICES CONTRACT – SCHEDULE 4.1

[Redacted]

DWP EMPLOYMENT CATEGORY MODEL SERVICES CONTRACT – SCHEDULE 4.1

[Redacted]

DWP EMPLOYMENT CATEGORY MODEL SERVICES CONTRACT – SCHEDULE 4.1

[Redacted]

DWP EMPLOYMENT CATEGORY MODEL SERVICES CONTRACT – SCHEDULE 4.1

[Redacted]

SCHEDULE 4.2 - COMMERCIALLY SENSITIVE INFORMATION

Commercially Sensitive Information

[Redacted]

[Redacted]

[Redacted]

[Redacted]

RULE 4.3 - NOTIFIED KEY SUB-CONTRACTORS

Identified Key Sub-contractors

accordance with Clause E2.11 (*Appointment of Key Sub-contractors*), the Supplier is entitled to Sub-contract its obligations under the Agreement to the Key Sub-contractors listed in the table below.

The Parties agree that they will update this Schedule periodically to record any Key Sub-contractors appointed by the Supplier with the consent of the Authority after the Effective Date for the purposes of the delivery of the Services.

[illegible]

SCHEDULE 4.4 – NOT USED





Department
for Work &
Pensions

SCHEDULE 6

IMPLEMENTATION

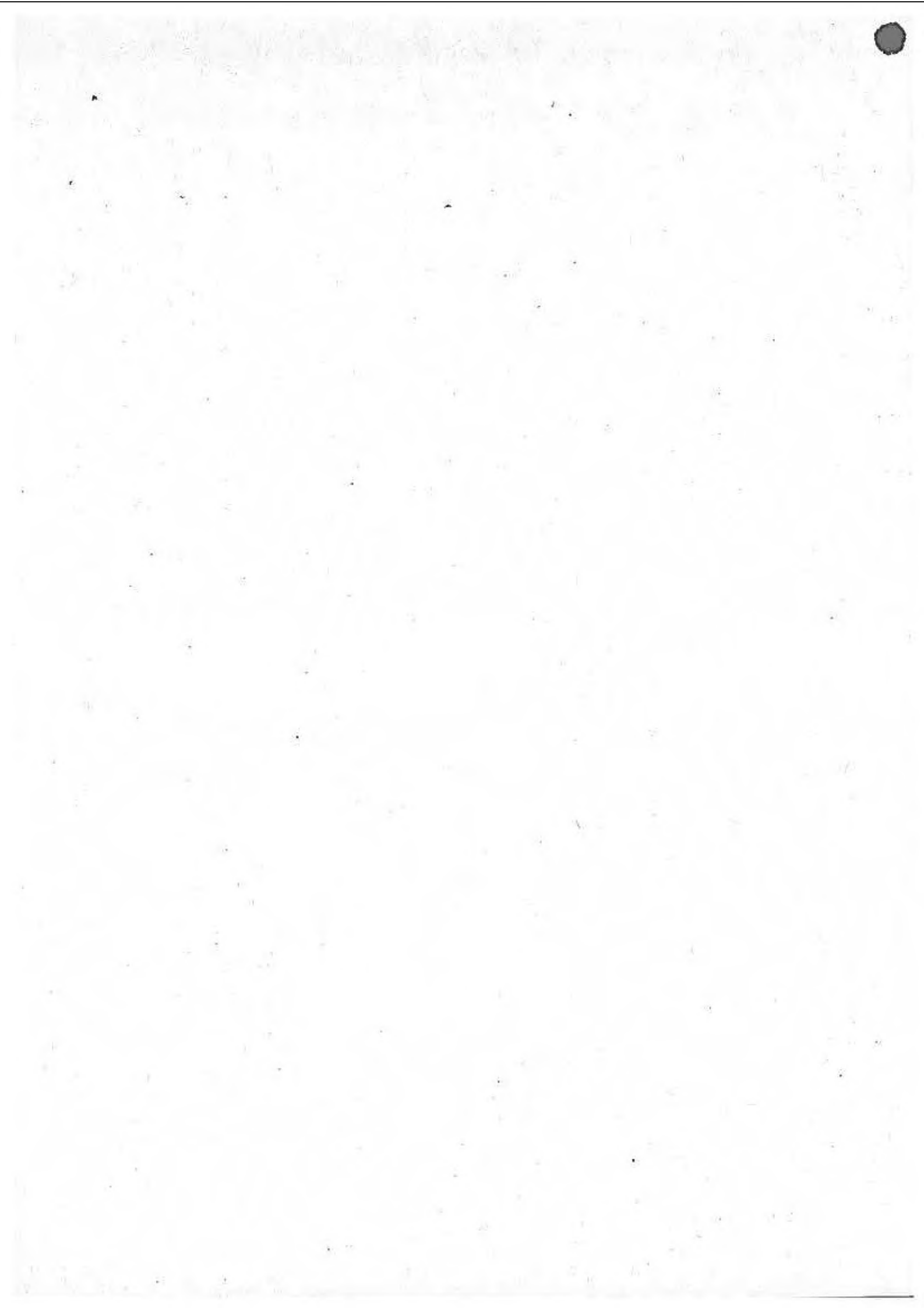
- 6.1 Implementation Plan
- 6.2 Not used

MODULE 6.1 - IMPLEMENTATION PLAN

[Redacted]

DWP EMPLOYMENT CATEGORY MODEL SERVICES CONTRACT – SCHEDULE 6.1

SCHEDULE 6.2 – NOT USED





Department
for Work &
Pensions

SCHEDULE 7

FINANCIAL MATTERS

- 7.1 Fees and Payments
- 7.2 Payments on Termination
- 7.3 Not used
- 7.4 Financial Distress
- 7.5 Financial Transparency and Audit Rights
- 7.6 Not used
- 7.7 Risk Premiums

SCHEDULE 7.1 – FEES AND PAYMENTS

1 Fees

- 1.1 The Authority shall pay to the Supplier the Fees for the Services in accordance with the amounts set out in this Schedule 7.1.
- 1.2 The Supplier acknowledges and agrees that it shall have no entitlement to remuneration in respect of the Services whatsoever other than the Fees.
- 1.3 The Fees shall comprise Outcome Payments which shall be paid as follows:
- (a) Face-to-Face Standard Holistic Assessments Outcome Payments shall be paid in respect of Face-to-Face Standard Holistic Assessments;
 - (b) Virtual Standard Holistic Assessments Outcome Payments shall be paid in respect of Virtual Standard Holistic Assessments; and
 - (c) Enhanced Holistic Assessment Outcome Payments shall be paid in respect of Enhanced Holistic Assessments.
- 1.4 The payment rates set out in this Schedule 7.1 will not be amended or adjusted if volumes change.

2 Value Added Tax

- 2.1 Payment from the Authority to the Supplier shall be by a HMRC approved self-billing process. The Supplier hereby agrees that for the duration of the Agreement the Authority will be self-billing producing the invoices on the Suppliers behalf. The Authority will issue VAT invoices and the Supplier shall confirm, on an annual basis, the rate of VAT that should be applied to self-billing invoices. It remains the responsibility of the Supplier to accurately account for and pay any VAT included in the payments received from the Authority to HMRC.
- 2.2 If the VAT status of the Supplier changes at any time during the delivery of the Services the Supplier shall notify the Authority immediately and in any case within twenty-four (24) hours. If the Supplier intends to outsource the self-billing process to any third party it shall not do so without first having obtained the Authority's prior approval, such approval not to be unreasonably withheld or delayed.
- 2.3 The Parties acknowledge and agree that an appropriate self-billing agreement is required to be in place and signed by the Parties throughout the Term to reflect the required self-billing treatment.

3 Additional costs

- 3.1 Subject to the provisions of this Agreement (including without limitation this Schedule 7.1), the Fees are fixed and unless otherwise agreed between the Parties in accordance with Clause D3 (Change) and Schedule 8.2 (Change Control Procedure) any additional or unforeseen costs incurred by the Supplier in delivering the Services shall be borne solely by the Supplier.

4 Types of Payment

- 4.1 Outcome Payments

- (a) Outcome Payments will be paid on a unit price basis at the rates set out in the table below based on the price in force at the relevant date of Referral:

	Amount per Outcome exc. VAT
Face-to-Face Standard Holistic Assessments Outcome Payment	[Redacted]
Virtual Standard Holistic Assessments Outcome Payment	[Redacted]
Enhanced Holistic Assessment Outcome Payment	[Redacted]

- (b) Not used.

4.2 Not used

- (a) Not used.
 (b) Not used.
 (c) Not used.
 (d) Not used.
 (e) Not used.

5 Methods of payment

- 5.1 The Authority and the Supplier shall make payments using PRaP and/or other electronic methods.
- 5.2 The Authority may issue a Purchase Order to the Supplier prior to commencement of the Services.
- 5.3 All invoices payable outside of PRaP, must include the appropriate purchase order number sent to the following address:

SSCL Accounts Payable Team
 Room 6124
 Tomlinson House
 Norcross
 Blackpool
 FY5 3TA
 Shared Services Helpline: 0845 602 8244

Or via email in PDF format to APIinvoices-DWP-U@sscl.gse.gov.uk.

- 5.4 The Authority reserves the right to set and / or alter, at its absolute discretion, the method of payment and will use reasonable endeavours to give thirty (30) days' notice to the Supplier of any change to the method of payment.

6 Payment rates

- 6.1 For the performance of the Services by the Supplier the Fees shall be paid at the prices and rates entered in this Schedule. These rates are fixed and not subject to amendment or alteration over the Term, save where an amendment or alteration is made in accordance with the Change Control Procedure.
- 6.2 All payments will be subject to the provisions of this Schedule 7.1 and Section C (Payment, Taxation and Value for Money Provisions) of the Terms and Conditions. The payment of any Outcome Payments shall not constitute acceptance and the Authority reserves the right to validate claims at any time in accordance with Clause C4 (Validation).

Appendix 1

VAT Confirmation

The format of appendix is subject to change from time to time at the Authority's absolute discretion

Company Name: [Insert Supplier name]

VAT Registration Number: [Supplier to complete]

Registered Office Address: [Supplier to complete]

Company Registration Number: [Supplier to complete]

Please mark an X in the box that identifies the VAT rate to be applied to each Outcome Payment type:

Supply [Supplier to complete for each Outcome Payment type]	Zero	Reduced	Standard	Exempt Supply	Outside the scope of VAT
Face-to-Face Standard Holistic Assessments Outcome Payment					
Virtual Standard Holistic Assessments Outcome Payment					
Enhanced Holistic Assessment Outcome Payments					

The Supplier hereby confirms that the VAT rates indicated in the above table are the correct VAT rates in respect of the supply of Services under the Agreement for Access to Work Holistic Assessment (Contract Reference Number: ecm_11005 dated [XX XXX XXXX]).

For and on behalf of the Supplier [Supplier to complete]

Signature of Director

Name

Date

Appendix 2

Self-Billing Agreement

The format of appendix is subject to change from time to time at the Authority's absolute discretion

Authority: The Secretary of State for the Department of Work and Pensions

VAT Number: 8888 15554

and

Supplier: [Supplier to complete]

VAT Number: [Supplier to complete]

The Authority agrees:

1. to issue self-billed invoices for all supplies made to them by the Supplier until 4 June 2027;
2. to complete self-billed invoices showing the Supplier's name, address and VAT registration number, together with all the other details which constitute a full VAT Invoice;
3. to make a new self-billing agreement in the event that its VAT registration number changes; and
4. to inform the Supplier if the issue of self-billed invoices will be outsourced to a third party.

The Supplier agrees:

1. to accept invoices raised by the Authority until 4 June 2027;
2. not to raise sales invoices for the transactions covered by this self-billing agreement;
3. to notify the Authority immediately if it:
 - changes its VAT registration number;
 - ceases to be VAT registered; or
 - sells its business, or part of its business.

Authority Signature:

For and on behalf of: The Secretary of State for the Department of Work and Pensions

Date:

Supplier Signature: [Supplier to complete]

For and on behalf of: [Supplier to complete]

Date: [Supplier to complete]

SCHEDULE 7.2 - PAYMENTS ON TERMINATION

Payments on Termination

1 Definitions

1.1 In this Schedule, the following definitions shall apply:

"Applicable Supplier Personnel"	<p>any Supplier Personnel who:</p> <ul style="list-style-type: none"> (i) at the Termination Date: <ul style="list-style-type: none"> a) are employees of the Supplier; b) are Dedicated Supplier Personnel; c) have not transferred (and are not in scope to transfer at a later date) to the Authority or the Replacement Supplier by virtue of the Employment Regulations; and (ii) are dismissed or given notice of dismissal by the Supplier within: <ul style="list-style-type: none"> a) forty (40) Working Days of the Termination Date; or b) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and (iii) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and (iv) the Supplier can demonstrate to the satisfaction of the Authority: <ul style="list-style-type: none"> a) are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers; b) are genuinely being dismissed for reasons of redundancy; and c) have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement under this provision in respect of such employees;
"Breakage Costs Payment"	an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with Paragraph 3;
"Compensation Payment"	the payment calculated in accordance with Paragraph 6;
"Contract Breakage Costs"	the amounts payable by the Supplier to its Sub-contractors for terminating all relevant Sub-contracts as a direct result of the early termination of this Agreement;
"Dedicated"	all Supplier Personnel then assigned to the Services or any part

Supplier Personnel	of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the Authority whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services;
"Profit Already Paid"	the Supplier Profit paid or payable to the Supplier under this Agreement for the period from the Effective Date up to (and including) the Termination Date;
"Redundancy Costs"	<p>the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount apportioned between the Supplier and the Authority based on the time spent by such employee on the Services as a proportion of the total Service duration:</p> <ul style="list-style-type: none"> (a) any statutory redundancy payment; and (b) in respect of an employee who was a Transferring Former Supplier Employee or a Transferring Authority Employee, any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the Supplier under the Employment Regulations;
"Request for Estimate"	a written request sent by the Authority to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment and Compensation Payment that would be payable if the Authority exercised its right under Clause 11.1(a) (Termination by the Authority) to terminate this Agreement for convenience on a specified Termination Date;
"Shortfall Period"	has the meaning given in Paragraph 6.2;
"Termination Estimate"	has the meaning given in Paragraph 11.2;
"Total Costs Incurred"	the Costs incurred by the Supplier up to the Termination Date in the performance of this Agreement and detailed in the Financial Model (but excluding Contract Breakage Costs, Redundancy Costs and any costs the Supplier would not otherwise be able to recover through the Fees) less any Deductions up to (and including) the Termination Date;
"Unrecovered Costs"	the Costs incurred by the Supplier in the performance of this Agreement (as summarised in the Financial Model) to the extent that the same remain at the Termination Date to be recovered through Fees that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7.1 (Fees and Payment) as such Costs and Fees are forecast in the Financial Model;
"Unrecovered"	an amount equal to the lower of:

Payment"	(a) the sum of the Unrecovered Costs and the Unrecovered Profit; and
	(b) the amount specified in Paragraph 4; and
"Unrecovered Profit"	(Total Costs Incurred x Anticipated Contract Life Profit Margin) - Profit Already Paid remaining unpaid at the Termination Date.

2 Termination Payment

The Termination Payment payable pursuant to Clause 12.3(a) (Payments by the Authority) shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment.

3 Breakage Costs Payment

3.1 The Supplier may recover through the Breakage Costs Payment only those costs incurred by the Supplier directly as a result of the termination of this Agreement which:

- (a) would not have been incurred had this Agreement continued until the scheduled expiry of the Term;
- (b) are unavoidable, proven, reasonable, and not capable of recovery;
- (c) are incurred under arrangements or agreements that are directly associated with this Agreement;
- (d) are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier; and
- (e) relate directly to the termination of the Services.

Limitation on Breakage Costs Payment

3.2 The Breakage Costs Payment shall not exceed the lower of:

- (a) the relevant limit set out in Annex 1; and
- (b) one hundred and twenty percent (120%) of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

Redundancy Costs

3.3 The Authority shall not be liable under this Schedule for any costs associated with Supplier Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.

3.4 Where the Supplier can demonstrate that a member of Supplier Personnel will be made redundant following termination of this Agreement, but redeployment of such person is possible and would offer value for money to the Authority when compared with redundancy, then the Authority shall pay the Supplier the actual direct costs incurred by the Supplier or its Sub-contractor arising out of the redeployment of such person (including retraining and relocation costs) subject to a maximum amount of thirty thousand pounds (£30,000) per relevant member of the Supplier Personnel.

Contract Breakage Costs

3.5 The Supplier shall be entitled to Contract Breakage Costs only in respect of Sub-contracts which:

- (a) are not assigned or novated to a Replacement Supplier at the request of the Authority in accordance with Schedule 8.5 (Exit Management); and
- (b) the Supplier can demonstrate:
 - (i) are surplus to the Supplier's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other customers; and
 - (ii) have been entered into by it in the ordinary course of business.

3.6 The Supplier shall seek to negotiate termination of any Sub-contracts with the relevant Sub-contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.

3.7 Except with the prior written agreement of the Authority, the Authority shall not be liable for any costs (including cancellation or termination charges) that the Supplier is obliged to pay in respect of:

- (a) the termination of any contractual arrangements for occupation of, support of and/or services provided for Supplier premises which may arise as a consequence of the termination of this Agreement; and/or
- (b) Assets not yet installed at the Termination Date.

4 Unrecovered Payment

The Unrecovered Payment shall not exceed the lowest of:

- (a) the relevant limit set out in Annex 1;
- (b) one hundred and twenty percent (120%) of the estimate for the Unrecovered Payment set out in any relevant Termination Estimate; and
- (c) the Fees that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7.1 (Fees and Payment) as forecast in the Financial Model.

5 Mitigation of Contract Breakage Costs, Redundancy Costs and Unrecovered Costs

5.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs, Redundancy Costs and Unrecovered Costs by:

- (a) the appropriation of Assets, employees and resources for other purposes;
- (b) at the Authority's request, assigning any Sub-contracts to the Authority or a third party acting on behalf of the Authority; and
- (c) in relation Sub-contract that is not to be assigned to the Authority or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.

5.2 If Assets, employees and resources can be used by the Supplier for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs, Redundancy Costs and Unrecovered Costs payable by the Authority or a third party to the Supplier. In the event of any Dispute arising over whether the Supplier can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the Dispute shall be referred to an Expert for determination in accordance with

the procedure detailed in Schedule 8.3 (Dispute Resolution Procedure).

6 Compensation Payment

6.1 The Compensation Payment payable pursuant to Clause 12.3(b) (Payments by the Authority) shall be an amount equal to the total forecast Fees over the Shortfall Period (as stated in the Financial Model) multiplied by the Anticipated Contract Life Profit Margin.

6.2 For the purposes of Paragraph 6.1, the “**Shortfall Period**” means:

- (a) where the Authority terminates this Agreement pursuant to Clause 11.1(a) (Termination by the Authority), a number of days equal to the number of days by which the notice given (or deemed given pursuant to Clause J10) falls short of three hundred and sixty-five (365) days; or
- (b) where the Supplier terminates this Agreement pursuant to Clause 11.3(a) (Termination by the Supplier), a number of days equal to the number of days by which the period from (and including) the date of the non-payment by the Authority to (and including) the Termination Date falls short of three hundred and sixty-five (365) days.

but in each case subject to the limit set out in Paragraph 6.3.

6.3 The Compensation Payment shall be no greater than the lower of:

- (a) the relevant limit set out in Annex 1; and
- (b) one hundred and twenty percent (120%) of the estimate for the Compensation Payment set out in the relevant Termination Estimate.

7 Full and final settlement

Any Termination Payment and/or Compensation Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Authority pursuant to Clause 11.1(a) (Termination by the Authority) or termination by the Supplier pursuant to Clause 11.3(a) (Termination by the Supplier) (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

8 Invoicing for the Payments on Termination

All sums due under this Schedule shall be payable by the Authority to the Supplier in accordance with the payment terms set out in Schedule 7.1 (Fees and Payment).

9 Set off

The Authority shall be entitled to set off any outstanding liabilities of the Supplier against any amounts that are payable by it pursuant to this Schedule.

10 No double recovery

10.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that the Authority makes any payments pursuant to Schedule 8.5 (Exit Management) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.

10.2 The value of the Termination Payment and/or the Compensation Payment shall be reduced or extinguished to the extent that the Supplier has already received the Fees or the financial benefit of any other rights or remedy given under this Agreement so that there is no double counting in calculating the relevant payment.

- 10.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

11 Estimate of Termination Payment and Compensation Payment

- 11.1 The Authority may issue a Request for Estimate at any time during the Term provided that no more than two (2) Requests for Estimate may be issued in any six (6) month period.

- 11.2 The Supplier shall within twenty (20) Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination Payment and the Compensation Payment that would be payable by the Authority based on a postulated Termination Date specified in the Request for Estimate (such estimate being the "**Termination Estimate**"). The Termination Estimate shall:

- (a) be based on the relevant amounts set out in the Financial Model;
- (b) include:
 - (i) details of the mechanism by which the Termination Payment is calculated;
 - (ii) full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract and appropriate supporting documentation; and
 - (iii) such information as the Authority may reasonably require; and
- (c) state the period for which that Termination Estimate remains valid, which shall be not less than twenty (20) Working Days.

- 11.3 The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Authority to terminate this Agreement.

- 11.4 If the Authority issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Supplier and the Authority.

ANNEX 1: MAXIMUM PAYMENTS ON TERMINATION

The table below sets out, by Contract Year, the maximum amount of the Unrecovered Payment, Breakage Costs Payment and Compensation Payment that the Authority shall be liable to pay to the Supplier pursuant to this Agreement:

Termination Date	Maximum Unrecovered Payment	Maximum Breakage Costs Payment	Maximum Compensation Payment
Anytime in the first Contract Year	£1,250,000	£1,250,000	£250,000
Anytime in the second Contract Year	£1,000,000	£1,000,000	£200,000
Anytime in third Contract Year	£800,000	£800,000	£150,000
Anytime in fourth Contract Year	£700,000	£700,000	£100,000
Anytime in Extension Period (if applicable)	£500,000	£500,000	£100,000

SCHEDULE 7.3 - NOT USED

SCHEDULE 7.4 - FINANCIAL DISTRESS

Financial Distress

1 Definitions

In this Schedule, the following definitions shall apply:

"Board"	means the Supplier's board of directors;
"Board Confirmation"	means written confirmation from the Board in accordance with Paragraph 8 of this Schedule;
"FDE Group"	means the Supplier, Key Sub-contractors, and the Guarantor;
"Financial Indicators"	in respect of the Supplier, Key Sub-contractors and the Guarantor, means each of the financial indicators set out at paragraph 5.1 of this Schedule;
"Financial Target Thresholds"	means the target thresholds for each of the Financial Indicators set out at paragraph 5.1 of this Schedule.

2 Warranties and duty to notify

- 2.1 The Supplier warrants and represents to the Authority for the benefit of the Authority that as at the Effective Date:
- (a) Not used;
 - (b) the financial position or, as appropriate, the financial performance of each of the Supplier, Guarantor and Key Sub-contractors satisfies the Financial Target Thresholds.
- 2.2 Not used.
- 2.3 The Supplier shall:
- (a) Not used;
 - (b) monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds on a regular basis and no less than once a year within one hundred and twenty (120) days after the Accounting Reference Date; and
 - (c) promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within ten (10) Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).
- 2.4 Not used.
- 2.5 Each report submitted by the Supplier pursuant to paragraph 2.3(b) shall:
- (a) be a single report with separate sections for each of the FDE Group entities;
 - (b) contain a sufficient level of information to enable the Authority to verify the

calculations that have been made in respect of the Financial Indicators;

- (c) include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
- (d) be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable; and
- (e) include a history of the Financial Indicators reported by the Supplier in graph form to enable the Authority to easily analyse and assess the trends in financial performance.

3 Financial Distress Events

3.1 The following shall be Financial Distress Events, and for the purposes of this Schedule are categorised as "Risk Level 1" Financial Distress Events:

- (a) Not used;
- (b) an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;
- (d) an FDE Group entity committing a material breach of covenant to its lenders;
- (e) a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
- (f) Not used;
- (g) any of the Financial Indicators set out at Paragraph 5 for any of the FDE Group entities falling within Risk Level 1.

3.2 The following shall be Financial Distress Events, and for the purposes of this Schedule are categorised as "Risk Level 2" Financial Distress Events:

- (a) any of the following:
 - (i) commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than two million pounds (£2m) or obligations under a service contract with a total contract value greater than two million pounds (£2m);
 - (ii) non-payment by an FDE Group entity of any financial indebtedness;
 - (iii) any financial indebtedness of an FDE Group entity becoming due as a result of an event of default;
 - (iv) the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity;
 - (v) the external auditor of an FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE entity; or

- (vi) an FDE Group entity can no longer use a corporate loan facility, or the corporate loan facility has been modified to the detriment of that FDE Group entity;

in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Agreement; and

- (b) any of the Financial Indicators set out at Paragraph 5 for any of the FDE Group entities falling within Risk Level 2.

4 Consequences of Financial Distress Events

- 4.1 Immediately upon notification by the Supplier of a Financial Distress Event (or if the Authority becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in Paragraphs 4.3 to 4.6.

- 4.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1(e), the Authority shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Supplier ten (10) Working Days to:

- (a) rectify such late or non-payment; or
- (b) demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.

- 4.3 The Supplier shall (and shall procure that the Guarantor and/or any relevant Key Sub-contractor shall):

- (a) at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement; and
- (b) where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3(a) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement:

- (i) submit to the Authority for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing); and
- (ii) to the extent that it is legally permitted to do so and subject to Paragraph 4.8, provide such information relating to the Supplier, Key Sub-contractors and/or the Guarantor as the Authority may reasonably require in order to understand the risk to the Services, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event.

- 4.4 The Authority shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Authority does not approve the draft Financial Distress Remediation Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Remediation Plan,

which shall be resubmitted to the Authority within five (5) Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is approved by the Authority or referred to the Dispute Resolution Procedure under Paragraph 4.5.

- 4.5 If the Authority considers that the draft Financial Distress Remediation Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Supplier's obligations in accordance with the Agreement, then it may either agree a further time period for the development and agreement of the Financial Distress Remediation Plan or escalate any issues with the draft Financial Distress Remediation Plan using the Dispute Resolution Procedure.
- 4.6 Following approval of the Financial Distress Remediation Plan by the Authority, the Supplier shall:
- (a) on a regular basis (which shall not be less than fortnightly):
 - (i) review and make any updates to the Financial Distress Remediation Plan as the Supplier may deem reasonably necessary and/or as may be reasonably requested by the Authority, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Services in accordance with this Agreement; and
 - (ii) provide a written report to the Authority setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Supplier and/or the reasons why the Supplier may have decided not to make any changes;
 - (b) where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 4.6(a), submit an updated Financial Distress Remediation Plan to the Authority for its approval, and the provisions of Paragraphs 4.4 and 4.5 shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and
 - (c) comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.
- 4.7 Where the Supplier reasonably believes that the relevant Financial Distress Event under Paragraph 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, and the Supplier is able to demonstrate this to the satisfaction of the Authority, the Supplier shall notify the Authority and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 4.6.
- 4.8 The Supplier shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at paragraph 4.3(b)(ii) is available when required and on request from the Authority and within reasonable timescales. Such measures may include:
- (a) obtaining in advance written authority from Key Sub-contractors and/or the Guarantor authorising the disclosure of the information to the Authority and/or entering into confidentiality agreements which permit disclosure;
 - (b) agreeing in advance with the Authority, Key Sub-contractors and/or the Guarantor a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the Authority;
 - (c) putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the Authority (which may include making price sensitive information available to Authority nominated personnel through confidential

arrangements, subject to their consent); and

- (d) disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymisation and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

5 Financial Indicators

- 5.1 Subject to the calculation methodology set out at Annex 4 of this Schedule, the Financial Indicators and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as follows:

Financial Indicator	Calculation ¹	Financial Target Threshold:	Risk Level 1	Risk Level 2
Debt Ratio	Total Liabilities / Total Assets	Debt ratio is less than or equal to 1.0	Debt ratio is greater than 1.0 but less than or equal to 1.2	Debt ratio is greater than 1.2
Acid Test	(Current liabilities – inventory) / Current liabilities	Acid test is greater than or equal to 0.8	Acid test is less than 0.8 but greater than or equal to 0.6	Acid test is less than 0.6
Operating Cash Flow Ratio	Operating cash flow / Revenue × 100	Operating cash flow ratio is greater than or equal to 4%	Operating cash flow ratio is less than 4% but greater than or equal to 2%	Operating cash flow ratio is less than 2%

Key: ¹ – See Annex 4 of this Schedule which sets out the calculation methodology to be used in the calculation of each Financial Indicator.

- 5.2 Not used.

6 Termination rights

The Authority shall be entitled to terminate this Agreement under Clause 11.1(b) (Termination by the Authority) if:

- the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.3(c);
- the Parties fail to agree a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraphs 4.3 to 4.5; and/or
- the Supplier fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 4.6(c).

7 Not used

- 7.1 Not used.

8 Board confirmation

- 8.1** If this Agreement has been specified as a Critical Service Contract under Paragraph 10.1 of Part 2 to Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning) then, subject to Paragraph 8.4 of this Schedule, the Supplier shall within one hundred and twenty (120) days after each Accounting Reference Date or within fifteen (15) months of the previous Board Confirmation (whichever is the earlier) provide a Board Confirmation to the Authority in the form set out at Annex 5 of this Schedule, confirming that to the best of the Board's knowledge and belief, it is not aware of and has no knowledge:
- (a)** that a Financial Distress Event has occurred since the later of the Effective Date or the previous Board Confirmation or is subsisting; or
 - (b)** of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.
- 8.2** The Supplier shall ensure that in its preparation of the Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to understand and confirm the position.
- 8.3** In respect of the first Board Confirmation to be provided under this Agreement, the Supplier shall provide the Board Confirmation within fifteen (15) months of the Effective Date if earlier than the timescale for submission set out in Paragraph 8.1 of this Schedule.
- 8.4** Where the Supplier is unable to provide a Board Confirmation in accordance with Paragraphs 8.1 to 8.3 of this Schedule due to the occurrence of a Financial Distress Event or knowledge of subsisting matters which could reasonably be expected to cause a Financial Distress Event, it will be sufficient for the Supplier to submit in place of the Board Confirmation, a statement from the Board of Directors to the Authority (and where the Supplier is a Strategic Supplier, the Supplier shall send a copy of the statement to the Cabinet Office Markets and Suppliers Team) setting out full details of any Financial Distress Events that have occurred and/or the matters which could reasonably be expected to cause a Financial Distress Event.

ANNEX 1: NOT USED

ANNEX 2: NOT USED

ANNEX 3: NOT USED

ANNEX 4: CALCULATION METHODOLOGY FOR FINANCIAL INDICATORS

The Supplier shall ensure that it uses the following general and specific methodologies for calculating the Financial Indicators against the Financial Target Thresholds:

General methodology

1. **Terminology:** The terms referred to in this Annex are those used by UK companies in their financial statements. Where the entity is not a UK company, the corresponding items should be used even if the terminology is slightly different (for example a charity would refer to a surplus or deficit rather than a profit or loss).
2. **Groups:** Where the entity is the holding company of a group and prepares consolidated financial statements, the consolidated figures should be used.
3. **Foreign currency conversion:** Figures denominated in foreign currencies should be converted at the exchange rate in force at the relevant date for which the Financial Indicator is being calculated.
4. **Treatment of non-underlying items:** Financial Indicators should be based on the figures in the financial statements before adjusting for non-underlying items.

Specific Methodology

Financial Indicator	Specific Methodology
Debt Ratio	$\text{Debt ratio} = \text{total liabilities} / \text{total assets}$ <p>All elements used to calculate the debt ratio are available on the face of the Balance Sheet in a standard set of financial statements.</p>
Acid Test	$\text{Acid test} = (\text{current liabilities} - \text{inventory}) / \text{current liabilities}$ <p>All elements used to calculate the acid test are available on the face of the Balance Sheet in a standard set of financial statements.</p>
Operating Cash Flow Ratio	$\text{Operating Cash Flow Ratio} = \text{Operating Cash Flow} / \text{Revenue} \times 100$ <p>All elements used to calculate the operating cash flow ratio are available in the Profit and Loss account and Cash Flow statement in a standard set of financial statements.</p>

ANNEX 5: BOARD CONFIRMATION

Supplier Name:

Contract Reference Number:

The Board of Directors acknowledge the requirements set out at paragraph 8 of Schedule 7.4 (Financial Distress) and confirm that the Supplier has exercised due care and diligence and made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to enable the Board to prepare this statement.

The Board of Directors confirms, to the best of its knowledge and belief, that as at the date of this Board Confirmation it is not aware of and has no knowledge:

- a) that a Financial Distress Event has occurred since the later of the previous Board Confirmation and the Effective Date or is subsisting; or
- b) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event

On behalf of the Board of Directors:

Chair

Signed

Date

Director

Signed

Date

SCHEDULE 7.5 - FINANCIAL TRANSPARENCY AND AUDIT RIGHTS

1 Definitions

In this Schedule, the following definitions shall apply:

"Audit Agents"	<ul style="list-style-type: none"> (a) the Authority's internal and external auditors; (b) the Authority's statutory or regulatory auditors; (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (d) HM Treasury or the Cabinet Office; (e) the European Commission; (f) the European Court of Auditors; (g) any party formally appointed by the Authority and/or by the Crown and/or by the European Commission and/or by the European Court of Auditors to carry out audit or similar review functions; and (h) successors or assigns of any of the above;
"Financial Model"	the Contract Cost Register submitted by the Supplier in its Tender, or where the Supplier has provided an updated Contract Cost Register at the Authority's request, that updated Contract Cost Register;
"Financial Transparency Objectives"	has the meaning given in Paragraph 1 of Part A;
"Onerous Contract"	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;
"Onerous Contract Report"	means a report provided by the Supplier pursuant to Paragraph 3 of Part A to this Schedule;
"Open Book Data"	<p>complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Fees already paid or payable and Fees forecast to be paid during the remainder of the Term, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> (a) the Supplier's Costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software; (b) operating expenditure relating to the provision of the Services including an analysis showing: <ul style="list-style-type: none"> (i) the unit costs and quantity of consumables and bought-in services; (ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed

- rates against each manpower grade;
- (iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin; and
- (iv) Reimbursable Expenses;
- (c) Overheads;
- (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- (e) the Supplier Profit achieved over the Term and on an annual basis;
- (f) 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;
- (g) 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
- (h) the actual Costs profile for each Service Period.

PART A: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA

1 Financial Transparency Objectives

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:

Understanding the Fees

- (a) for the Authority to understand any payment sought from it by the Supplier including an analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Services and the Supplier Profit Margin;
- (b) for both Parties to be able to understand the Financial Model and Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;
- (c) Not used.

Agreeing the impact of Change

- (d) 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 Fees;
- (e) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services.

Continuous improvement

- (f) for the Parties to challenge each other with ideas for efficiency and improvements; and
- (g) 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 Fees are calculated.
- 2.2 During the Term, and for a period of seven (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 (in any event, no later than two (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 of the Services;
- (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 Programme Board, such final form report to be agreed no later than one (1) month following the Authority's receipt of the draft Onerous Contract Report.

3.3 The Programme Board shall meet within fourteen (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 Relevant Supplier; representatives from any Monitored Suppliers; 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 Programme Board on an information only basis and the Authority and Programme 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: NOT USED

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 eighteen (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) Not used;
 - (b) to verify the accuracy of the Fees and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Fees 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 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 IT Environment (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 any records created during the design and development of the Supplier System and pre-operational environment such as information relating to testing;
 - (q) to review the Supplier's quality management systems (including all relevant Quality

Plans and any quality manuals and procedures);

- (r) to review the Supplier's compliance with the Standards;
- (s) 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
- (t) 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 any Contract 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 Customer Service Standards, Tender Minimum Performance Levels and RNOs at a level of detail sufficient to verify compliance with the Customer Service Standards, Tender Minimum Performance Levels and RNOs.

2.4 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (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 and External Audit Teams

- 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 and/or external 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 and/or external 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;
 - (b) Not used;
 - (c) the Authority has overpaid any Fees, 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 Fees if it prefers; and
 - (d) the Authority has underpaid any Fees, the Supplier shall not be entitled to increase the Fees paid or payable by the Authority.

SCHEDULE 7.6 – NOT USED

SCHEDULE 7.7 – RISK PREMIUMS

1. Definitions

In this Schedule 7.7, the following definitions shall apply:

- “Additional TUPE Costs”** the costs referred to in paragraph 5.1 of this Schedule 7.7;
- “Relevant Period”** means in relation to each Relevant Premium the specified “Relevant Period” in Paragraph 2 of this Schedule 7.7;
- “Relevant Premiums”** have the meaning given in Paragraph 2 of this Schedule 7.7;
- “Relevant Risk”** a risk for which the Supplier and/or its Sub-contractor has included a Relevant Premium;
- “Relevant Sum”** the sum of: the amount specified for the Relevant Premium for the corresponding Relevant Period less the costs (if any) actually incurred by the Supplier (including where relevant Sub-contractor(s) costs for which the Supplier is responsible) in that Relevant Period resulting from the Relevant Risk;
- “TUPE Risk Premium”** the risk premium submitted by the Supplier in the Financial Model in respect of potential Additional TUPE Costs.

2. Relevant Premiums

- 2.1 The Supplier has specified the following risk premiums in respect of its and/or its Sub-contractors' costs in the Financial Model in the Supplier's Tender (each a “Relevant Premium”):

Relevant Premium	Relevant Period	Amount
TUPE Risk Premium	Year 1 (June 23 – May 24)	[Redacted]

3. Consequences of Relevant Risk not resulting in costs meeting or exceeding amount of Relevant Premium

- 3.1 The Supplier shall actively monitor whether Relevant Risks have arisen. At the end of each Relevant Period the Supplier shall provide details of whether the Relevant Risk has arisen and the costs (if any) actually incurred by the Supplier (including where relevant Sub-contractor(s) costs for which the Supplier is responsible) in that Relevant Period resulting from the Relevant Risk, together with reasonable supporting information, documentation and calculations. The Supplier shall cooperate with the Authority and provide reasonable assistance to allow the Authority to review such costs.

3.2 If the Relevant Risk does not result in costs to the Supplier (including where relevant Sub-contractor(s) costs for which the Supplier is responsible) for the corresponding Relevant Period which meet or exceed the amount of the Relevant Premium:

- (a) the Supplier shall notify the Authority as soon as reasonably practicable after it becomes aware of this; and
- (b) the Authority may, in its absolute discretion, require the Supplier: (i) to pay the Relevant Sum to the Authority; or (ii) to invest the Relevant Sum in such investment connected to the provision of the Services of the Authority's election.

4. Miscellaneous

4.1 The Authority shall notify the Supplier if it exercises its rights under this Schedule 7.7.

4.2 The provisions of this Schedule 7.7 are without prejudice to any other rights of the Authority howsoever arising.

4.3 For the avoidance of doubt, and without prejudice to anything else in this Agreement, costs shall only be captured once when establishing costs incurred for the purpose of this Schedule 7.7.

4.4 The Supplier shall, and shall procure that all Sub-contractors shall, take all reasonable steps to mitigate the costs resulting from a Relevant Risk.

4.5 For the purposes of the calculation of the Relevant Sum, any Supplier or Sub-contractor costs shall be disregarded if those costs are payable to or recoverable by the Supplier or relevant Sub-contractor other than by virtue of their inclusion within the Relevant Premium (such as under an indemnity or alternative payment provision under this Agreement or if the Supplier or Sub-contractor is entitled to payment of such amounts by a third party).

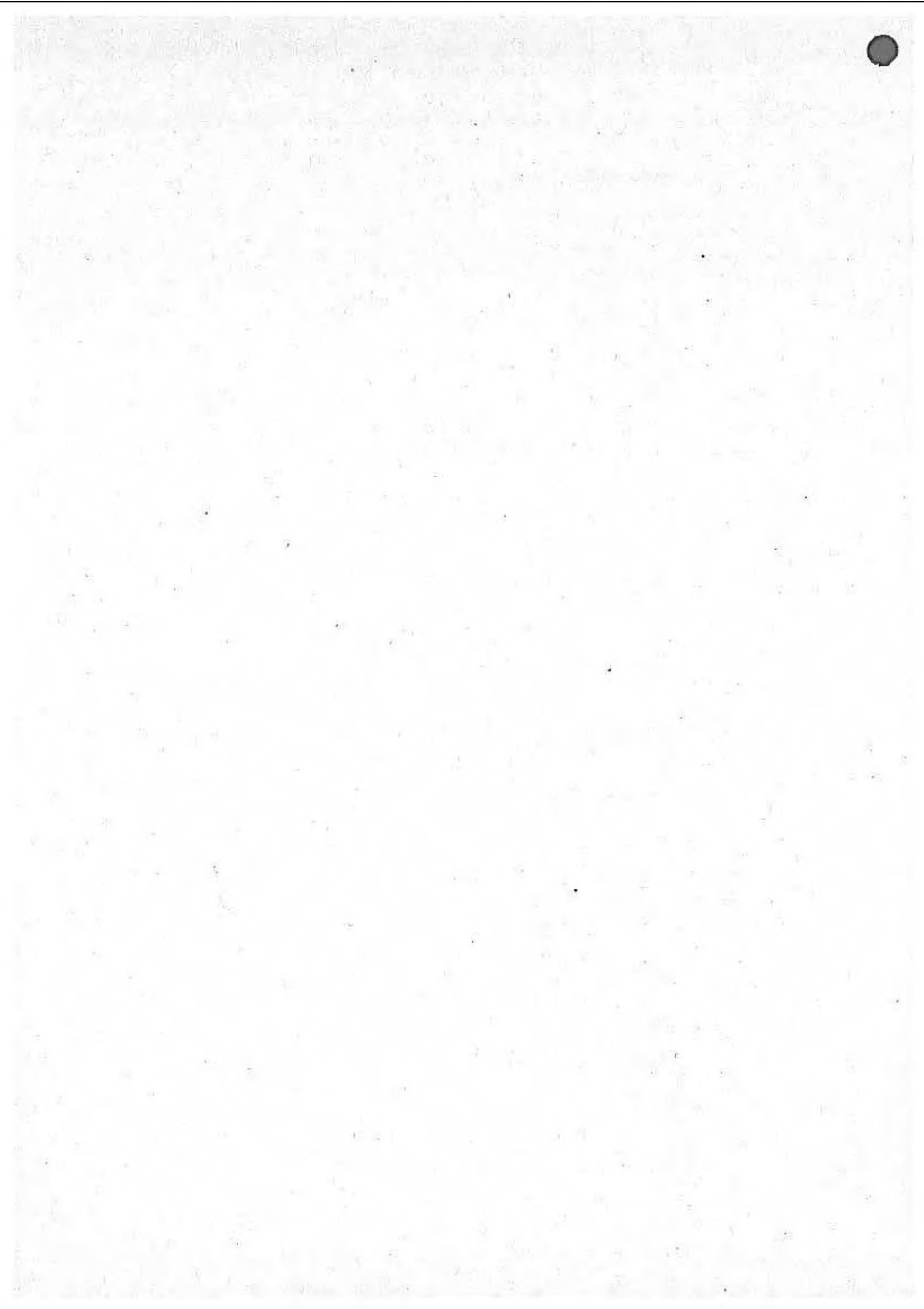
5. TUPE Additional Costs

5.1 The TUPE Risk Premium shall cover only the costs arising as a direct result of the operation of a TUPE transfer of people from a supplier to the Authority of services which are the same as or substantially similar to the Services to the Supplier or a Sub-contractor and in the following categories:

- (a) salaries;
- (b) contractual benefits including accrued but untaken holiday pay, bonuses, commissions and payments in lieu of notice;
- (c) employer NI contributions;
- (d) employer pension contributions;
- (e) statutory redundancy payments calculated under Part IX of the Employment Rights Act 1996, to the extent they have been approved by the Authority in writing in advance;
- (f) re-training and/or redeploying people for the purpose of avoiding redundancy, to the extent they have been approved by the Authority in writing in advance;
- (g) any enhanced contractual redundancy payment and other contractual benefits which may be due on redundancy (including pension top up entitlements), to the extent they have been approved by the Authority in writing in advance; and

- (h) compensation payments made to people by way of compromise of their employment rights, to the extent they have been approved by the Authority in writing in advance,
(the **TUPE Additional Costs**).

5.2 Costs incurred by the Supplier (including where relevant Sub-contractor(s) costs for which the Supplier is responsible) in respect of the TUPE Additional Costs referred to in Paragraphs 5.1(e) to (h) above shall only be included in the calculation of the Relevant Sum to the extent that they have been approved by the Authority in writing in advance.





Department
for Work &
Pensions

SCHEDULE 8

GOVERNANCE

- 8.1 Governance
- 8.2 Change Control Procedure
- 8.3 Dispute Resolution Procedure
- 8.4 Reports and Records Provisions
- 8.5 Exit Management
- 8.6 Service Continuity Plan and Corporate Resolution Planning
- 8.7 Conduct of Claims
- 8.8 Management Information

SCHEDULE 8.1 - GOVERNANCE

1 Annual Review

- 1.1** An annual review meeting shall be held throughout the Term on a date to be agreed between the Parties.
- 1.2** The meetings shall be attended by the "Contract Director" of the Supplier or any other persons considered by the Authority necessary for the review and the individual designated as the "Commercial Contract Lead" of the Authority and any other persons considered by the Authority necessary for the review.
- 1.3** A chairperson shall be appointed by the Authority for each annual review meeting. The chairperson shall be responsible for:
 - (a) scheduling the meeting;
 - (b) setting the agenda for the meeting and circulating to all attendees in advance of such meeting;
 - (c) chairing the meeting;
 - (d) monitoring the progress of any follow up tasks and activities agreed to be carried out following the meeting;
 - (e) ensuring that minutes for the meeting are recorded and disseminated electronically to the appropriate persons and to all meeting participants within seven (7) Working Days after the meeting; and
 - (f) facilitating the process or procedure by which any decision agreed at the meeting is given effect in the appropriate manner.

2 Contract Management Mechanisms

- 2.1** Both Parties shall pro-actively manage risks attributed to them under the terms of this Agreement.
- 2.2** The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for
 - (a) the identification and management of risks;
 - (b) the identification and management of issues;
 - (c) monitoring and controlling project plans.

SCHEDULE 8.2 - CHANGE CONTROL PROCEDURE

1 Definitions

In this Schedule, the following definitions shall apply:

"Change Authorisation Letter"	a letter sent in accordance with the Change Control Procedure which: <ul style="list-style-type: none">(a) when signed by both Parties, and(b) is received by the First Party from the Second Party, constitutes a variation to the Agreement;
"First Party"	has the meaning given in paragraph 2.2;
"Second Party"	has the meaning given in paragraph 2.2.

2 Change Control Procedure

- 2.1 The following Change Control Procedure applies in relation to any Contract Changes.
- 2.2 A Party (the "First Party") may propose Contract Changes by issuing Change Authorisation Letters to the other Party (the "Second Party") detailing the changes that the First Party proposes are made to the Agreement.
- 2.3 For any Change Authorisation Letter to be valid under this Schedule, it must be sent:
- (a) by email to the email address of the Authority Representative or the Supplier Representative, as applicable, provided that a representative has been appointed to that role at that time and the other Party has been provided with their email address; or
 - (b) in accordance with Clause J10 (Notices).
- 2.4 Subject to paragraph 2.3(a), the provisions of Clause J10 (Notices) shall apply to a Change Authorisation Letter as if it were a notice.
- 2.5 The First Party must sign a Change Authorisation Letter before the First Party sends it to the Second Party.
- 2.6 If the Second Party agrees to the Change Authorisation Letter it must sign the Change Authorisation Letter and send it to the First Party within ten (10) Working Days of receipt, unless the Authority determines that a different period should apply.
- 2.7 The First Party may withdraw a Change Authorisation Letter it has sent at any point before it has received the signed Change Authorisation Letter from the Second Party.
- 2.8 If the Second Party amends the Change Authorisation Letter before signing the Change Authorisation Letter and sending it to the First Party, then the Change Authorisation Letter shall be treated as being withdrawn by the First Party.
- 2.9 No proposed Contract Change is effective until the Change Authorisation Letter has been signed by both Parties, and received by the First Party from the Second Party. The Parties shall not implement a proposed Contract Change until the Change Authorisation Letter has been signed by both Parties, and received by the First Party from the Second Party.

- 2.10 If the Change Authorisation Letter cannot be agreed between both Parties, then either Party may refer the matter for resolution in accordance with Clause J11 (Disputes).
- 2.11 By signing the Change Authorisation Letter the Supplier also confirms the consent of the Guarantor to the Contract Changes.

3 Operational Change Procedure

- 3.1 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 Fees or other costs.
- 3.2 The Authority may request an Operational Change by submitting a written request for Operational Change ("RFOC") to the Supplier Representative.
- 3.3 The RFOC shall include the following details:
- (a) the proposed Operational Change; and
 - (b) the timescale for completion of the Operational Change.
- 3.4 The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.
- 3.5 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.

SCHEDULE 8.3 - DISPUTE RESOLUTION PROCEDURE

1 Definitions

In this Schedule, the following definitions shall apply:

"CEDR"	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
"Counter Notice"	has the meaning given in Paragraph 7.2;
"Expert"	in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute;
"Expert Determination"	determination by an Expert in accordance with Paragraph 6;
"Mediation Notice"	has the meaning given in Paragraph 4.2;
"Mediator"	the independent third party appointed in accordance with Paragraph 5.2 to mediate a Dispute;
"Multi-Party Dispute"	a Dispute which involves the Parties and one or more Related Third Parties;
"Multi-Party Dispute Representatives"	has the meaning given in Paragraph 9.6;
"Multi-Party Dispute Resolution Board"	has the meaning given in Paragraph 9.6;
"Related Third Party"	a party to: <ul style="list-style-type: none"> • another contract with the Authority or the Supplier which is relevant to this Agreement; or • a Sub-contract; and
"Supplier Request"	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.

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 twenty (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; 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; 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 7) or litigation (in accordance with Clause J12 (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 (Urgent Relief).

3 Expedited Dispute Timetable

3.1 In exceptional circumstances where the use of the times 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 five (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(c), ten (10) Working Days;
- (b) in Paragraph 5.2, ten (10) Working Days;
- (c) in Paragraph 6.2, five (5) Working Days; and
- (d) in Paragraph 7.2, ten (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 two (2) Working Days after the deadline has passed, the Authority may set a revised deadline provided that it is no less than five (5) Working Days before the end of the period of time specified in the applicable paragraphs (or two (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 such 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 shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the individual designated as the "Commercial Contract Lead" of the Authority and the Supplier's Divisional Director of Employment Services.

4.2 If:

- (a) either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;
- (b) the Parties 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
- (c) the Parties have not settled the Dispute in accordance with Paragraph 4.1 within thirty (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).
- 5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within twenty (20) Working Days from (and including) the service of a Mediation Notice, 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 of 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). 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 financing 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 ten (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 fifteen (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) he/she 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 his/her determination within thirty (30) Working Days of his 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 twenty (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 his/her fees and expenses, are to be paid.

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 fifteen (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 fifteen (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 fifteen (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 Rules of the London Court of International Arbitration ("LCIA") (subject to Paragraphs 7.5(e), (f) and (g));
 - (b) the arbitration shall be administered by the LCIA;
 - (c) the LCIA procedural 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 arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - (d) if the Parties fail to agree the appointment of the arbitrator within ten (10) Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
 - (e) the chair of the arbitral tribunal shall be British;
 - (f) the arbitration proceedings shall take place in London and in the English language; and
 - (g) the seat of the arbitration shall be London.

8 Urgent relief

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 Paragraph 2.1 and/or referring the Dispute to mediation 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 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 or to arbitration in accordance with Paragraph 7, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by 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 five (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 ten (10) Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within five (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 contractual 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 twenty-five (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) 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.

SCHEDULE 8.4 - REPORTS AND RECORDS PROVISIONS

1 Transparency Reports

- 1.1 Within three (3) months of the Effective 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 1 (once approved, the **"Transparency Reports"**).
- 1.2 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 five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.

2 Other reports

The Authority may require any or all of the following reports:

- (a) delay reports;
- (b) reports relating to tests carried out under Schedule 2.4 (Security Requirements) and Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
- (c) reports which the Supplier is required to supply as part of the Management Information;
- (d) annual reports on the Insurances;
- (e) security reports; and
- (f) Force Majeure Event reports.

3 Records

- 3.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Annex 1 (together **"Records"**):
 - (a) in accordance with the requirements of The National Archives and Good Industry Practice;
 - (b) in chronological order;
 - (c) in a form that is capable of audit; and
 - (d) at its own expense.
- 3.2 The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.
- 3.3 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.

- 3.4 The Supplier shall, during the Term and a period of at least seven (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.
- 3.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least seven (7) years after the expiry or termination of this Agreement.
- 3.6 Without prejudice to the foregoing, the Supplier, at the Authority's request, shall provide the Authority:
- (a) as soon as they are available, and in any event within sixty (60) Working Days after the end of the first six (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 un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such six (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 one hundred and thirty (130) Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, 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.

ANNEX 1: TRANSPARENCY REPORTS

TITLE	CONTENT	FORMAT	FREQUENCY
<i>(Performance)</i>			
<i>(Fees)</i>			
<i>(Major Sub-contractors)</i>			
<i>(Technical)</i>			
<i>(Performance management)</i>			

ANNEX 2: RECORDS TO BE KEPT BY THE SUPPLIER

The records to be kept by the Supplier are:

1. This Agreement, its Schedules 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 the underlying IT Environment 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 Fees.
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; and including documents detailing the identity of the persons changing such ownership or interest.
13. Invoices and records related to 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 produced by the Supplier pursuant to Schedule 2.4 (Security Requirements).
18. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement.

4: SUPPLY CHAIN TRANSPARENCY INFORMATION TEMPLATE

	Financial Year 20[]			
	Under this Agreement		Supplier as a whole	
	£	%	£	%
total contract revenue (£) to be in this Financial Year	£[]	100%	£[]	100%
of Sub-contracted revenues (£) in this Financial Year	£[]	[]	£[]	[]
of Sub-contracted revenues to in this Financial Year	£[]	[]	£[]	[]
of Sub-contracted revenues to in this Financial Year	£[]	[]	£[]	[]

SCHEDULE 8.5 - EXIT MANAGEMENT

1 Definitions

In this Schedule, the following definitions shall apply:

"Application Programming Interface" or "API"	means a piece of software that facilitates access to the Supplier's application(s) to provide access to business functionality and/or Authority Data to support any relevant Termination Services which conforms to the Government Digital Service API technical and data standards set online at: https://www.gov.uk/guidance/gds-api-technical-and-data-standards
"Emergency Exit"	any termination of this Agreement which is a: <ul style="list-style-type: none">(a) termination of the whole or part of this Agreement in accordance with Clause 11 (Termination Rights), except where the period of notice given under that Clause is greater than or equal to six (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 11 (Termination Rights); or(c) wrongful termination or repudiation of this Agreement by either Party;
"Exclusive Assets"	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;
"Exit Information"	has the meaning given in Paragraph 3.1;
"Exit Manager"	the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties' respective obligations under this Schedule;
"Net Book Value"	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;
"Non-Exclusive Assets"	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;
"Ordinary Exit"	any termination of the whole or part of this Agreement which occurs: pursuant to Clause 11 (Termination Rights) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to six (6) months; or as a result of the expiry of the Term;

"Registers"	the register and configuration database referred to in Paragraphs 2.1(a) and 2.1(b);
"Transferable Assets"	those of the Exclusive Assets which are capable of legal transfer to the Authority;
"Transferable Contracts"	the Sub-contracts, licences for Supplier's Software, licences for Third Party Software 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
"Transferring Contracts"	has the meaning given in Paragraph 6.2(c).

2 Obligations during the Term to facilitate Exit

2.1 During the Term, the Supplier shall:

- (a) create and maintain 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 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 and provide written notification of such appointment to the other Party within three (3) months of the Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has

the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule 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 five (5) Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any 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 ten (10) Working Days of a request in writing from the Authority.

3.4 The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than four (4) updates in any six (6) month period.

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).

4 Exit Plan

4.1 The Supplier shall, within three (3) months after the Effective Date, 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 Partial Termination, expiry or termination of this Agreement;
- (b) complies with the requirements set out in Paragraph 4.2; and
- (c) is otherwise reasonably satisfactory to the Authority.

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

4.3 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 (including such of the services 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 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.

4.4 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.

4.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) and if requested by the Authority following the occurrence of a Financial Distress Event, within fourteen (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 twenty (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 twenty (20) Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

Finalisation of the Exit Plan

4.6 Within twenty (20) Working Days after service of a Termination Notice by either Party or six (6) months prior to the expiry of this 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 and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.

4.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days following its delivery to the 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 and the last approved version of the Exit Plan (insofar as relevant).

5 Termination Services

Notification of requirements for Termination Services

5.1 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 four (4) months prior to the date of Partial Termination, termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than one (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 twenty-four (24) months after the date that the Supplier ceases to provide the terminated Services.

5.2 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 for more than six (6) months after the date the Supplier ceases to provide the terminated Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and
- (b) the right to terminate its requirement for Termination Services by serving not less than twenty (20) Working Days' written notice upon the Supplier to such effect.

Termination Assistance Period

5.3 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 5.1, 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 5.3(b) without additional costs to the Authority;
- (d) provide the Services and the Termination Services at no detriment to the Customer Service Standards, KPIs and KPI Targets, save to the extent that the Parties agree otherwise in accordance with Paragraph 5.5; and
- (e) at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.

5.4 Without prejudice to the Supplier's obligations under Paragraph 5.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 5.3(b) without additional costs to the Authority, any 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.

5.5 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 Customer Service Standards or KPI Targets, the Parties shall vary the relevant Customer Service Standards or KPI Targets to take account of such adverse effect.

Termination obligations

- 5.6** The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination.
- 5.7** 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) in respect of the Services that have been terminated, the Supplier shall:
- (a) cease to use the Authority Data;
 - (b) 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);
 - (c) 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 and promptly certify to the Authority that it has completed such deletion;
 - (d) return to the Authority such of the following as is in the Supplier's possession or control:
 - (i) all 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;
 - (e) vacate any Authority Premises unless access is required to continue to deliver the Services;
 - (f) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to twelve (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 5.7(f)(ii).
- 5.8** 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), 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.

- 5.9 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.

6 Assets, Sub-contracts and software

- 6.1 Following notice of termination 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 except to the extent that such change does not or will not affect the provision of Services or the Fees;
 - (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.
- 6.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 5.3(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");
 - (i) which, if any, of:
 - the Exclusive Assets that are not Transferable Assets; and
 - the Non-Exclusive Assets,the Authority and/or the Replacement Supplier requires the continued use of; and
 - (b) 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.

- 6.3 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; or
 - (b) the cost of the Transferring Asset has been partially or fully paid for through the Fees 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 Fees.
- 6.4 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.

- 6.5** Where the Supplier is notified in accordance with Paragraph 6.2(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.
- 6.6** 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.
- 6.7** 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.
- 6.8** 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.
- 6.9** 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 6.6 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 F1 (Intellectual Property Rights) and/or Clause F2 (Transfer and Licences Granted by the Supplier).

7 Supplier Personnel

- 7.1** 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.
- 7.2** 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.
- 7.3** 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.

- 7.4 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.
- 7.5 The Supplier shall not for a period of twelve (12) months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier, except that this paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

8 Fees

- 8.1 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 Fees 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.
- 8.2 Where the Authority requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with Paragraph 5.2:
- (a) where more than six (6) months' notice is provided, the same rate as set out in the Exit Plan (or the Fees when not stated in the Exit Plan) shall be payable; and
 - (b) where less than six (6) months' notice is provided, no more than 1.2 times the rate as set out in the Exit Plan (or the Fees when not stated in the Exit Plan) shall be payable.
- 8.3 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.
- 8.4 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 including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

9 Apportionments

- 9.1 All outgoing 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 three hundred and sixty-five (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.

9.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 9.1 as soon as reasonably practicable.

ANNEX 1: SCOPE OF THE TERMINATION SERVICES

- 1 The Termination Services to be provided by the Supplier shall include such of the following services as the Authority may specify:
- (a) ceasing all non-critical Software changes (except where agreed in writing with the Authority);
 - (b) notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
 - (c) 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;
 - (d) delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the twelve (12) month period immediately prior to the commencement of the Termination Services;
 - (e) providing details of work volumes and staffing requirements over the twelve (12) month period immediately prior to the commencement of the Termination Services;
 - (f) 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;
 - (g) providing the Authority with any problem logs which have not previously been provided to the Authority;
 - (h) 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 twelve (12) months after the Termination Assistance Period;
 - (i) 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;
 - (j) reviewing all Software libraries used in connection with the Services and providing details of these to the Authority and/or the Replacement Supplier;
 - (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) provide all necessary support, equipment, tools, and Software such as 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) assisting in establishing naming conventions for any new production site;
- (o) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- (p) Not used;
- (q) agreeing with the Authority a handover plan for all of the Supplier's responsibilities as set out in Schedule 2.4 (Security Requirements);
- (r) delivering copies of the 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;
- (s) assisting with the loading, testing and implementation of the production databases;
- (t) assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;
- (u) in respect of the maintenance and support of the Supplier System, providing historical performance data for the duration of the Agreement;
- (v) assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by the Authority (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
- (w) providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
- (x) answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;
- (y) 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;
- (z) 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
- (aa) 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; and

- (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.

1.2 The Supplier shall:

- (a) provide a documented plan relating to the training matters referred to in Paragraph 1.1(k) for agreement by the Authority at the time of termination or expiry of this Agreement;
- (b) co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1(o), providing skills and expertise of a suitable standard; and
- (c) fully co-operate in the execution of the Authority Database migration plan agreed pursuant to Paragraph 1.1(w), 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 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 Paragraph 1.1(y) shall include:

- (a) copies of up-to-date procedures and operations manuals;
- (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;
- (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.

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.

SCHEDULE 8.6 - SERVICE CONTINUITY PLAN AND CORPORATE RESOLUTION PLANNING

Part 1: Service Continuity Plan

1 Definitions

1.1 In this Schedule, the following definitions shall apply:

"Business Continuity Plan"	has the meaning given in Paragraph 2.2(a)(ii);
"Business Continuity Services"	has the meaning given in Paragraph 4.2(b);
"Department"	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: Government Department; or Non-Ministerial Department.
"Disaster"	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 fourteen (14) days or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
"Disaster Recovery Plan"	has the meaning given in Paragraph 2.2(a)(iii);
"Disaster Recovery Services"	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
"Disaster Recovery System"	the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
"Insolvency Continuity Plan"	has the meaning given in Paragraph 2.2(a)(iv).
"Related Service Provider"	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 any other person appointed to perform a contract under the Access to Work: Holistic Assessments programme;
"Review Report"	has the meaning given in Paragraphs 7.2(a) to 7.2(c);
"Service Continuity Plan"	means the plan prepared pursuant to Paragraph 2 of this Schedule which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan;

2 Service Continuity Plan

- 2.1 Within forty (40) Working Days from the Effective 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, 4, 5 and 6.
- 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 twenty (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 twenty (20) Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 2.3 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 website (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 27002 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 relating to the Customer Service Standards and KPI Targets or to any increase in the Fees 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) address the various possible levels of failures of or disruptions to the Services;
 - (b) 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"**);
 - (c) specify any applicable Customer Service Standards, KPIs and KPI Targets with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Customer Service Standards and KPI Targets in respect of other Services during any period of invocation of the Business Continuity Plan; and
 - (d) 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 Customer Service Standards, KPIs and KPI Targets with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Customer Service Standards and KPI Targets 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; 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 six (6) months;
- (b) within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9;
- (c) within fourteen (14) days of a Financial Distress Event;
- (d) within thirty (30) days of a Corporate Change Event; and
- (e) where the Authority requests any additional reviews (over and above those provided for in Paragraphs 7.1(a) to 7.1(d)) 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 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 twenty (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 twenty (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 twenty (20) Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 7.3 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 Contract Year). Subject to Paragraph 8.2, 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 twenty (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.
- 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 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.
- 8.8 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 2: CORPORATE RESOLUTION PLANNING

10 Service status and Supplier Status

- 10.1 This Agreement is a Critical Service Contract.
- 10.2 The Supplier shall notify the Authority in writing within five (5) Working Days of the Effective Date and throughout the Term within one hundred and twenty (120) days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier.

11 Provision of Corporate Resolution Planning information

- 11.1 Paragraphs 11 to 13 of this Part 2 shall apply if this Agreement has been specified as a Critical Service Contract under Paragraph 10.1 of this Part 2 or the Supplier is or becomes a Public Sector Dependent Supplier.
- 11.2 Subject to Paragraphs 11.6, 11.10 and 11.11 of this Part 2:
- (a) where this Agreement is a Critical Service Contract, the Supplier shall provide the Relevant Authority with the CRP Information within sixty (60) days of the Effective Date; and
 - (b) except where it has already been provided in accordance with Paragraph 11.2(a) of this Part 2, where the Supplier is a Public Sector Dependent Supplier, it shall provide the Relevant Authority with the CRP Information within sixty (60) days of the date of the Relevant Authority's request.
- 11.3 The Supplier shall ensure that the CRP Information:
- (a) is full, comprehensive, accurate and up to date;
 - (b) is split into two parts:
 - (i) Group Structure Information and Resolution Commentary;
 - (ii) UK Public Service / CNI Contract Information.
- and is structured and presented in accordance with the requirements and explanatory notes set out at Annex I of the latest published version of the Resolution Planning Guidance published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-outsourcing-playbook> 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 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 Critical National Infrastructure and the nature of those agreements; and
 - (e) complies with the requirements set out at Appendix I (Group Structure Information and Resolution Commentary) and Appendix II (UK Public Sector / CNI Contract Information) respectively.
- 11.4 Following receipt by the Relevant Authority of the CRP Information pursuant to

Paragraphs 11.2, 11.8 and 11.9 of this Part 2, the Supplier and the Relevant Authority shall discuss in good faith the contents of the CRP Information and:

- (a) where the Authority is the Relevant Authority, the Authority shall; and
- (b) where the Cabinet Office Markets and Suppliers Team is the Relevant Authority, the Authority shall use reasonable endeavours to procure that the Cabinet Office Markets and Suppliers Team shall,

no later than sixty (60) days after the date on which the CRP Information was delivered by the Supplier either provide an Assurance to the Supplier that it approves the CRP Information or that it rejects it.

11.5 If the Relevant Authority rejects 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 comments, and shall re-submit the CRP Information to the Relevant Authority for approval within thirty (30) days of the date of the Relevant Authority's rejection. The provisions of paragraph 11.3 to 11.5 of this Part 2 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.

11.6 Where the Supplier has already provided CRP Information to a Department (or, in the case of a Strategic Supplier, to the Cabinet Office Markets and Suppliers Team) and has received an Assurance of its CRP Information from that Department (or, in the case of a Strategic Supplier, from the Cabinet Office Markets and Suppliers Team), then provided that the Assurance remains Valid, the Supplier shall not be required to provide the CRP Information or updated CRP Information under Paragraphs 11.2 and 11.8(a) to 11.8(c) of this Part 2 if it provides a copy of the Valid Assurance to the Authority on or before the date on which the CRP Information would otherwise have been required.

11.7 An Assurance shall be deemed Valid for the purposes of Paragraph 11.6 of this Part 2 if:

- (a) in respect of the Supplier's obligations under Paragraph 11.2:
 - (i) the CRP Information on which the Assurance was based was provided to the Department providing the Assurance (or, in the case of Strategic Suppliers, to the Cabinet Office Markets and Suppliers Team) within the twelve (12) months prior to the deadline by which the CRP Information would otherwise have been required under Paragraph 11.2; and
 - (ii) 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 on which the CRP Information was provided; and
- (b) in respect of the Supplier's obligations under Paragraphs 11.8(a) to 11.8(c), the CRP Information on which the Assurance was based was provided to the Department providing the Assurance (or, in the case of Strategic Suppliers, to the Cabinet Office Markets and Suppliers Team) after the date of the event triggering the obligation to provide the CRP Information under Paragraphs 11.8(a) to 11.8(c).

11.8 Subject to Paragraph 11.6, 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 11.8(c) of this Part 2 its initial CRP Information) to the Relevant Authority:

- (a) within fourteen (14) days of the occurrence of a Financial Distress Event (along with

any additional highly confidential information no longer exempted from disclosure under Paragraph 11.11 of this Part 2);

- (b) within thirty (30) days of a Corporate Change Event unless not required pursuant to Paragraph 11.10;
- (c) within thirty (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 11.10; or
 - (ii) none of the credit rating agencies specified at Paragraph 11.10 hold a public credit rating for the Supplier or any of its Parent Undertakings; and
- (d) in any event, within six (6) months after each Accounting Reference Date or within fifteen (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 11.8(a) 11.8(b) or 11.8(c) since the most recent Accounting Reference Date (being no more than twelve (12) months previously) within the timescales that would ordinarily be required for the provision of that information under this Paragraph 11.8(d); or
 - (ii) unless not required pursuant to Paragraph 11.10

11.9 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 11.8(a) to (d) of this Part 2, the Supplier shall provide at the request of the Relevant Authority and within the applicable timescales for each event as set out in Paragraph 11.8 (or such longer timescales as may be notified to the Supplier by the Authority), the CRP Information to the Relevant Authority.

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

- (i) Aa3 or better from Moody's;
- (ii) AA- or better from Standard and Poor's;
- (iii) AA- or better from Fitch;

the Supplier will not be required to provide the 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 11.10, in which cases the Supplier shall provide the updated version of the CRP Information in accordance with paragraph 11.8.

11.11 Subject to Paragraph 13, where the Supplier demonstrates to the reasonable satisfaction of the Relevant Authority that a particular item of CRP Information is highly confidential, the Supplier may, having orally disclosed and discussed that information with the Relevant Authority, 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 to the extent required under Paragraph 11.8.

12 Termination rights

12.1 The Authority shall be entitled to terminate this Agreement under Clause 11.1(b) (Termination by the Authority) if the Supplier is required to provide CRP Information under Paragraph 11 of this Part 2 and either:

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

13 Confidentiality and usage of CRP information

- 13.1 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.
- 13.2 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 13.1 of this Part 2 and Clause F6.
- 13.3 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 pursuant to Paragraph 11 of this Part 2 subject, where necessary, to the Relevant Authority entering into an appropriate confidentiality agreement in the form required by the third party.
- 13.4 Where the Supplier is unable to procure consent pursuant to Paragraph 13.3 of this Part 2, 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;
 - 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.
- 13.5 The Supplier shall provide the Relevant Authority 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.

APPENDIX I

Group structure information and resolution commentary

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 Appendix II 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 Appendix II and the dependencies between each.

APPENDIX II

UK Public Sector / CNI contract information

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:
 - 1.1.1 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;
 - 1.1.2 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 1.1.1 of this Appendix II and where the member of the Supplier Group is acting as a Key Sub-contractor under the agreement with the end recipient; or
 - 1.1.3 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 five million pounds (£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;

SCHEDULE 8.7 - CONDUCT OF CLAIMS

1 Indemnities

- 1.1 This Schedule 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").
- 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.

3 Recovery of sums

- 3.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity 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 whichever is the lesser of:

- (a) an amount equal to the sum recovered (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 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.

4 Mitigation

- 4.1 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 the indemnities in this Schedule.

SCHEDULE 8.8 – MANAGEMENT INFORMATION

1 General

1.1 The Supplier grants the Authority a non-exclusive, transferable, perpetual, irrevocable, royalty-free licence to:

- (a) use and share with:
 - (i) any Crown Body;
 - (ii) any other Contracting Authority; and
 - (iii) any other third party as may be agreed by the Authority and the Supplier from time to time (such Supplier's agreement not to be unreasonably withheld); and/or
- (b) publish (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA being redacted),

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.

2 Management Information and format

2.1 The Supplier agrees to provide timely Management Information and/or MI Reports to the Authority which incorporates the data listed below, in the correct format, and which the Supplier represents and warrants are full, accurate and complete as at the date of provision to the Authority.

Management Information required	Frequency or date required by
All MI relating to Customer Service Standards.	Each at the frequency required and immediately on request
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 which could include but is not limited to 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	Immediately on request

Management Information required	Frequency or date required by
its board papers and board minutes.	
Where a Guarantee has been provided in accordance with Clause B1.2, a copy of its annual accounts, annual returns, management accounts, evidence to the satisfaction of its assets, liabilities and funding position, and copies of its board papers and board minutes for the Guarantor, including 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 MI relating to Sub-contracts and Sub-contractors required by Clause E2.	Immediately on request
Details of the wages, salaries, bonuses and profit sharing arrangements as applicable in respect of all Supplier Personnel.	Immediately on request
Any further information as the Authority may reasonably request.	Immediately on request
The number of supplier and end-to-end supply chain staff working on this Agreement (including data on absences) and in what roles, including a full-time equivalent (FTE) breakdown.	Monthly MI Report
The number of people participating within the main element of the Delivery Model.	Monthly MI Report
Supplier performance against the Customer Service Standards.	Monthly MI Report
Participant fail to attend rates by Participant group/segment for interviews, group sessions and other interventions.	Monthly MI Report
Participant attendance at face-to-face and group sessions and potentially other agreed channels of engagement within the last two months.	Monthly MI Report
The performance and management of the Sub-contractors (including cohort performance against the performance levels and Customer Service Standards in the Agreement).	Monthly MI Report
The names of each Sub-contractor used by the Supplier, the Supplier's main contact (name, phone number and email address) for each Sub-contractor with an alternative contact for contingency, the Services delivered by each Sub-contractor, the geographic area covered by each Sub-contractor, the amount paid to each Sub-contractor each Month, the Supplier's risk	Monthly MI Report

Management Information required	Frequency or date required by
assessment of the stability of each Sub-contractor, and the Supplier's contingency plan(s) should a Sub-contractor become insolvent.	
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 thirty (30) days from the receipt of a valid invoice.	Quarterly MI Report
Analysis of Participant complaints, analysis of trends and themes, and management action plans to reduce future occurrences.	Quarterly MI Report
Data on the Supplier's high level order book, and turnover analysis, including but not limited to: the commissioner of each of the Supplier's contracts, the percentage of the Supplier's turnover represented by each contract, and contract key dates (e.g. income start and end).	Quarterly MI Report
Marginal costs information, which is all costs, including financial and time costs, which the Supplier would have incurred to achieve one extra Outcome from each Cohort from which it has earned an Outcome in the immediately preceding twelve (12) months.	No less frequently than once in each Contract Year in an MI Report
Details of the Supplier's policy, process and methodology for its risk assessments of the stability of each Sub-contractor.	(a) within ten (10) Working Days of the Effective Date, (b) when updated, reviewed or amended by the Supplier, and (c) annually.

- 2.2 The Authority may from time to time make changes to the data it requires the Supplier to provide in a MI Report including to the data required or format of the report and notify such changes to the Supplier. The Authority shall give notice in writing of any such change to the MI Report and shall specify the date from which such changes to the content or format of the MI Reports shall be effective which date shall be at least thirty (30) calendar days following the date of the notice.
- 2.3 If the Authority changes the data required or format of the MI Report at any time, then the Supplier agrees to provide all future MI Reports in accordance with such notification.
- 2.4 The Authority may provide the Supplier with supplemental guidance for completing the MI Report or submitting MI Reports from time to time which may for example indicate which fields are mandatory and which are optional. The Supplier agrees to complete the MI Report in accordance with any such guidance.
- 2.5 The Authority shall have the right from time to time (on reasonable written notice) to amend the nature of the Management Information which the Supplier is required to supply to the Authority.

3 Frequency and coverage

- 3.1 All MI Reports must be returned to the Authority on or prior to the Reporting Date every month during the Term and thereafter, until all transactions relating to Agreements to which the Supplier is a party have permanently ceased.
- 3.2 The MI Report should be used (among other things) to report activity and transactions occurring during the month(s) to which the MI Report relates.
- 3.3 Unless otherwise notified to the Supplier by the Authority, the Supplier must return the MI Report for each month(s) even where there are no transactions to report in the relevant month (a "Nil Return").
- 3.4 The Supplier must inform the Authority of any errors or corrections to the Management Information:
 - (a) in the next MI Report due immediately following discovery of the error by the Supplier; or
 - (b) as a result of the Authority querying any data contained in an MI Report.

4 Submission of the MI Report

The completed MI Report shall be completed electronically and returned to the Authority by uploading and/or sending the MI Report in accordance with the instructions notified by the Authority to the Supplier from time to time. The Supplier agrees to comply with any such instructions provided they do not materially increase the burden on the Supplier.

5 Defective Management Information

- 5.1 The Supplier acknowledges that it is essential that the Authority receives timely and accurate Management Information pursuant to this Agreement because Management Information is used by the Authority to inform strategic decision making.
- 5.2 Following an MI Failure, the Authority may issue reminders to the Supplier or require the Supplier to rectify defects in the MI Report provided to the Authority. The Supplier shall rectify any deficient or incomplete MI Report as soon as possible and not more than five (5) Working Days following receipt of any such reminder.

6 Meetings

The Supplier agrees to attend meetings between the Authority and the Supplier in person to discuss the circumstances of any MI Failure(s) at the request of the Authority (without prejudice to any other rights the Authority may have). If the Authority requests such a meeting the Supplier shall propose measures to ensure that the MI Failures are rectified and do not occur in the future. The Authority and the Supplier shall document these measures and continue to monitor the Supplier's performance.

7 MI Admin Fees

- 7.1 If, in any rolling three (3) month period, two (2) or more MI Failures occur, the Supplier acknowledges and agrees that the Authority shall have the right to invoice the Supplier for MI Admin Fees and (subject to paragraph 7.2) in respect of any MI Failures as they arise in subsequent months.
- 7.2 If, following activation of the Authority's right to charge Admin Fee(s) in respect of MI

Failures pursuant to paragraph 7.1, the Supplier submits the monthly MI Report for two (2) consecutive months and no MI Failure occurs then the right to charge the Admin Fee(s) shall lapse. For the avoidance of doubt the Authority shall not be prevented from exercising such right again during the Term if the conditions in paragraph 7.1 are met.

- 7.3 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 Management Information as required by this Agreement.
- 7.4 The Authority shall notify the Supplier if any MI Admin Fees arise pursuant to paragraph 7.1 above and shall be entitled to invoice the Supplier for such MI Admin Fees, which shall be payable by the Supplier within thirty (30) days of the date of the relevant invoice. Any exercise by the Authority of its rights under this paragraph 7.4 shall be without prejudice to any other rights that may arise pursuant to the terms of this Agreement.





Department
for Work &
Pensions

SCHEDULE 9

EMPLOYMENT

- 9.1 Staff Transfer
- 9.2 Key Personnel

SCHEDULE 9.1 - STAFF TRANSFER

1 Definitions

In this Schedule, the following definitions shall apply:

"Former Supplier"	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"	the revised Fair Deal position set out in the HM Treasury guidance: <i>"Fair Deal for staff pensions: staff transfer from central government"</i> issued in October 2013 including: (i) any amendments to that document immediately prior to the Relevant Transfer Date; (ii) 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"	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
"Replacement Sub-contractor"	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"	a transfer of employment to which the Employment Regulations applies;
"Relevant Transfer Date"	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
"Service Transfer"	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;
"Service Transfer Date"	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
"Staffing Information"	in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format: their ages, dates of commencement of employment or engagement, gender and place of work; details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;

the identity of the employer or relevant contracting Party;

their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;

their wages, salaries, bonuses and profit-sharing arrangements as applicable;

details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;

any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);

details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long-term absence;

copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

"Statutory Schemes"	means the CSPA, NHSPA or LGPS as defined in the Annexes to Part D of this Schedule;
"Supplier's Final Supplier Personnel List"	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
"Supplier's Provisional Supplier Personnel List"	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;
"Transferring Authority Employees"	those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;
"Transferring Former Supplier Employees"	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
"Transferring Supplier Employees"	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

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.

PART A: Not used.

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(2) 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/or the Acquired Rights Directive; 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 or the Acquired Rights Directive then:

- (a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within five (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 fifteen (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 fifteen (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 five (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 six (6) months of the Effective 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 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

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 2007;
- (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
- (c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
- (d) 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

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 the Pensions Annex to this Staff Transfer Schedule.

PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

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 or the Acquired Rights Directive then:
 - (a) the Supplier shall, and shall procure that the relevant Sub-contractor shall, within five (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 fifteen (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 fifteen (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 five (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 fifteen (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 six (6) months of the Effective Date.

3 Procurement Obligations

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

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:

"Actuary"	a Fellow of the Institute and Faculty of Actuaries;
"Admission Agreement"	either or both of the CSPA Admission Agreement (as defined in Annex D1: CSPA) or the LGPS Admission Agreement) as defined in Annex D3: LGPS), as the context requires;
"Broadly Comparable"	<p>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>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 "Broad Comparability" shall be construed accordingly;</p>
"CSPA"	the schemes as defined in Annex D1 to this Part D;
"Direction Letter"	has the meaning in Annex D2 to this Part D;
"Fair Deal Employees"	<p>any of:</p> <ul style="list-style-type: none"> (i) Transferring Authority Employees; (ii) Transferring Former Supplier Employees; and/or (iii) 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 paragraphs 2.3 (d) of Parts A or B or paragraph 1.2 (d) of Part C; (iv) where the Former Supplier becomes the Supplier employees; <p>who at the Effective Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Authority;</p>
"Fair Deal Schemes"	the relevant Statutory Scheme or a Broadly Comparable pension scheme;
"Fund Actuary"	a Fund Actuary as defined in Annex D3 to this Part D;

"LGPS" the schemes as defined in Annex D3 to this Part D; and

"NHSPS" the schemes as defined in Annex D2 to this Part D.

2 Participation

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

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

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 or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
- (b) 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.

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; and
- (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).

4 Indemnities

4.1 The Supplier undertakes to the Authority to indemnify and keep indemnified NHS Pensions, the Authority and/or any Replacement Supplier and/or any Replacement Sub-Contractor on demand from and against all and any Losses whatsoever:

- (a) arising 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 CSPA Admission Agreement and/or the Direction Letter and/or the LGPS Admission Agreement; and/or
- (b) which relates to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Fair Deal Schemes.

4.2 The Supplier hereby indemnifies NHS Pensions, the Authority and/or any Replacement Supplier and/or Replacement Sub-Contractor from and against all Losses suffered or incurred by it or them which arise from claims by Fair Deal Employees of the Supplier and/or of any 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:

- (a) relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Agreement; and/or
- (b) 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.

4.3 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 G1 (Limitation of Liability).

5 Disputes

5.1 The Dispute Resolution Procedure will not apply to this Part D and any dispute between the Authority and/or the Supplier, or between their respective actuaries, or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the 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.

6 Third Party Rights

- 6.1 The Parties agree Clause J9 (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 owed 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 twenty-eight (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**

Employee transfers to another employer (by way of a transfer under the Employment Regulations) the Supplier shall or shall procure that any relevant Sub-Contractor shall:

- (a) consult with about, and inform those Fair Deal Employees of, the pension provisions relating to that transfer; and
- (b) procure that the employer to which the Fair Deal Employees are transferred (the "New Employer") complies with the provisions of this Part D and its Annexes provided that references to the "Supplier" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Employees so transferred to the New Employer.

9 Pension issues on expiry or termination

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

10 Broadly comparable Pension schemes

10.1 If either:

- (a) the terms of any of paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and or 4 of Annex D3: LGPS apply; or
- (b) the Authority agrees, having considered the exceptional cases provided for in New Fair Deal, (such agreement not to be unreasonably withheld) that the Supplier (and/or its Sub-Contractors, if any) need not continue to provide the Fair Deal Employees, who continue to qualify for Fair Deal Protection, with access to the appropriate Statutory Scheme;

the Supplier must (and must, where relevant, procure that each of its Sub-Contractors will) ensure that, with effect from the Relevant Transfer Date or, if later, cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Authority.

10.2 Where the Supplier has set up a Broadly Comparable pension scheme or schemes pursuant to the provisions of paragraph 10.1, 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 covering all relevant Fair Deal Employees, as soon as it is able to do so and in any event no later than twenty-eight (28) days before the Relevant Transfer Date;
- (b) fully fund any such Broadly Comparable pension scheme on a past service reserve basis which is aligned to the funding requirements set by that Broadly Comparable pension scheme's Actuary or by the Government Actuary's Department and is subject to the underpin for the period ending on the Service Transfer Date;
- (c) instruct any such Broadly Comparable pension scheme's Actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the Replacement Supplier and/or 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 Employee that remains eligible for

New Fair Deal protection following a Service Transfer;

- (d) provide a replacement Broadly Comparable pension scheme with immediate effect for those Fair Deal Employees who are still employed by the Supplier and/or relevant 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 terminated;
- (e) allow and make all necessary arrangements to effect, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the relevant Statutory Scheme and as is relevant on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the appropriate Statutory Scheme to fund day for day service ("**Shortfall**"), the Supplier or the Sub-Contractor (as agreed between them) must pay the Statutory Scheme, 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; and
- (f) indemnify the Authority and/or NHS Pension and/or CSPA and/or the relevant Administering Authority and/or on demand for any failure to pay the Shortfall as required under paragraph (e) above.

Annex D1: CSPS

1 Definitions

In this Annex D1: CSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule 1: Definitions:

"CSPS Admission Agreement"	an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the Services;
"CSPS Eligible Employee"	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPS Admission Agreement;
"CSPS"	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; [the Designated Stakeholder Pension Scheme] ¹ and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014.

2 Future service benefits

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

¹ It is anticipated that the Designated Stakeholder Pension Scheme will no longer be available from September 2018

Annex D2: NHSPS

1 Definitions

In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule 1: Definitions:

"Direction Letter"	an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a 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 Eligible Employees;
"NHSPS Eligible Employees"	<p>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> <p>(a) their employment with the Authority, an NHS Body or other employer which participates automatically in the NHSPS; or</p> <p>(b) their employment with a Former Supplier who provides access to the NHSPS pursuant to an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal and were permitted to re-join the NHSPS, having been formerly in employment with the 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),</p> <p>and, in each case, being continuously engaged for more than fifty percent (50%) of their employed time in the delivery of services (the same as or similar to the Services).</p> <p>For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an "open" Direction Letter or other NHSPS "access" facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHSPS) is not an NHSPS Eligible Employee;</p>
"NHS Body"	has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;
"NHS Pensions"	NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for

	relevant administrative functions of the NHSPS;
"NHSPS"	the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations;
"NHS Pension Scheme Arrears"	any failure on the part of the Supplier or its Sub-Contractors (if any) to pay employer's contributions or deduct and pay across employee's contributions to the NHSPS or meet any other financial obligations under the NHSPS or any Direction Letter in respect of the NHSPS Eligible Employees;
"NHS Pension Scheme Regulations"	as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;
"NHS Premature Retirement Rights"	rights to which any Fair Deal Employee (had they remained in the employment of the Authority, an NHS Body or other employer which participates automatically in the NHSPS) would have been or are entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;
"Pension Benefits"	any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme; and
"Retirement Benefits Scheme"	a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004.

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 Eligible Employee compulsorily transfers as a result of the award of this Agreement, if not an NHS Body or other employer which participates automatically in the NHSPS, must by or as soon as reasonably practicable after the Relevant Transfer Date, each secure a Direction Letter to enable the NHSPS Eligible Employees to retain either continuous active membership of or eligibility for, the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Agreement, and have a right to membership or eligibility of that scheme under the terms of the Direction Letter.
- 2.2 The Supplier must supply to the Authority by or as soon as reasonably practicable after the Relevant Transfer Date a complete copy of each Direction Letter.
- 2.3 The Supplier must ensure (and procure that each of its Sub-Contracts (if any) ensures) that all of its NHSPS Eligible Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter.

- 2.4 The Supplier will (and will procure that its Sub-Contractors (if any) will) comply with the terms of the Direction Letter, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health in respect of the NHSPS Eligible Employees for so long as it remains bound by the terms of any such Direction Letter.
- 2.5 Where any employee omitted from the Direction Letter supplied in accordance with paragraph 2 of this Annex are subsequently found to be an NHSPS Eligible Employee, the Supplier will (and will procure that its Sub-Contractors (if any) will) treat that person as if they had been an NHSPS Eligible Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
- 2.6 The Supplier will (and will procure that its Sub-Contractors (if any) will) as soon as reasonably practicable and at its (or its Sub-Contractor's) cost, obtain any guarantee, bond or indemnity that may from time to time be required by the Secretary of State for Health.

3 Future service benefits in the NHSPS

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

4 NHS Premature Retirement Rights

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 Eligible 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.

5 Breach and cancellation of any Direction Letter(s) and right of set-off

- 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-contractor) breaches the terms of its Direction Letter. 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.
- 5.2 If the Authority is entitled to terminate the Agreement or the Supplier (or its Sub-contractor, if relevant) ceases to participate in the NHSPS for whatever other reason, the Authority may in its sole discretion, and instead of exercising its right to terminate this Agreement where relevant, permit the Supplier (or any such Sub-Contractor, as appropriate) to offer Broadly Comparable Pension Benefits, on such terms as decided by the Authority. The provisions of paragraph 10 (Bulk Transfer Obligations in relation to any Broadly Comparable pension scheme) of Part D: Pensions shall apply in relation to any Broadly Comparable pension scheme established by the Supplier or its Sub-contractors.
- 5.3 In addition to the Authority's right to terminate the Agreement, if the Authority is notified by NHS Pensions of any NHS Pension Scheme Arrears, the Authority will be entitled to deduct all or part of those arrears from any amount due to be paid under this Agreement or otherwise.

6 Compensation

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

- (a) membership of the NHSPS (having used its best endeavours to secure a Direction Letter); or
- (b) access to 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 Eligible 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 Eligible 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.

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 Eligible Employee that the provision of (or failure to provide) Pension Benefits and NHS Premature Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.

7.2 The Supplier must indemnify and keep indemnified the Authority, NHS Pensions and any Replacement Supplier against all Losses arising out of the Supplier (or its Sub-contractor) allowing anyone who is not an NHSPS Eligible Employee to join or claim membership of the NHSPS at any time during the Term.

8 Sub-contractors

8.1 If the Supplier enters into a Sub-contract for the delivery of all or part or any component of the Services which will involve the transfer of employment of any NHSPS Eligible Employee it will impose obligations on its Sub-contractor in identical terms as those imposed on the Supplier in relation to Pension Benefits and NHS Premature Retirement Rights by this Annex, including requiring that:

- (a) if the Supplier has secured a Direction Letter, the Sub-contractor also secures a Direction Letter in respect of the NHSPS Eligible Employees for their future service with the Sub-contractor as a condition of being awarded the Sub-contract and the Supplier shall be responsible for ensuring that the Authority receives a complete copy of each such Sub-contractor direction letter as soon as reasonably practicable; or
- (b) if, in accordance with paragraph 5.2 of this Annex, the Supplier has offered the NHSPS Eligible Employees access to a pension scheme under which the benefits are Broadly Comparable to those provided under the NHSPS, the Sub-contractor either secures a Direction Letter in respect of the NHSPS Eligible Employees or (with the prior consent of the Authority) provides NHSPS Eligible Employees with access to a scheme with Pension Benefits which are Broadly Comparable to those provided under the NHSPS whereupon the provisions of paragraph 10.2 of Part D above (Broadly Comparable Scheme) shall apply.

- 8.2 The Supplier shall procure that each Sub-contractor provides indemnities to the Authority, NHS Pensions and/or any Replacement Supplier and/or Replacement Sub-contractor that are identical to the indemnities set out in paragraph 7 of this Annex B. Where a Sub-contractor fails to satisfy any claim made under such one or more indemnities, the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

Annex D3: LGPS

1 Definitions

In this Annex D3: LGPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule 1: Definitions:

"Administering Authority"	in relation to the Fund [insert name], the relevant Administering Authority of that Fund for the purposes of the Local Government Pension Scheme Regulations 2013;
"Fund Actuary"	the actuary to a Fund appointed by the Administering Authority of that Fund;
"Fund"	[insert name], a pension fund within the LGPS;
"LGPS"	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;
"LGPS Admission Agreement"	an admission agreement within the meaning in Schedule 1 of the Local Government Pension Scheme Regulations 2013;
"LGPS Admission Body"	an admission body (within the meaning of Part 3 of Schedule 2 of the Local Government Pension Scheme Regulations 2013);
"LGPS Eligible Employees"	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the LGPS Admission Agreement or otherwise any Fair Deal Employees who immediately before the Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the LGPS or of a scheme Broadly Comparable to the LGPS; and
"LGPS Regulations"	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS.

2 Supplier to become an LGPS Admission Body

- 2.1 Where the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date, the Supplier shall become an LGPS Admission Body and shall on or before the Relevant Transfer Date enter into a LGPS Admission Agreement with the Administering Authority which will have effect from and including the Relevant Transfer Date.
- 2.2 The LGPS Admission Agreement must ensure that all LGPS Eligible Employees covered by that Agreement who were active LGPS members immediately before the Relevant Transfer Date are admitted to the LGPS with effect on and from the Relevant Transfer Date. Any LGPS Eligible Employees who were eligible to join the LGPS but were not active LGPS members immediately before the Relevant Transfer Date must retain the ability to join the LGPS after the Relevant Transfer Date if they wish to do so.

2.3 The Supplier shall provide any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.

2.4 The Supplier shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Eligible Employees in any pension scheme other than the LGPS.

3 Right of set-off

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

4 Supplier ceases to be an LGPS Admission Body

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

5 Discretionary benefits

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

PART E: EMPLOYMENT EXIT PROVISIONS

1 Pre-Service transfer obligations

1.1 The Supplier agrees that within twenty (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 twelve (12) months before the end of the Term; and
- (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 six (6) month period),

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

1.2 At least twenty (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, 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 employees engaged in providing the Services;
- (b) the percentage of time spent by each employee 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) of this Schedule 9.1 (Staff Transfer) (as appropriate); and
- (d) a description of the nature of the work undertaken by each employee 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 five (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) bank/building society account details for payroll purposes.

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 and/or the Acquired Rights Directive 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(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement 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 in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) 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 Schemes which in any case are attributable in whole or in part to the period ending on (and including) 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 on or before 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 on or before 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 on and before 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 on or before 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 (and including) 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/or the Acquired Rights Directive; 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 or the Acquired Rights Directive, then:
- (a) the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within five (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 fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or 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 fifteen (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 five (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,

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

(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 six (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 comply, and shall procure that each Sub-contractor shall comply, with all its obligations under 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 any person identified in the Supplier's Final Supplier Personnel list before and on 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 such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

- (a) the Supplier and/or any Sub-contractor; and
- (b) the Replacement Supplier and/or the Replacement Sub-contractor.

2.12 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.

2.13 Subject to Paragraph 2.14, 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 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 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.

2.14 The indemnities in Paragraph 2.13 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: LIST OF NOTIFIED SUB-CONTRACTORS

NAME OF ORGANISATION	TYPE OF ORGANISATION (Private, Public, Voluntary)

SCHEDULE 9.2 - KEY PERSONNEL

Key Personnel

Key Role	Name / Unique Reference No.	Responsibilities / Authorities	Phase of the project during which they will be a member of Key Personnel	Minimum period in Key Role
Contract Director	[Redacted]	Maximus – to manage the Ops service lead and oversee the contract quality and delivery.	Full duration of contract	Full duration of contract
Head of Operations		Maximus - to Manage the regional team leaders and the Quality and contracts manager.	Full duration of contract	Full duration of contract
Regional Team Leader x 2		Maximus-To manage a team of assessors ensuring that assessments and reports are of high quality and meet the requirements of the commissioner and that SLAs are met, to ensure that assessors have the appropriate ongoing knowledge relating to access to work assessment information, system (CMS) information and	Full duration of contract	Full duration of contract

DWP EMPLOYMENT CATEGORY MODEL SERVICES CONTRACT – SCHEDULE 9.2

	Name / Unique Reference No.	Responsibilities / Authorities	Phase of the project during which they will be a member of Key Personnel	Minimum period in Key Role
		commissioner requirements.		
and manager		<p>Maximus – to manage the Business admin and responsibility for the overall quality management of the contract - ensuring that assessments and reports are of high quality and meet the requirements of the commissioner and that SLAs are met.</p>	Full duration of contract	Full duration of contract
x3	[Redacted]	<p>Maximus - To contact customers to schedule assessments and confirm the assessment modality is appropriate, to be available as a help desk function for customers between 8am and 6pm</p>	Full duration of contract	Full duration of contract
x 16		<p>Maximus -To complete assessments, Assessments will be either remote or face-to-face including any requirements for enhanced assessments, to write up high quality reports. Ensuring that assessments and reports are of high quality and meet the requirements of the</p>	Full duration of contract	Full duration of contract

DWP EMPLOYMENT CATEGORY MODEL SERVICES CONTRACT – SCHEDULE 9.2

Key Role	Name / Unique Reference No.	Responsibilities / Authorities	Phase of the project during which they will be a member of Key Personnel	Minimum period in Key Role
		commissioner.		
Business Administrator	[Redacted]	Maximus – to manage the creation and management of a catalogue of assistive technology, training, and human support providers to enable the provision of quotes in compliance with the specification.	Full duration of contract	Full duration of contract





**Department
for Work &
Pensions**

SCHEDULE 10

GUARANTEE

Maximus Inc.,

- and -

The Secretary of State for Work and Pensions

DEED OF GUARANTEE

DEED OF GUARANTEE

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

BETWEEN:

- (1) **Maximus Inc.**, a company incorporated under the laws of the State of Virginia, USA, registered in Virginia, USA at 1891 Metro Center Drive, Reston, Virginia, USA, 20190, whose principal office is at 1891 Metro Center Drive, Reston, Virginia, USA, 20190 ("**Guarantor**"); in favour of
- (2) The Secretary of State for Work and Pensions whose principal office is at Caxton House, Tothill Street, London, SW1H 9NA ("**Beneficiary**")

WHEREAS:

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

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

1 Definitions and Interpretation

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.2 the words and phrases below shall have the following meanings:
 - (a) "**Guaranteed Agreement**" means the agreement headed Commercial Agreement for the Provision of Employment and Health Related Services: Access to Work Holistic Assessments made between the Beneficiary and the Supplier on [Date] and
 - (b) "**Guaranteed Obligations**" means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement.
- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;

- 1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent, present or future.

2 Guarantee and indemnity

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
 - (a) fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
 - (b) as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.
- 2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including,

without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3 Obligation to enter into a new contract

If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

4 Demands and Notices

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

- (a) [Address of the Guarantor in England and Wales]
- (b) [Facsimile Number]
- (c) For the Attention of [insert details]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

- 4.2** Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

- (a) If delivered by hand, at the time of delivery; or
- (b) if posted, at 10.00am on the second Working Day after it was put into the post; or
- (c) if sent by facsimile, at the time of despatch, if despatched before 5.00pm on any Working Day, and in any other case at 10.00am on the next Working Day.

- 4.3** In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

- 4.4** Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

5 Beneficiary's protections

- 5.1** The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment

to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- (a) it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
 - (b) it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
 - (c) if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
 - (d) the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other

reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

6 Guarantor intent

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

7 Rights of subrogation

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

- (a) of subrogation and indemnity;
- (b) to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
- (c) to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights up to such amount as the Beneficiary determines in its sole discretion represents the amount of the Guarantor's liabilities under this Deed of Guarantee (the "**Guarantee Estimate Amount**") on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor may retain for its own account or otherwise deal with any such amounts recovered in excess of the Guarantee Estimate Amount as the Guarantor may determine in its sole discretion. The Guarantor hereby confirms that it has not taken any security from the Supplier (other than cross-indemnities or other security taken in the ordinary course of its financial arrangements with its Affiliates) and agrees not to do take any further security until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

8 Deferral of rights

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

- (a) claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement; or
- (b) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement.

8.2 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees

that, without the prior written consent of the Beneficiary, it will not, following the occurrence of a Financial Distress Event or Supplier Termination Event:

- (a) exercise any rights it may have to be indemnified by the Supplier;
- (b) demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or
- (c) claim any set-off or counterclaim against the Supplier.

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

9 Representations and warranties

The Guarantor hereby represents and warrants to the Beneficiary that:

- 9.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- 9.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
- 9.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
 - (a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
 - (b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
 - (c) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
- 9.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 9.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

10 Payments and set-off

- 10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

11 Guarantor's acknowledgement

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

12 Assignment

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

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

13 Severance

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

14 Third party rights

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

15 Governing law

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

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

15.3 Nothing contained in this Clause shall limit the rights of the Beneficiary 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 hereby irrevocably designates, appoints and empowers the Supplier either at its registered office from time to time or on facsimile number [insert fax no.] to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.

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

Executed as a deed by
Maximus Inc acting by [NAME OF
AUTHORISED SIGNATORY] and
[NAME OF AUTHORISED
SIGNATORY] who, in accordance
with the laws of Virginia, are acting
under the authority of the company

.....

Authorised signatory

.....

Authorised signatory





Department
for Work &
Pensions

SCHEDULE 11

PROCESSING PERSONAL DATA

1 Processing Personal Data

The final decision as to the content of this Schedule shall be with the Authority at its absolute discretion.

- 1.1 The contact details of the Authority's Data Protection Officer are: [Redacted]
[Redacted]
- 1.2 The contact details of the Supplier's Data Protection Officer are: [Redacted]
- 1.3 Any Party that is a Processor shall comply with any further written instructions with respect to processing by any Party that is a Controller.
- 1.4 Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of Controller for each Category of Personal Data	<p>The Authority is Controller and the Supplier is Processor The Parties acknowledge that in accordance with Clause F8.2 to F8.15 and for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor of the following Personal Data:</p> <ul style="list-style-type: none"> The Authority shall be the Controller of any Personal Data and Special Category Personal Data relating to the Agreement that it collects and transfers to the Supplier. The Authority is also Controller for any sets of Personal Data and Special Category Personal Data which it prescribes the Supplier shall process pursuant to the Agreement. This includes: <ul style="list-style-type: none"> URN (Unique Reference Number), Customer name, National Insurance Number, name and address of Customers' place of work, Customer telephone number, name of their line manager and details of health condition and disability. Special categories of Personal Data regarding health and disability are also collected. <p>The Supplier is Controller and the Authority is Processor The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Controller and the Authority is the Processor in accordance with Clause F8.2 to F8.15 of the following Personal Data:</p> <ul style="list-style-type: none"> Not applicable <p>The Parties are Joint Controllers The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"> Not applicable <p>The Parties are Independent Controllers of Personal Data The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of the following categories of Personal Data which they provide to each other under the Agreement:</p> <ul style="list-style-type: none"> Business contact details of Supplier Personnel, Business contact details of any directors, officers, employees, agents, consultants and contractors of the Authority (excluding the

DWP EMPLOYMENT CATEGORY MODEL SERVICES CONTRACT – SCHEDULE 11

Description	Details
	<p><i>Supplier Personnel) engaged in the performance of the Authority's duties under this Agreement).</i></p> <p><i>The Authority acknowledges that it is an Independent Controller for the purposes of the Data Protection Legislation in respect of the following categories of Personal Data which it does not provide to the Supplier:</i></p> <ul style="list-style-type: none"> • Not applicable <p><i>The Supplier acknowledges that it is an Independent Controller for the purposes of the Data Protection Legislation in respect of the following categories of Personal Data which it does not provide to the Authority:</i></p> <ul style="list-style-type: none"> • Not applicable
Subject matter of the processing	<p>[</p> <p>The processing is needed to ensure that the Processor can effectively deliver the contract to provide the Access to Work programme.</p> <p>In summary the Access to Work (AtW) programme is a Jobcentre Plus (JCP) discretionary grant scheme that has been in existence since 1994. It assists disabled people who are in paid employment, self-employed or participating in a Jobcentre Plus agreed Job/Work Trial which may have already commenced or is due to commence, by providing practical support to overcome work related obstacles resulting from their disability. Support is also available for young disabled people to enable them to take up an offer of a work experience placement. The programme provides advice, a possible assessment of a person's disability needs in the workplace and, if required, a financial grant towards the cost of any necessary support.</p>
Duration of the processing	The duration of the Agreement (subject to the "Plan for return and destruction of the data" below)
Nature and purposes of the processing	<p>For full details of the purpose of the processing of Personal Data please see the Specification.</p> <p>The nature of the processing includes any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of Personal Data.</p>
Type of Personal Data	The type of Personal Data processed includes an URN (Unique Reference Number), Customer name, National Insurance Number, name and address of Customers' place of work, Customer telephone number, name of their line manager and details of health condition and disability. Special categories of Personal Data regarding health and disability are also collected.
Categories of Data Subject	Individuals Referred onto AtW: HA by the Authority.
International transfers and legal gateway	The Parties agree that Personal Data may be stored or accessed from the United Kingdom only.

DWP EMPLOYMENT CATEGORY MODEL SERVICES CONTRACT – SCHEDULE 11

Description	Details
<p>Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</p>	<p>The Parties agree to erase Personal Data in all physical and electronic forms as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their internal policies and procedures.</p>

ANNEX 1: Not used



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SCHEDULE 12

SUSTAINABLE DEVELOPMENT REQUIREMENTS

This Schedule sets out the Sustainable Development Requirements which are applicable to the provision of the Services.

1 General

- 1.1 The Supplier acknowledges that the Authority must at all times be seen to be actively promoting Sustainable Development through its environmental, social and economic responsibilities.
- 1.2 In delivering the Services, the Supplier shall ensure that its Sub-contractors assist and cooperate with the Authority, by fully complying with the requirements of this Schedule.

2 Compliance

- 2.1 The Supplier shall produce a Sustainable Development Policy Statement and Sustainable Development Plan in accordance with paragraphs 2.2 and 2.3 of this Schedule, within three (3) months of the Effective Date and every twelve (12) months thereafter. The Sustainable Development Policy Statement and Sustainable Development Plan must be specific to the Agreement and include all Sub-contractors involved in delivery of the Agreement. The Supplier must obtain the required information from Sub-contractors and then collate and submit as stated above.
- 2.2 In delivering the Services, the Supplier shall prepare a Sustainable Development Policy Statement giving, for each organisation involved in delivery of the Agreement an overarching commitment to:
 - (a) dispose of contract waste in a legal manner (i.e. waste is disposed of via a registered waste collector, the Waste Electrical and Electronic Equipment (WEEE) regulations are adhered to where relevant);
 - (b) reduce energy consumption;
 - (c) promote waste management including recycling;
 - (d) promote green or public transport;
 - (e) promote Corporate Social Responsibility (CSR); and
 - (f) the Sustainable Development Policy and that of continuous improvement which should be signed and dated by senior management.
- 2.3 In delivering the Services, the Supplier shall prepare and deliver a Sustainable Development Plan which should be used to turn the commitment shown in the Sustainable Development Policy into action and which as a minimum, detail how each organisation involved in delivery of the Agreement will:
 - (a) reduce their **Environmental** footprint of this Agreement through:
 - (i) minimising the use of energy, water and materials;
 - (ii) minimising waste and increasing recycling levels;
 - (iii) utilising recycled goods within operations;
 - (iv) providing efficient low carbon delivery methods; and

- (v) promoting the use of green or public transport.
- (b) contribute to **Social** sustainability of this Agreement through compliance with "Schedule 13 – Life Chances" where requested by the Authority.
- (c) drive **Economic** sustainability of this Agreement through:
 - (i) supporting job creation both locally and nationally; and
 - (ii) facilitating opportunities for Minority Owned Businesses and Small and Medium-sized Enterprises.

2.4 To aid the department in monitoring the progress of each organisation the following information should also be included in the Supplier's plan:

- (a) a baseline assessment of current position in terms of waste minimisation, recycling and energy consumption (energy consumption only required if current energy usage is available to organisations);
- (b) annual estimates of the progress of Sustainable Development actions; and
- (c) details of how Supplier Personnel awareness of Sustainability will be increased in line with the Sustainable Development Plan.





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SCHEDULE 13

LIFE CHANCES

1 General

- 1.1 The Supplier acknowledges that the Crown is committed to assisting people to move from welfare to employment and driving forward improvements in economic, social and environmental well-being.
- 1.2 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.
- 1.3 The Supplier acknowledges that the Authority is supporting the Crown'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.

2 Diversity and Equality Delivery Plan

- 2.1 In addition to complying with its obligations set out in Clause J1.3 and this Schedule 13 (Life Chances), 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 J1.3 and this Schedule 13 (Life Chances) and (b) the effect such action(s) have on the Supplier Personnel used in the performance of its obligations under the Agreement.
- 2.2 As part of the information to be provided by the Supplier under paragraph 2.1 of this Schedule 13 (Life Chances), the Authority requires the Supplier to provide to the Authority:
- (a) a diversity and equality delivery plan ("**Diversity and Equality Delivery Plan**") six (6) months after the Effective Date, and annually thereafter. The Diversity and Equality Delivery Plan must be specific to the Agreement and include details of all Supplier Personnel including but not limited to all Sub-contractors involved in the performance of the Supplier's obligations under the Agreement.
 - (b) details of the action(s) the Supplier is taking to support the Crown's social value agenda including but not limited to the action(s) the Supplier is taking to meet its obligations under paragraph 2.3 of this Schedule.
- 2.3 The Supplier shall, and shall ensure that its Sub-contractors, take the following action(s) in respect of DWP Priority Groups:
- (a) **Apprentices**
 - (i) Ensure that five percent (5%) of the Supplier Personnel used in the performance of the Supplier's obligations under the Agreement are Apprentices.
 - (ii) Make available to potential members of Supplier Personnel used in the performance of the Supplier's obligations information about the National Apprenticeship Service.
 - (b) **Disabled People**
 - (i) Take steps to become a Disability Confident Employer and achieve level 3

within twelve (12) months of the Effective Date and maintain such Disability Confident Employer status at all times thereafter during the Term. For the purposes of this Schedule, the term **"Disability Confident Employer"** (including the levels associated with such definition) is more particularly described in the Authority's Disability Confident accreditation publication, as updated and/or replaced by the Authority and notified to the Supplier from time to time. Any breach by the Supplier of this paragraph 2.3(b)(i) shall entitle the Authority to terminate this Agreement by issuing a Termination Notice to the Supplier.

- (ii) Ensure that its Sub-contractors achieve a minimum Disability Confident status commensurate to the proportion of Services that those Sub-contractors individually deliver, as follows:

- (A) Disability Confident Level 1 – from 5% up to 25%
- (B) Disability Confident Level 2 – more than 25% up to 50%
- (C) Disability Confident Level 3 – more than 50%

The Sub-Contractor's Disability Confident status must be achieved within twelve (12) months from the date the Sub-contractor commences delivery of Services. Any breach by the Supplier of this paragraph 2.3(b)(ii) shall entitle the Authority to terminate this Agreement by issuing a Termination Notice to the Supplier.

- (iii) Make appropriate use of Access to Work to support recruit and retain disabled workers.
- (iv) When recruiting Supplier Personnel to be used in the performance of the Supplier's obligations under the Agreement, offer Disabled People interviews under a guaranteed interview scheme for vacancies for Supplier Personnel where the Disabled People meet the minimum criteria for such vacancies.
- (v) Offer Work Trials to Disabled People to support filling vacancies for Supplier Personnel.
- (vi) Provide Employment Experience to Disabled People as members of Supplier Personnel used in the performance of the Supplier's obligations under the Agreement to develop their skills and experience and increase their employability.

(c) Young People – Under 25

- (i) Offer Work Trials to Young People to support filling vacancies for Supplier Personnel.
- (ii) Provide Employment Experience to Young People as members of Supplier Personnel used in the performance of the Supplier's obligations under the Agreement to develop their skills and experience and increase their employability.

(d) Older Workers – Over 50

- (i) Offer Work Trials to Older Workers to support filling vacancies for Supplier Personnel.

- (ii) Provide Employment Experience to Older People as members of Supplier Personnel used in the performance of the Supplier's obligations under the Agreement to develop their skills and experience and increase their employability.
- (e) **Ex-Offenders**
 - (i) Offer Work Trials to Ex-Offenders to support filling vacancies for Supplier Personnel.
 - (ii) Provide Employment Experience to Ex-Offenders as members of Supplier Personnel used in the performance of the Supplier's obligations under the Agreement to develop their skills and experience and increase their employability.
- (f) **Black and Minority Ethnic People**
 - (i) Offer Work Trials to Black and Minority Ethnic people to support filling vacancies for Supplier Personnel.
 - (ii) Provide Employment Experience to Black and Minority Ethnic people as members of Supplier Personnel used in the performance of the Supplier's obligations under the Agreement to develop their skills and experience and increase their employability.
- (g) **Employee Vacancies**
 - (i) Advertise all vacancies for Supplier Personnel via Find a Job (<https://www.gov.uk/jobsearch>) 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.

2.4 The Diversity and Equality Delivery Plan must also include:

- (a) an overview of Supplier and any Sub-contractor's policies and procedures for preventing unlawful discrimination and promoting equality of opportunity in respect of:
 - (i) age;
 - (ii) disability;
 - (iii) gender reassignment;
 - (iv) marriage and civil partnership;
 - (v) pregnancy and maternity;
 - (vi) race;
 - (vii) religion or belief;
 - (viii) sex; and
 - (ix) sexual orientation.
- (b) an overview of Supplier and any Sub-contractor's policies and procedures covering:
 - (i) harassment;
 - (ii) bullying;

- (iii) victimisation;
- (iv) Supplier Personnel training and development.
- (c) details of the way in which the above policies and procedures are, or will be (and by when), communicated to Supplier Personnel;
- (d) details of what general diversity and equality related training has been, or will be delivered (and by when), to Supplier Personnel;
- (e) 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.

2.5 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 contract manager acting on behalf of the Authority. If an issue relates to a Sub-contractor, the Supplier must raise and resolve the issue with the Sub-contractor.

Life Chances Workforce Monitoring template

- 2.6 The Supplier shall provide the Life Chances Workforce Monitoring template (contained in Appendix 1 to this Schedule 13 (Life Chances)), as may be updated and amended by the Authority from time to time, duly completed in full by the Supplier in respect of all Supplier Personnel (including but not limited to all Sub-contractors used in the performance of the Supplier's obligations under the Agreement), six (6) months after the Effective Date and annually thereafter.
- 2.7 The Supplier shall complete the Life Chances Workforce Monitoring template in line with the 'Life Chances through Procurement Guidance for DWP Contractors' and the contract definitions.
- 2.8 The Supplier will compare figures in all categories listed in the Appendix 1 - Workforce Monitoring template and provide (where possible) comparisons against any official national/regional statistics that are publicly available in accordance with the "Social Value Guidance for Contractors" provided by the Authority to the Supplier.
- 2.9 The 'Social Value Guidance for Contractors' provides links to a number of data collection sources, this is not an exhaustive list and other sources are 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.
- 2.10 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 Supplier and/or any Sub-contractor to improve the numbers in the Social Value Workforce Monitoring template (contained in Appendix 1 to this Schedule 13 (Life Chances)) to the satisfaction of the Authority.
- 2.11 Diversity and Equality, the Crown's social value agenda 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 paragraph 2.2 of this Schedule 13 (Life Chances).

APPENDIX 1 – LIFE CHANCES WORKFORCE MONITORING

Important – the figures the Supplier provides must relate specifically to the staff used in the performance of the contractor's obligations under the contract only, which for the avoidance of doubt includes any Sub-contractor.

Date of Return Month: Year	
Name of Contract:	
Contract Number:	
Name of Supplier:	
Call-Off Effective Date:	
Total Number of Supplier Personnel, which for the avoidance of doubt includes any Sub-contractors	

1 – Number of new Supplier Personnel posts created in the performance of the Supplier's obligations under the Agreement

New Supplier Personnel Posts	Number of new Supplier Personnel posts created in period	
	1-34 hr per week posts	35 hr + per week posts
Baseline return (at 6 months for months 0-6)		
1st annual return (at 18 months for months 7-18)		
2nd annual return (at 30 months for months 19 - 30)		
3rd annual return (at 42 months for months 31-42)		

2 – Number of Apprentices In Supplier Personnel used in the performance of the Supplier's obligations under the Agreement

DWP Priority Group - Apprentices	Number of Apprentices in Supplier Personnel which have been employed for 26 weeks or longer in period	% of Apprentices in Supplier Personnel at the end of the period	No. of Apprentices who began apprenticeships as part of the Supplier Personnel during the period
Baseline return (at 6 months for months 0-6)			
1st annual return (at 18 months for months 7-18)			
2nd annual return (at 30 months for months 19 - 30)			
3rd annual return (at 42 months for months 31-42)			

3 – Number of Disabled People in Supplier Personnel used in the performance of the Supplier's obligations under the Agreement

DWP Priority Group - Disabled People	Number of Disabled People in Supplier Personnel which have been employed for 26 weeks or longer in period	% of Disabled People in Supplier Personnel at end of period	Number of Disabled People who began employment as part of the Supplier Personnel during the period
Baseline return (at 6 months for months 0-6)			
1st annual return (at 18 months for months 7-18)			
2nd annual return (at 30 months for months 19 - 30)			
3rd annual return (at 42 months for months 31-42)			

4 – 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,

DWP Priority Group – Disabled People in the Supplier Personnel who had been interviewed by the Supplier under the GIS	Number of Disabled People who have been interviewed for Supplier Personnel posts by the Supplier under the GIS during the period
Baseline return (at 6 months for months 0-6)	
1st annual return (at 18 months for months 7-18)	
2nd annual return (at 30 months for months 19 - 30)	
3rd annual return (at 42 months for months 31-42)	

5 – Number of Young People in Supplier Personnel used in the performance of the Supplier's obligations under the Agreement

DWP Priority Group - Young People	Number of Young People in Supplier Personnel which have been employed for 26 weeks or longer in period	% Young People in Supplier Personnel at end of period	Number of Young People who began employment as part of the Supplier Personnel during the period
Baseline return (at 6 months for months 0-6)			
1st annual return (at 18 months for months 7-18)			
2nd annual return (at 30 months for months 19 - 30)			
3rd annual return (at 42 months for months 31-42)			

6 – Number of Older Workers in Supplier Personnel used in the performance of the Supplier's obligations under the Agreement

DWP Priority Group - Older Workers	Number of Older Workers in Supplier Personnel which have been employed for 26 weeks or longer in period	% Older Workers in Supplier Personnel at end of period	Number of Older Workers who began employment as part of the Supplier Personnel during the period
Baseline return (at 6 months for months 0-6)			
1st annual return (at 18 months for months 7-18)			
2nd annual return (at 30 months for months 19 - 30)			
3rd annual return (at 42 months for months 31-42)			

7 – Number of Ex-Offenders in Supplier Personnel used in the performance of the Supplier's obligations under the Agreement.

DWP Priority Group - Ex-Offenders	Number of ex-offenders in Supplier Personnel which have been employed for 26 weeks or longer in period	% ex-offenders in Supplier Personnel at end of period	Number of ex-offenders who began employment as part of the Supplier Personnel during the period
Baseline return (at 6 months for months 0-6)			
1st annual return (at 18 months for months 7-18)			
2nd annual return (at 30 months for months 19 - 30)			
3rd annual return (at 42 months for months 31-42)			

8 – Number of Black or Minority Ethnic (BME) in Supplier Personnel used in the performance of the Supplier's obligations under the Agreement.

DWP Priority Group - Ex-Offenders	Number BME in Supplier Personnel which have been employed for 26 weeks or longer in period	% BME in Supplier Personnel at end of period	Number of BME who began employment as part of the Supplier Personnel during the period
Baseline return (at 6 months for months 0-6)			
1st annual return (at 18 months for months 7-18)			
2nd annual return (at 30 months for months 19 - 30)			
3rd annual return (at 42 months for months 31-42)			

9 – Number of Employment Experience placements conducted in the performance of the Supplier's obligations under the Agreement

Employment Experience placements	Number of Employment Experience placements conducted during the period
Baseline return (at 6 months for months 0-6)	
1st annual return (at 18 months for months 7-18)	
2nd annual return (at 30 months for months 19 - 30)	
3rd annual return (at 42 months for months 31-42)	

10 – 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.

Work Trials	Number of Work Trials conducted during the period
Baseline return (at 6 months for months 0-6)	
1st annual return (at 18 months for months 7-18)	
2nd annual return (at 30 months for months 19 - 30)	
3rd annual return (at 42 months for months 31-42)	

11 – Number of vacancies for Supplier Personnel advertised via Find a Job

Supplier Personnel vacancies advertised via Find a Job	Number of vacancies for Supplier Personnel advertised via Find a Job during the period	% of all vacancies for Supplier Personnel advertised via Find a Job during the period.
Baseline return (at 6 months for months 0-6)		
1st annual return (at 18 months for months 7-18)		
2nd annual return (at 30 months for months 19 - 30)		
3rd annual return (at 42 months for months 31-42)		





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SCHEDULE 14

DWP SUPPLIER CODE OF CONDUCT

OVERARCHING STANDARDS OF BEHAVIOUR

- 1 The overarching standards of behaviour the Authority expects of the Supplier are:
 - a. **Ethical behaviour** – the Authority expects the highest standards of ethical behaviour and professionalism from Suppliers when Suppliers deal with the Authority, service users, and stakeholders. The Authority also expects Suppliers to act within the spirit of the contract.
 - b. **Counter fraud and corruption** – the Authority expects all Suppliers to comply with anti-corruption laws, anti-money laundering laws and to have robust control systems to prevent and detect fraudulent or potentially fraudulent activity.
 - c. **Transparency** – the Authority expects all Suppliers to be transparent when dealing with the Authority, their service users, their Sub-contractors, and stakeholders.
 - d. **Treatment of Sub-contractors** – the Authority expects Suppliers to treat their Sub-contractors fairly when dealing with prompt payment, risk management and charging for services provided to them by the Supplier.
 - e. **Corporate Social Responsibility** – the Authority expects its Suppliers to be good corporate citizens by upholding the values of this Code and supporting key government corporate social responsibility policy areas, such as: diversity and inclusion, sustainability, prompt payment, small and medium sized enterprise engagement, support of the Armed Forces Covenant, apprenticeships and skills development. The Authority supports constructive and collaborative partnership working and expects Suppliers to invest in the relationship between the Authority and the Suppliers.
- 2 The Authority expects the Supplier to adhere to, and the Authority reserves the right to monitor, the following:

RELATIONSHIP MANAGEMENT / ETHICAL BEHAVIOUR

- 3 Suppliers must act openly, honestly and with integrity in delivering services, working with the Authority, its customers and stakeholders and when claiming payment for services. Suppliers must 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.
- 4 Suppliers must not force unfair contract terms on their Sub-contractors, nor allow unfair exploitation of a dominant market or customer position.
- 5 Suppliers must act at all times with respect and integrity, use open and transparent accounting, and work within the spirit of the contract as well as within the contractual terms. Where there is a conflict between the spirit and contract terms Suppliers must bring this to the attention of the Authority.
- 6 Suppliers must ensure that risk is managed by the party best able to do so and be prepared to share with the Authority intelligence of 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.

TREAT EMPLOYEES AND SUB-CONTRACTORS FAIRLY

- 7** Suppliers and their Sub-contractors must ensure that robust procedures are adopted and maintained to ensure the protection of human rights at all times. Suppliers must ensure the elimination of 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 service users. Suppliers and their Sub-contractors are encouraged to pay employees (and seek employment opportunities for customers at or above) the National Living Wage.
- 8** Suppliers and their Sub-contractors must have policies and processes in place for recording and eliminating the occurrence of health and safety related incidents.
- 9** The Authority requires full Sub-contractor transparency and compliance with HM Government policy initiatives including the support and capacity building of micro-organisations, small and medium sized organisations, prompt payment, and support for economic growth.
- 10** Suppliers must engage their Sub-contractors in a manner consistent with the Authority's treatment of its direct Suppliers. 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.
- 11** The Authority will not tolerate bribery, corruption or fraud in any form and Suppliers must conduct their business honestly, fairly and free from such behaviours. Suppliers, and the Sub-contractor, must 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.
- 12** The Authority's employees, employees of the Authority's Suppliers, and service users 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 service users.

VALUE

- 13** Value for Money ("VfM") and financial transparency are essential requirements to the Authority's commissioned work. All Suppliers and their Sub-contractors must seek to maximise value including by improving performance and quality of services throughout the life of the contract / relationship.
- 14** Suppliers must demonstrate that they are pursuing continuous improvement throughout the contract and Sub-contracts, and apply stringent and robust financial controls, management and governance to reduce waste and improve efficiency in their internal operations and within the Sub-contracts. The Authority expects Suppliers and their Sub-contractors to demonstrate openness and honesty and be realistic about their performance, in all circumstances.
- 15** The Authority expects to obtain value for money and to be able to demonstrate long-term value for money to the UK taxpayer. This means that contracts should be priced to offer sustainable value throughout their life, including when changes are made to the contract.

- 16 The Authority's minimum expectation is that contracts are delivered to meet targets and that Suppliers will continually improve value and quality through continuous improvement, improved performance and improved quality.
- 17 The Authority does not expect Suppliers to exploit an incumbent, monopoly position, Sub-contractor(s), urgent situation(s), or an imbalance of capability or information to impose opportunistic pricing.
- 18 The Authority expects Suppliers to work in good faith to resolve any disputes promptly and fairly during the life of a contract through good relationship management and, where appropriate, use contractual dispute resolution mechanisms, recognising that taxpayer and Supplier interests are rarely best served by litigation.
- 19 The Authority expects Suppliers to seek opportunities to improve value and social value in contracts and to share best practice with the Authority and other authorities / Suppliers.

REPUTATION AND CONFLICT

- 20 The Authority expects Suppliers and their Sub-contractors to behave ethically, comply with legal and industry requirements and seek to implement best practice.
- 21 Suppliers must be honest when representing their work for the Authority, their performance of the contract and their relationship with the Authority. The Authority expects Suppliers to protect the HM Government's reputation and ensure that neither they nor any of their 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.
- 22 The Authority requires Suppliers to mitigate against any real or perceived conflict of interest through their work with HM Government. A Supplier with a position of influence gained through a contract must not use that position to disadvantage any other 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.
- 23 The Supplier and their Sub-contractors must conduct business in compliance with competition (anti-trust) laws and must not seek to co-ordinate the market with other Suppliers or their Sub-contractors in a way that restricts competition.

COUNTER FRAUD AND CORRUPTION

- 24 Suppliers must adhere to anti-corruption laws, including but not limited to the Bribery Act 2010, and money laundering regulations. Suppliers must have robust processes to ensure that the Sub-contractors in their supply chain also comply with these laws.
- 25 The Authority has a zero tolerance to any form of corrupt practices including extortion and fraud, and will investigate any suspected instances. The Authority expects Suppliers to be vigilant and to proactively identify fraud, and the risk of fraud, in their business. Suppliers must 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.
- 26 Suppliers and their Sub-contractors must declare to the Authority any instances or allegations of unethical behaviour by an existing or previous member of staff, or where there is a known or suspected conflict of interest. Suppliers must immediately notify the Authority

where fraudulent practice and/or financial irregularity is suspected or discovered and disclose any interests that might affect their decision-making or the advice that they give to HM Government.

FINANCIAL TRANSPARENCY OBJECTIVES

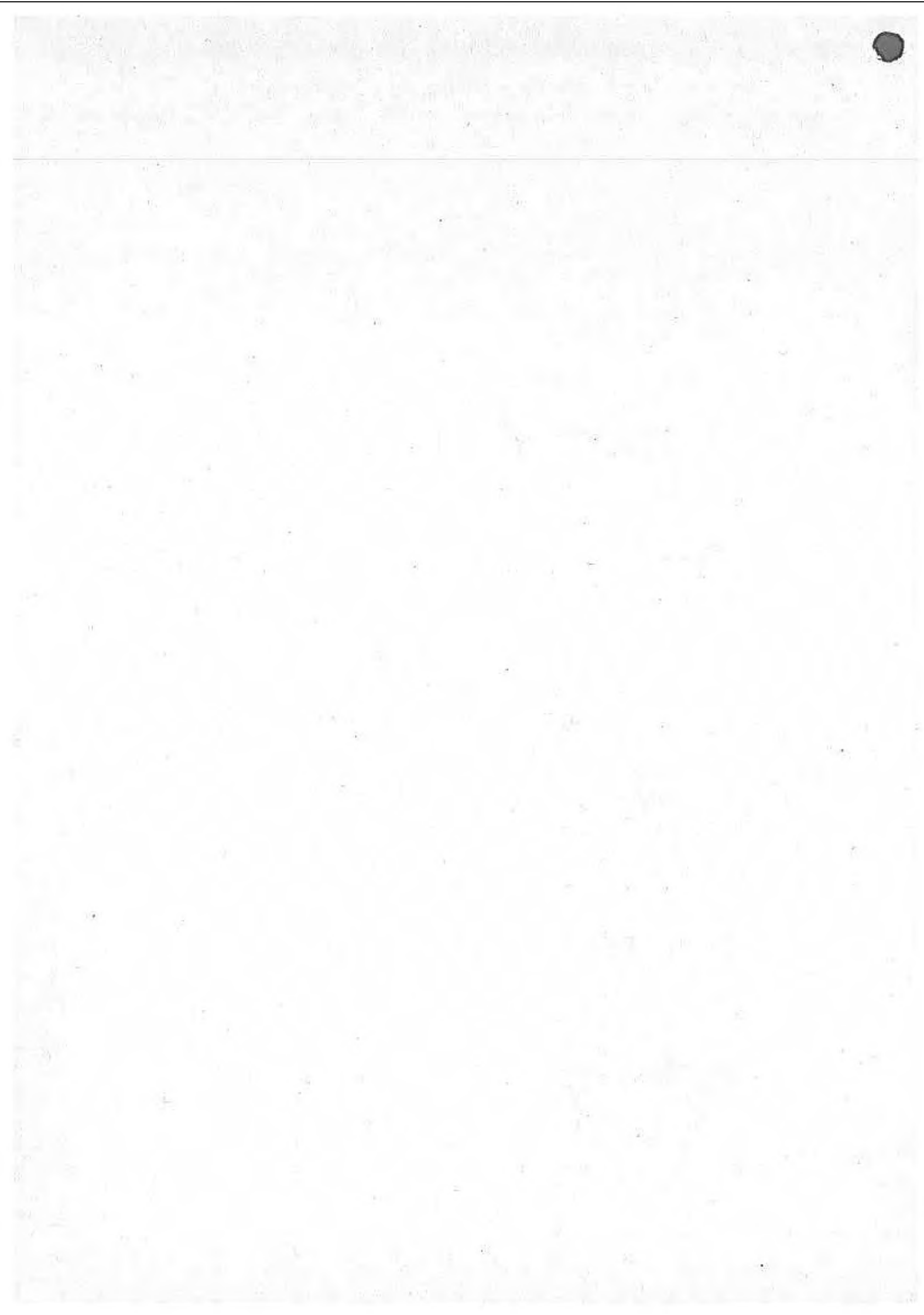
27 The Supplier will cooperate with the Authority so that:

- a. the Authority can understand any financial information that the Supplier submits to the Authority,
- b. both Parties have confidence that the Fees 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.

COVID-19 GUIDANCE

28 The Supplier must, in delivering the Services, adhere to any guidance issued by HM Government on working safely during the COVID-19 pandemic. 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>





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SCHEDULE 16

WELSH LANGUAGE SCHEME

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 must at all times be seen to be actively promoting the equality of the English and Welsh languages, in accordance with the Welsh Language Act 1993.
- 1.2 In the performance of the 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 through the medium of Welsh

- 3.1 The Supplier undertakes that those 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:
- (a) those who want, or are required, to correspond with the Supplier will be able to do so in English or Welsh;
 - (b) those who are known to prefer corresponding through the medium of Welsh will have correspondence initiated in Welsh;
 - (c) any correspondence received in Welsh will be answered in Welsh within the same timescales and standards as those written in English;
 - (d) staff who are in Wales will greet any telephone callers in English and Welsh until the caller's preferred language can be ascertained;
 - (e) any help lines set up to deliver the service 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;
 - (f) any answer phones in the Supplier's offices in Wales will have a pre-recorded bilingual message;
 - (g) all people who participate in the Services are able to contribute through the medium of English or Welsh;

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- (h) 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;
- (i) all forms and explanatory material be available in both English and Welsh and available for use within the same timescales; and
- (j) any complaints or grievance procedure should be provided in both English and Welsh.
- (k) any websites, including any interactive pages, set up to support the delivery of the service must be available in both Welsh and English;
- (l) where DWP has notified the contractor or the participant has identified that Welsh is their preferred language this should be recorded, ensuring all future dealings with that participant will be in Welsh.

