

**DATED**

4/3/2025 | 3:27 PM GMT

**2025**

**(1) NHS ENGLAND**

**(2) HEALTH DELIVERY PARTNERSHIP**

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**FORM OF AGREEMENT**  
**for the Programme Delivery Partner in respect of**  
**the New Hospital Programme**

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This **AGREEMENT** is made on the                      day of                      4/3/2025 | 3:27 PM GMT 2025

## **BETWEEN**

- (1) **NHS ENGLAND** of Wellington House, 133-155 Waterloo Road, London SE1 8UG (the "**Client**");
- (2) **HEALTH DELIVERY PARTNERSHIP**, an unincorporated joint venture formed of:
  - i. **MACE CONSULT LIMITED** (company registered number 07094851) whose registered office is at 155 Moorgate, London EC2M 6XB; and
  - ii. **TURNER & TOWNSEND PROJECT MANAGEMENT LIMITED** (company registered number 02165592) whose registered office is at Low Hall Calverley Lane, Horsforth, Leeds, West Yorkshire LS18 4GH

(together, jointly and severally, the "**Consultant**"),

the *Client* and the *Consultant* are together the "Parties" and each is a "Party".

## **BACKGROUND**

- A The *Client* wishes to procure the services of a Programme Delivery Partner to deliver the New Hospital Programme ("NHP") as more particularly described in this Contract.
- B The *Client* wishes to appoint the *Consultant* and the *Consultant* has agreed to be appointed in accordance with the terms and conditions set out below to act as a 'client-side' partner, embedded in the NHP, to assist the *Client* in strategic and operational thinking and delivery (the "*Service*").

## **IT IS HEREBY AGREED AS FOLLOWS**

### **1 DEFINITIONS**

- 1.1 In this Agreement (including the recitals) words and expressions have the meanings assigned to them in the *conditions of contract*.
- 1.2 Article headings are for information purposes only and do not affect the interpretation of this subcontract.

### **2 THE CONTRACT**

- 2.1 The *Consultant* agrees to provide the *service* in accordance with the Contract. The Contract means this Agreement and the following documents:
  - 2.1.1 the *conditions of contract* as referred to in article 3 below, including the Appendices thereto, included in Schedule 1;
  - 2.1.2 any Task Orders issued by the *Service Manager* in accordance with the Contract;
  - 2.1.3 the Contract Data Part One and Contract Data Part Two;
  - 2.1.4 the Schedule of Cost Components;
  - 2.1.5 the Scope provided by the *Client* included in Schedule 2; and
  - 2.1.6 the *Consultant's* tender dated 27<sup>th</sup> September 2024 included in Schedule 3.
- 2.2 The documents forming the Contract are taken and read together but in the event of any conflict between them, the *Service Manager* states how the ambiguity or inconsistency should be resolved, in accordance with the following order of precedence for the documents comprising the Contract (in descending order of priority):

- 2.2.1 this Agreement;
- 2.2.2 the *conditions of contract* as amended including the Appendices thereto;
- 2.2.3 the Contract Data Part One;
- 2.2.4 the Schedule of Cost Components;
- 2.2.5 the Contract Data Part Two;
- 2.2.6 Task Orders;
- 2.2.7 the Scope; and
- 2.2.8 the *Consultant's* tender.

### **3 NEC CONDITIONS**

- 3.1 The *conditions of contract* are an amended form of the NEC4 Professional Service Contract Option E June 2017 (with amendments January 2023).

### **4 APPOINTMENT**

- 4.1 On the Contract Date, the *Client* appoints the *Consultant* to provide the *service* in accordance with this Contract and the *Consultant* accepts such appointment.
- 4.2 In consideration of the *Consultant* providing the *service*, the *Client* pays to the *Consultant* the amount due in accordance with the *conditions of contract*.

### **5 COUNTERPARTS**

- 5.1 This Agreement may be executed in any number of counterparts, and by the Parties to this Agreement on *separate* counterparts but will not be effective until each such Party has executed at least one counterpart.
- 5.2 Each counterpart shall constitute an original of this agreement, but all the counterparts shall together constitute one and the same instrument.

This **AGREEMENT** has been signed for an on behalf of the parties on the date stated at the beginning of it.

**Signed by for and on behalf of NHS England:**

Signature:

[REDACTED]

Print name and position:

[REDACTED]

**Signed by for and on behalf of Mace Consult Limited:**

Signature:

[REDACTED]

Print name and position:

[REDACTED]

**Signed by for and on behalf of Turner & Townsend Project Management Limited:**

Signature:

[REDACTED]

Print name and position:

[REDACTED]

**SCHEDULE 1 – CONDITIONS OF CONTRACT**



# Professional Service Contract

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This contract should be used for the appointment of a supplier to provide a professional service

**An NEC document**

**June 2017**

**(with amendments January 2023)**

**This amended contract is based on the NEC family of contracts, the copyright of which belongs to the Institution of Civil Engineers**

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# Core Clauses

## 1. GENERAL

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- 10.1 The Parties and the *Service Manager* shall act as stated in this Contract.
- 10.2 The Parties and the *Service Manager* act in a spirit of mutual trust and co-operation.

### Identified and defined terms 11

- 11.1 In these *conditions of contract*, terms identified in the Contract Data are in italics and defined terms have capital initials.
- 11.2
- (1) The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the *Service Manager*. The latest programme accepted by the *Service Manager* supersedes previous Accepted Programmes.
  - (2) An Activity Schedule is the activity schedule included in a Fixed Price Task Order unless later changed in accordance with these *conditions of contract*.
  - (3) An Affiliate is, in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, as 'holding company' and 'subsidiary' are defined in Section 1159 and Schedule 6 of the Companies Act 2006 (or where the *Consultant* is a Joint Venture any of the parties comprising the Joint Venture).
  - (4) Annual Incentivisation Performance Meeting has the meaning provided in clause X20.9.
  - (5) An Appendix is an appendix to these *conditions of contract* as listed below
    - Appendix 1 – Form of Guarantee,
    - Appendix 2 – Forms of Novation Agreement and Associated Collateral Warranty,
    - Appendix 3 – Forms of Consultant and Subcontractor Collateral Warranty,
    - Appendix 4 – Incentive Schedule,
    - Appendix 5 – Insurances,
    - Appendix 6 – Financial Distress,
    - Appendix 7 – Data Protection,
    - Appendix 8 – Security Provisions,
    - Appendix 9 – Cyber Essentials Scheme,
    - Appendix 10 – Intellectual Property Rights,
    - Appendix 11 – Software,
    - Appendix 12 – Staff Transfer,
    - Appendix 13 – Exit Management,
    - Appendix 14 – Service Continuity Plan and Corporate Resolution Planning,
    - Appendix 15 – Benchmarking,
    - Appendix 16 – Modern Slavery,
    - Appendix 17 – Social Value Plan,
    - Appendix 18 – Social Value Statement and
    - Appendix 19 – Expenses Policy.
  - (6) Applicable Law is all relevant and applicable UK statutes, subordinate legislation, directives, regulations, orders, statutory guidance, consents, applicable codes of



practice and bye laws in force as enacted, judgments of relevant courts of law, directives or requirements of any regulatory bodies, amended or interpreted from time to time.

- (7) *Client's Policies* are the policies appended or referred to in Scope S500.
- (8) Confidential Information is information that ought to be considered confidential (however it is conveyed and on whatever media it is stored) including information where the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data including special categories of personal data and personal data relating to criminal convictions and offences.
- (9) Conflict of Interest includes, in relation to the NHP, any actual or potential conflict of interest, any scenario where the *Client* may consider there to be a conflict of interest and any scenario which may create the impression of there being a conflict of interest.
- (10) A Consent is any planning consent, environmental permit or any other permit, approval or consent whatsoever, whether required by Applicable Law or otherwise, necessary to be obtained from a third party or Others (including any applicable approvals, consents or conditions to be obtained pursuant to a statutory provision or decision of an authority and including the agreement of any person which is required under any Applicable Law or parliamentary undertakings and assurances) to enable the *Consultant* to Provide the Service in accordance with this Contract.
- (11) The Contract is as defined in the Form of Contract.
- (12) The Contract Date is the date of execution of the Contract by the Parties.
- (13) Contract Year means a period of twelve (12) months commencing on the *starting date* and/or each anniversary of the *starting date*.
- (14) A Corrupt Act is
- to directly or indirectly offer, promise or give any person working for or engaged by the *Client* or other Contracting Body or any other public body a financial or other advantage to
    - induce that person to perform improperly a relevant function or activity or
    - reward that person for improper performance of a relevant function or activity,
  - 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 contract,
  - committing any offence
    - under the Bribery Act 2010 (or any legislation repealed or revoked by such Act),
    - under legislation or common law concerning fraudulent acts or
  - defrauding, attempting to defraud or conspiring to defraud the *Client* or
  - any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK.
- (15) A Cost Reimbursable Task Order is a Task Order pursuant to which the *Consultant* is reimbursed its Defined Cost incurred in carrying out the work in the Task plus the Fee.
- (16) Covid-19 means the coronavirus disease 2019 and/or the causative virus known as severe acute respiratory syndrome-coronavirus 2 (SARS-CoV-2).
- (17) Crown Body means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf.
- (18) CSMO Task Order means the Task Order so named and issued for the provision of the *Consultant's* Service Management Office.
- (19) Data Protection Legislation is
- the UK GDPR as defined by Section 3(10) (as supplemented by Section 205(4)) of the Data Protection Act 2018,
  - the Data Protection Act 2018,

- the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended from time to time) and
  - any other legislation in force from time to time in the United Kingdom relating to privacy and/or the processing of Personal Data.
- (20) A Defect is a part of the *service* which is not in accordance with the Scope, Applicable Law, or any other part of the Contract.
- (21) Defined Cost is the cost of the components in the Schedule of Cost Components less, for Cost Reimbursable Task Orders only, Disallowed Cost.
- (22) Disallowed Cost is, in relation to a Cost Reimbursable Task Order, cost which
- is not justified by the *Consultant's* accounts and records,
  - should not have been paid to a Subcontractor or supplier in accordance with its contract,
  - was incurred in excess of the forecast total of the Prices for the applicable Task Order except where the *Service Manager* approved (in writing) the incurrence of such expenditure in advance,
  - was incurred only because the *Consultant* did not
    - follow an acceptance or procurement procedure stated in the Scope,
    - give an early warning which the Contract required it to give and/or
    - give notification to the *Service Manager* of the preparation for and conduct of an adjudication or proceedings of a tribunal between the *Consultant* and a Subcontractor or supplier,
- and the cost of
- correcting Defects,
  - resources not used to Provide the Service (after allowing for reasonable availability and utilisation),
  - preparation for and conduct of an adjudication or proceedings of the *tribunal* between the Parties,
  - *Consultant's* people if and to the extent that relevant person has not been onboarded in accordance with the Scope,
  - *Consultant's* people for days in excess of the *Consultant's* tendered annual utilisation allowance per Contract Year for the applicable rate as set out in the Wider Team Rates,
  - a replacement person for a *key person* during the period that the *key person* transfers its duties and responsibilities to the replacement person and any period of parallel working between the replaced and replacement person and/or
  - any payment to a Subcontractor if that Subcontractor has not been accepted pursuant to clause 23.2.
- (23) The Early Warning Register is a register of matters which are
- listed in the Contract Data for inclusion and
  - notified by the *Service Manager* or the *Consultant* as early warning matters.
- It includes a description of the matter and the way in which the effects of the matter are to be avoided or reduced.
- (24) The Fee is the amount calculated by applying the *fee percentage* to the amount of Defined Cost incurred in relation to a Cost Reimbursable Task Order only and excluding the Defined Cost of Small Enterprise Subcontractors and Umbrella Organisations.
- (25) The Fee Percentage Buildup is detailed in Annex A1 of the Schedule of Cost Components.
- (26) A Fixed Price Task Order is a priced Task Order with an Activity Schedule in which each activity is allocated a Price and interim payments are made upon the completion of those activities.
- (27) A Force Majeure Event is the occurrence of any of the following events after the Contract Date
- war, civil war, rebellion, revolution, insurrection, military or usurped power,
  - loss or damage to the site/plant and materials caused by fire, lightning or

explosion,

- use or threat of terrorism or the activities of the relevant authorities in dealing with the use or threat of terrorism,
- epidemic, pandemic or plague as classified or advised by HM's Government (excepting Covid-19),
- industrial action, labour disputes or strikes or disruptions in the supply chain (excepting such action taken by the *Consultant* or its Subcontractors) or
- extreme weather events and natural disasters including hurricanes, earthquakes or floods

provided that such event or its effects could not have been prevented by either Party and an experienced consultant would have judged at the Contract Date that such event would have such a small chance of occurring that it would have been unreasonable for it to have allowed for it.

(28) The Form of Contract is the document so named and set out at the beginning of this Contract.

(29) A Government Body is

- the Secretary of State or
- any UK government department or entity wholly or partly owned by the UK government.

(30) Group Company is any subsidiary or holding company of the *Consultant* or another subsidiary or holding company of such company, as 'subsidiary' and 'holding company' are defined in Section 1159 of the Companies Act 2006.

(31) An H2A Contractor is a contractor pursuant to the *Client's* Hospital 2.0 Alliance Framework.

(32) Intellectual Property Rights are

- 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,
- applications for registration, and the right to apply for registration, for any of the rights listed in the first bullet point that are capable of being registered in any country or jurisdiction,
- all other rights having equivalent or similar effect in any country or jurisdiction and
- all or any goodwill relating or attached thereto.

(33) The Insurance Table is at Appendix 5.

(34) A Joint Venture means two (2) or more persons in joint venture, partnership, consortium or other unincorporated grouping and any such person is a Joint Venture Member.

(35) A Key Date is the date by which work is to meet the Condition stated. The Key Date is the key date stated in a Task Order and the Condition is the condition stated in a Task Order unless later changed in accordance with this Contract.

(36) Key Person Compensation Amount is the applicable *key person's* daily rate as set out in Annex A to the Schedule of Cost Components multiplied by 40 (being the equivalent of two (2) months' Working Days).

(37) Key Subcontractors are the *key subcontractors*, and any other Subcontractors designated as such by the *Service Manager* in its absolute discretion.

(38) KPI Assessment Date has the meaning provided in clause X20.4.

(39) The Leadership Rates are the rates for Leadership Team People set out in the column named "Daily Rate excluding Fee" in Annex A3 of the Schedule of Cost Components.

(40) The Leadership Team Rate Cap is [REDACTED].

(41) Leadership Team People are people providing the "PDP Named Roles" as set out in Scope S210.1.

(42) Lump Sum Fee has the meaning provided in clause Z2.15.

(43) The NHP is the New Hospital Programme as more particularly defined in Scope

(S100).

- (44) Open Book is an approach which is transparent and includes the unrestricted provision to the *Client* (or its nominee) of information in the *Consultant's* possession or control (subject to legal professional privilege) to enable effective verification of the Defined Cost, claims for payment, and of the *Consultant's* performance that are likely to be of interest to a prudent entity procuring a programme of the nature, scale and complexity of the NHP.
- (45) Others are people or organisations who are not the *Client*, the *Service Manager*, the *Adjudicator*, the *Consultant* or any employee, Subcontractor or supplier of the *Consultant*.
- (46) The Parties are the *Client* and the *Consultant*.
- (47) The Period of Insurance is the period of insurance set out in the Insurance Table in respect of each required insurance.
- (48) Personal Data has the meaning given in the Data Protection Legislation.
- (49) The Price for Service Provided to Date is
- in respect of each Cost Reimbursable Task Order
    - the total Defined Cost which the *Service Manager* forecasts will have been paid by the *Consultant* before the next assessment date plus the Fee,
    - the *profit percentage* applied to the total Small Enterprise Subcontractor Defined Cost which the *Service Manager* forecasts will have been paid by the *Consultant* before the next assessment date and
    - the *profit percentage* applied to the total Umbrella Organisation Defined Cost which the *Service Manager* forecasts will have been paid by the *Consultant* before the next assessment date and
  - in respect of each Fixed Price Task Order, the total of the Prices for each completed activity (being an activity without notified Defects).
- (50) The Prices are
- in respect of each Cost Reimbursable Task Order, the forecast of the total Defined Cost for the Task plus the Fee and
  - in respect of each Fixed Price Task Order, the lump sum prices for each of the activities on the Activity Schedule unless later changed in accordance with this Contract.
- (51) Professional Indemnity Insurance has the meaning set out in the Insurance Table.
- (52) To Provide the Service means to do the work necessary to complete the *service* in accordance with this Contract and all incidental work, services and actions which this Contract requires.
- (53) PCR 2015 is the Public Contracts Regulations 2015 (as may be amended from time to time).
- (54) The Rates are the Leadership Team Rates and the Wider Team Rates.
- (55) Relevant Requirements are all Applicable Laws 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.
- (56) Scope is information which
- specifies and describes the *service* or
  - states any constraints on how the *Consultant* Provides the Service
- and is either
- in the documents which the Contract Data states it is in or
  - in an instruction given in accordance with this Contract.
- (57) The Secretary of State is the Secretary of State for Health and Social Care.
- (58) The Selection Questionnaire is the selection questionnaire for the Programme Delivery Partner procurement as issued on 29 November 2023.
- (59) The Service Period means the *service period* unless changed in accordance with this Contract.
- (60) Small Enterprise means an enterprise with fewer than 50 employees and an annual

turnover and/or an annual balance sheet total not exceeding €10 million (ten million euros).

- (61) Small Enterprise Subcontractor means a Subcontractor that is a Small Enterprise or other Subcontractor as may be deemed a Small Enterprise at the *Service Manager's* absolute discretion.
- (62) A Subcontractor is a person or organisation who has a contract with the *Consultant* to provide part of the *service*, except for the supply of people paid for by the *Consultant* according to the time they work.
- (63) Strategic Deliverable has the meaning provided in Appendix 4 (Incentive Schedule).
- (64) Strategic Deliverable Completion Date has the meaning provided in Appendix 4 (Incentive Schedule).
- (65) Strategic Deliverable Completion has the meaning provided in Appendix 4 (Incentive Schedule).
- (66) A Task is work included in the *service* which the *Service Manager* instructs the *Consultant* to carry out and for which a Task Order programme is required.
- (67) Task Completion is when the *Consultant* has done all the work in the Task Order (including achieving the "Task Completion" requirements as set out in the Task Order) and corrected Defects.
- (68) Task Completion Date is the date for completion of a Task stated in the Task Order unless later changed in accordance with this Contract.
- (69) A Task Order is the *Service Manager's* instruction to carry out a Task.
- (70) An Umbrella Organisation means an employer (excepting the *Consultant* and its Affiliates) of any organisational structure which provides contingent labour resources to the *Consultant* for the purposes of Providing the Service.
- (71) Wider Team People are all people providing services in relation to this Contract except
- any Leadership Team People and
  - any people employed or provided by a Small Enterprise Subcontractor or Umbrella Organisation.
- (72) Wider Team People are all people providing services in relation to this Contract except
- any Leadership Team People and
  - any people employed or provided by a Small Enterprise Subcontractor or Umbrella Organisation.
- (73) Wilful Default is an intentional and deliberate act or omission by the *Consultant* or any of its personnel where the *Consultant* or such personnel knows and appreciates the act or omission may cause harm, damage or loss to the *Client* or a breach of contract, or is in reckless disregard or wanton indifference as to whether that act or omission may cause harm, damage, loss or breach but does not include errors of judgment, mistakes, errors, or acts or omissions made in good faith.
- (74) A Working Day is any day other than Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in the United Kingdom.

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**Interpretation and the law** 12

- 12.1 In this Contract, except where the context shows otherwise
- words in the singular also mean in the plural and the other way round,
  - words denoting persons include individuals, partnerships, firms and corporations and their successors in title and permitted assignees and transferees,
  - references to a document include any revision made to it in accordance with this Contract,
  - references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it,
  - references to a standard include any current relevant standard that replaces it,
  - references to a public organisation include any successor (statutory or otherwise) public organisation which has taken over the functions and duties of such public organisation,
  - references to the words “include”, “includes”, “including” and “included” are construed without limitation to the words which follow,
  - references to this Contract include any permitted variation, amendment or supplement to this Contract,
  - references to fault include negligence, default, breach of statutory duty or breach of contract by or insolvency of the Part or other entities engaged by them or for whom they are responsible (including, in the case of the *Consultant*, Subcontractors and subcontractors at a lower tier of the supply chain) or the occurrence of an event that is at the Party's risk,
  - references to work include services and vice versa as the context permits,
  - references to the absolute discretion of the *Service Manager* or of the *Client* means that such party is entitled to exercise that discretion however they wish to, including without regard to any provision of this Contract (including clause 10)
  - references to “writing” or “written” exclude fax but not email and
  - provisions including the words “agree”, “agreed” or “agreement” require the agreement to be recorded in writing.
- 12.2 This Contract and any non-contractual obligations arising out of or in relation to it are governed by the *law of the contract*.
- 12.3 No change to this Contract, unless provided for by these *conditions of contract*, has effect unless it has been agreed, confirmed in writing and recorded in a document signed by the Parties.
- 12.4 Headings and titles are for information purposes only and are not deemed part of this Contract or taken into consideration in the interpretation or construction of this Contract.
- 12.5 This Contract is the entire agreement between the Parties. In entering this Contract neither Party relies on any statement, assurance, warranty, representations or undertakings (whether oral or in writing) made by the other Party, save to the extent such representations or undertakings are expressly incorporated into this Contract.
- 12.6 The failure or delay of either Party to exercise any right or remedy under this Contract does not constitute a waiver of that right or remedy. No waiver by either Party of any breach of this Contract constitutes a waiver of any subsequent breach (including a repetition of a previous breach) or continuing breach of this Contract. No waiver of a Party's rights or remedies under this Contract has effect unless provided in writing, specifying the right or remedy and the extent to which it is being waived, and dated and

signed by the Party granting the waiver.

- 12.7 If any clause or part of this Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this Contract and will be ineffective without, as far as is possible, modifying any other clause or part of this contract and this will not affect any other provisions of this Contract which will remain in full force and effect.
- 12.8 Any time periods in this Contract stated in days exclude Christmas Day, Good Friday and bank holidays.

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**Communications** 13

- 13.1 Each communication which this Contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of the Contract*.
- 13.2 If the Scope specifies the use of a communication system, a communication has effect when it is communicated through the communication system specified in the Scope.
- If the Scope does not specify a communication system, a communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.

- 13.3 A notification or notice relating to a dispute or termination is in writing and
- delivered by hand or by pre-paid first-class post or other next Working Day delivery service at the last address notified by the recipient for receiving hard-copy communications or, if none is notified, at the recipient's address for communications stated in the Contract Data (in which case a copy of the notification or notice is sent by email to the last email address notified by the recipient for receiving email communications or, if none is notified, to the recipient's address for electronic communications stated in the Contract Data) or
  - sent by email to the last email address notified by the recipient for receiving email communications or, if none is notified, to the recipient's address for electronic communications stated in the Contract Data.

Any notification or notice given to a Party pursuant to this clause 13.3 is deemed to have been received

- if delivered by hand, at the time the notice is left at the proper address,
- if sent by pre-paid first-class post or other next Working Day delivery service, at 9.00am on the second Working Day after posting or
- if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume.

In this clause 13.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

- 13.4 If this Contract requires the *Service Manager* or the *Consultant* to reply to a communication, unless otherwise stated in these *conditions of contract*, they reply within the *period for reply*.
- 13.5 The *Service Manager* replies to a communication submitted or resubmitted by the *Consultant* for acceptance. If the reply is not acceptance, the *Service Manager* states the reasons in sufficient detail to enable the *Consultant* to correct the matter. The *Consultant* resubmits the communication within the *period for reply* taking account of these reasons. Reasons for withholding acceptance include
- that more information is needed in order to assess the *Consultant's* submission fully,
  - the submission does not comply with this Contract, a Consent and/or Applicable Law,
  - it does not show the information which this Contract requires,
  - the *Consultant's* plans which it shows are not practicable, economic or efficient,
  - it does not represent the *Consultant's* plans realistically,
  - it would have an adverse impact on the work of Others or cause nuisance or disturbance to adjacent landowners,
  - the submission is not consistent with other information provided by the

*Consultant and/or*

- any other reason stated in this Contract.
- 13.6 The *Service Manager* may extend the period for reply to a communication if the *Service Manager* and the *Consultant* agree to the extension before the reply is due. The *Service Manager* informs the *Consultant* of the extension which has been agreed.
- 13.7 The *Service Manager* issues certificates to the *Client* and the *Consultant*.
- 13.8 A notification or certificate which this Contract requires is communicated separately from other communications.
- 13.9 The *Service Manager* may withhold acceptance of a submission by the *Consultant*. Withholding acceptance for a reason stated in these *conditions of contract* is not a compensation event.
- 13.10 Any reference to a “communication” in this clause 13 includes any proposed reports, schedules, plans or other documentation required to be submitted to the *Client* in accordance with this Contract or the Scope.
- 13.11 The *Consultant* retains copies of drawings, specifications, reports and other documents which record the *service* for the *period for retention*. The copies are retained in the form stated in the Scope.

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**The Service Manager** 14

- 14.1 The *Service Manager's* issue of or failure to issue, notifications, replies, comments, acceptances, decisions, approvals, certificates or instructions or the carrying out of, or the failure to carry out, any inspection, test or other enquiry, whether by the *Service Manager*, or any third party does not change the *Consultant's* responsibility to Provide the *Service* or any duty or liability of the *Consultant* including for its design.
- 14.2 The *Service Manager*, after notifying the *Consultant*, may delegate any of its actions and may cancel any delegation. The notification contains the name of the delegate and details of the actions being delegated or any cancellation of delegation. A reference to an action of the *Service Manager* in this Contract includes an action by its delegate. The *Service Manager* may take an action which it has delegated.
- 14.3 The *Service Manager* may give an instruction to the *Consultant* which changes the Scope or a Key Date (including the Condition stated). If information provided by the *Client* is found to be incorrect, the *Service Manager* gives an instruction correcting it.
- 14.4 The *Service Manager* does not give an instruction to the *Consultant* which would require it to act in a way that was outside its professional code of conduct.
- 14.5 The *Client* may replace the *Service Manager* after notifying the *Consultant* of the name of the replacement.

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**Early warning** 15



- 15.1 The *Consultant* and the *Service Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could
- increase the total of the Prices or the forecast total Defined Cost for a Task,
  - delay Task Completion,
  - delay meeting a Key Date,
  - impair the usefulness of the *service* to the *Client*,
  - affect the work of the *Client*, a *Client's* contractor or another consultant,
  - prevent or restrict the *Consultant's* ability to Provide the Service,
  - result in a delay in obtaining a Consent, or a refusal by an authority to grant an application for, or discharge, a Consent,
  - result in the *Client* or the *Consultant* not complying with Applicable Law or incurring any additional liability to pay any fees, costs, or expenses under a Consent,
  - result in the termination of a subcontract entered into by the *Consultant* and/or
  - change an accepted part of the *Consultant's* design.

The *Service Manager* or the *Consultant* may give an early warning by notifying the other of any other matter which could increase the *Consultant's* total cost. The *Service Manager* enters early warning matters in the Early Warning Register. Early warning of a matter for which a compensation event has previously been notified is not required. Notification of an early warning includes details of the risk and its likely impact and timing as far as the Party is aware.

- 15.2 The *Service Manager* prepares a first Early Warning Register and issues it to the *Consultant* within one (1) week of the *starting date*. The *Service Manager* instructs the *Consultant* to attend a first early warning meeting within two (2) weeks of the *starting date*.

Later early warning meetings are held

- if either the *Service Manager* or *Consultant* instructs the other to attend an early warning meeting, and, in any case,
- at no longer interval than the interval stated in the Contract Data until the end of the Service Period.

The *Service Manager* or *Consultant* may instruct other people to attend an early warning meeting if the other agrees.

A Subcontractor attends an early warning meeting if its attendance would assist in deciding the actions to be taken.

- 15.3 At an early warning meeting, those who attend co-operate in
- making and considering proposals for how the effects of each matter in the Early Warning Register can be avoided or reduced,
  - seeking solutions that will bring advantage to all those who will be affected,
  - deciding on the actions which will be taken and who, in accordance with the Contract, will take them,
  - deciding which matters can be removed from the Early Warning Register and
  - reviewing actions recorded in the Early Warning Register and deciding if different actions need to be taken and who, in accordance with the Contract, will take them.

- 15.4 The *Service Manager* records the proposals considered at an early warning meeting and, where decisions are taken at the early warning meeting, revises the Early Warning Register to record the decisions made and issues the revised Early Warning Register to the *Consultant* within one (1) week of the early warning meeting. If a decision requires a change to the Scope, the *Service Manager* instructs the change at the same time as the revised Early Warning Register is issued.

**Requirements for instructions**

16

- 16.1 The *Service Manager* or the *Consultant* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between
- the documents which are part of the Contract (including any design or other information submitted by the *Consultant* to and accepted by the *Client*),
  - any Consents and/or
  - any of the documents referred to in the first preceding bullet point and any Consents.
- The *Service Manager* states how the ambiguity or inconsistency should be resolved, in accordance with the following order of precedence for the documents comprising the Contract (in descending order of priority)
- the Form of Contract,
  - these *conditions of contract* including Appendices,
  - Contract Data Part One,
  - the Schedule of Cost Components,
  - Task Orders,
  - the Scope,
  - Contract Data Part Two and
  - the other schedules comprising the Contract.
- The *Service Manager* may request a proposal from the *Consultant* as to how to resolve the ambiguity or inconsistency prior to issuing any instruction under this clause 16.1.
- 16.2 The *Service Manager* or the *Consultant* notifies the other as soon as either becomes aware that the Scope includes an illegal or impossible requirement. If the Scope does include an illegal or impossible requirement, the *Service Manager* gives an instruction to change the Scope appropriately.

**Corrupt Acts**

17

- 17.1 The *Consultant* represents and warrants that neither it, nor to the best of its knowledge any of its people, have at any time prior to the *starting date*
- committed a Corrupt Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Corrupt Act and/or
  - 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 Corrupt Act.
- 17.2 In Providing the Service the *Consultant* does not
- commit a Corrupt Act and/or
  - do or suffer anything to be done which would cause the *Client* or any of the *Client's* employees, consultants, contractors, subcontractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 17.3 In Providing the Service the *Consultant*
- establishes, maintains and enforces, and requires that its Subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Corrupt Act,
  - keeps appropriate records of its compliance with this Contract and makes such records available to the *Client* on request and
  - provides, maintains and (where appropriate) enforces an anti-bribery policy (which shall be disclosed to the *Client* on request) to prevent it and any *Consultant's* people or any person acting on the *Consultant's* behalf from committing a Corrupt Act.
- 17.4 The *Consultant* immediately notifies the *Client* in writing if it becomes aware of any breach of clause 17.1 or 17.2, or has reason to believe that it has or any of its people or Subcontractors have

- been subject to an investigation or prosecution which relates to an alleged Corrupt Act,
- 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 Corrupt Act and/or
- received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Corrupt Act.

17.5 If the *Consultant* makes a notification to the *Client* pursuant to clause 17.4, the *Consultant* responds promptly to the *Client's* enquiries, co-operates with any investigation, and allows the *Client* to audit any books, records and/or any other relevant documentation in accordance with this Contract.

17.6 If the *Consultant* breaches this clause 17, the *Client* may by notice require the *Consultant* to remove from carrying out the *service* any person whose acts or omissions have caused the *Consultant's* breach.

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**Occurrence of a Force Majeure Event** 18

18.1 If a Force Majeure Event occurs, the *Service Manager* may give an instruction to the *Consultant* stating how the Force Majeure Event is to be dealt with.

18.2 The *Consultant* mitigates the effect of the Force Majeure Event in so far as it is reasonably practical to do so.

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**Consultant's Proposals** 19

- 19.1 The *Consultant* may propose to the *Service Manager* that the Scope provided by the *Client*, the *Consultant's* design and/or the Accepted Programme are changed in order to
- reduce the amount the *Client* pays to the *Consultant* for Providing the Service,
  - reduce the cost of operating and/or maintaining an asset,
  - reduce the total cost of procuring the NHP (or any part thereof excluding the *service*) and/or
  - complete the NHP at a date earlier than the then current forecast completion date for the NHP.

The *Consultant* provides details of its proposed changes, referring to this clause 19, together with its assessment of the benefit it believes the *Client* may obtain, and a quotation.

The *Service Manager* consults with the *Client* and the *Consultant* about the change.

Where the *Client* wishes to implement a change proposed by the *Consultant*, the Parties negotiate with a view to agreeing the changes to the Scope, the Accepted Programme, the Key Dates and/or the Prices.

Where the *Consultant's* proposals derive a financial benefit to the NHP (but not this Contract), the Parties may negotiate to agree the *Consultant's* share of such financial benefit.

The *Consultant* does not implement the agreed changes until the *Service Manager* issues a notice to the *Consultant* instructing any such agreed changes.

## 2. THE CONSULTANT'S MAIN RESPONSIBILITIES

Providing the Service	20	
	20.1	The <i>Consultant</i> Provides the Service in accordance with this Contract, the Scope, Applicable Law, and any Consents.
	20.2	The <i>Consultant</i> warrants that in Providing the Service, it has exercised and will continue to exercise the reasonable skill, care and diligence to be expected of an appropriately qualified professional consultant who is experienced in designing or providing services (as applicable) in relation to modern clinical facilities similar in size, nature, scope, and complexity to those forming part of the NHP, and in providing services similar in scope and complexity to the <i>service</i> , and delivered under the same or similar circumstances, and who is seeking to comply with its contractual obligations and all Applicable Law and Consents.
	20.2A	Notwithstanding any other clause in this Contract, and except as required by Applicable Law, the <i>Consultant</i> does not owe any greater duty in relation to this Contract than the use of reasonable skill, care and diligence pursuant to clause 20.2.
	20.3	The <i>Consultant</i> prepares forecasts of the total <i>expenses</i> for the whole of the <i>service</i> in consultation with the <i>Service Manager</i> and submits them to the <i>Service Manager</i> . Forecasts are prepared at the intervals stated in the Contract Data from the <i>starting date</i> until the end of the Service Period. An explanation of the changes made since the previous forecast is submitted with each forecast.
Design Standard	20.4	The <i>Consultant</i> warrants that it has used and continues to use the standard of skill, care and diligence required by clause 20.2 above to ensure that there are not used or specified in the <i>service</i> any materials that by their nature or application contravene any British Standard or equivalent or which are considered to be deleterious in the UK construction industry at the time of use or specification or which contravene the recommendations in the publication "Good Practice in Selection of Construction Materials" (2011; British Council for Offices).
	20.5	Without prejudice to its obligations under clause 20.1, the <i>Consultant's</i> design complies with, and the <i>Consultant</i> Provides the Service in a way that complies in all respects with, all Consents and the <i>Client's</i> health and safety requirements, sustainability requirements and any other policies produced by the <i>Client</i> and provided to the <i>Consultant</i> from time to time, including without limitation the <i>Client's</i> Policies.
	20.6	The <i>Consultant</i> is not liable for a Defect which arose from its design unless it failed to carry out that design using the standard of skill and care stated in clause 20.2.
<i>Consultant's</i> Due Diligence	20.7	<p>Prior to carrying out a Task Order, the <i>Consultant</i> carries out all necessary investigations in respect of the <i>service</i> in order to satisfy itself of the scope and nature of the <i>service</i> and the level of staffing, resources, materials, equipment, and other items needed to Provide the Service under a Task Order. No failure by the <i>Consultant</i> to comply with this clause 20, nor any consequence of any such failure, is a compensation event.</p> <p>The <i>Client</i> does not warrant the accuracy of any representation or statement of fact or law (including, without limitation, the frequencies or volumes set out in the Scope or other tender documents) given to the <i>Consultant</i> by the <i>Client</i> or <i>Service Manager</i>, its servants or agents at any time before the execution of this Contract. The <i>Client</i> shall not be liable to the <i>Consultant</i> for any loss or damage to the <i>Consultant</i> as a result of it relying on any such other representation, statements, information or advice whether in contract, tort, under the Misrepresentation Act 1967 or otherwise, save in so far as any such other representation, statement, information or advice was made or given fraudulently by the <i>Client</i> or <i>Service Manager</i>, its servants or agents acting in the course of their employment.</p>
Design Acceptance	20.8	<p>The <i>Consultant</i> submits the particulars of its design for acceptance by the <i>Service Manager</i> as the Scope requires and within one (1) week of an instruction to do so by the <i>Service Manager</i>. The <i>Consultant</i> may submit its design or other information for acceptance in parts if the design or contents of each part can be assessed fully. Reasons for not accepting the <i>Consultant's</i> design are that it does not comply with</p> <ul style="list-style-type: none"> <li>• the Scope,</li> <li>• Applicable Law,</li> </ul>

- it is not integrated and coordinated with other elements of the *Consultant's* design which the *Service Manager* has accepted or with the designs of the *Client* and/or Others,
- the *Client* does not consider the design to be safe and/or compliant with legislation,
- the *Consultant* has not demonstrated that the design will be reasonably likely to be constructible and operable within the *Client's* budget or
- any other reason stated in this Contract.

The *Consultant* does not proceed with the relevant work until the *Service Manager* has accepted its design.

- 20.9 The only effect of an acceptance by the *Service Manager* of a submission is to allow the *Consultant* to proceed with the relevant work and the *Service Manager's* acceptance does not carry any implication that the quality, efficacy or compliance of the *Consultant's* design or other information has been tested or verified by the *Service Manager*.
- 20.10 The *Consultant* co-ordinates and integrates the various elements of the *Consultant's* design with one another. The *Service Manager* issues instructions concerning the co-ordination and integration of the *Consultant's* design which the *Service Manager* has accepted with any work or designs provided by Others which is provided to the *Consultant* under this Contract as stated in the Scope. If the instruction changes the *Consultant's* design which the *Service Manager* has accepted the instruction constitutes a compensation event.
- Omission
- 20.11 The *Service Manager* omits any part of the Scope of the *service* (including any Task Order) at its discretion and for any reason (including where the omitted work is to be done by Others, whether or not for a lower price).
- 20.12 The *Service Manager* may include in an instruction to omit part of the Scope of the *service* (including any issued Task Order) that the *Consultant* novates, to the *Client* or Others (but excluding any H2A Contractor), the benefit of any subcontract or other contract (including any bond or guarantee in relation to such subcontract or other contract) relating to the performance of the omitted services. Where a novation is instructed, the *Consultant* executes and procures that the relevant Subcontractor and parent company acting as the Subcontractor's guarantor, executes and delivers to the *Client* or Others a deed of novation substantially in the form set out in Appendix 2 (Forms of Novation Agreement and Associated Collateral Warranty).
- 20.13 The *Consultant's* cancellation costs as set out below relating to the Scope of the *service* in respect of which the *Service Manager* has instructed an omission of Task Order scope are treated as Defined Cost
- the Defined Cost which has been reasonably incurred by the *Consultant* in expectation of completing the omitted Task Order scope provided that those costs cannot be mitigated or avoided, but no cancellation costs relating to any omission
    - which is the subject of a subcontract or other contract which is novated or the benefit of which is assigned to the *Client* or Others in accordance with the *Service Manager's* instruction under clause 12.2 or
    - which is the subject of a subcontract or other contract which is not novated or the benefit assigned but the relevant Subcontractor enters into a new contract with the *Client* or Others where the omitted *service* is to be carried out by the *Client* or Others.
- 
- 20.14 The *Consultant* has no claim against the *Client* on the *Consultant's* own account or on the account of any subcontractor at any tier of the supply chain for
- loss of profit,
  - loss of business,
  - loss of opportunity,
  - any consequential loss,
  - any indirect loss,
  - loss of goodwill,
  - loss of contract,
  - early termination or non-renewal of contract and/or
  - any other loss or cost,

(in each case) if any omission is made for any reason, even if it is intended that the relevant work will be performed by Others, whether or not for a lower price.

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**People**

21

- 21.1 The *Consultant* either provides each *key person* named to do the job stated in the Contract Data or provides a replacement person who has been accepted by the *Service Manager*. The *Service Manager* may, at its absolute discretion, instruct that any person Providing the Service is appointed a *key person*.
- 21.2 The *Consultant* submits the name, relevant qualifications and experience of a proposed replacement person to the *Service Manager* for acceptance as soon as reasonably practicable. Reason for not accepting the proposed replacement person are
- that the *Service Manager* considers that their relevant qualifications and experience are not of the same standard of those of the person who is to be replaced,
  - the proposed replacement person is not suitable for the nature of the role,
  - the person being replaced was named in the Contract Data and remains employed by the *Consultant* or a Subcontractor, and the replacement did not become necessary due to circumstances which are otherwise beyond the reasonable control of the *Consultant* or
  - any other reason stated in this Contract.
- 21.3 Subject to clause 21.5, the *Consultant* uses all reasonable endeavours to ensure there is a reasonable uninterrupted transition period (which shall not be shorter than two (2) weeks) between the *key person* and the replacement person. During the uninterrupted transition period, the *Client* pays to the *Consultant* the cost for the *key person* only, not the replacement person.
- 21.4 Regardless of whether a replacement person has been accepted by the *Service Manager*, the *Consultant* pays to the *Client* the Key Person Compensation Amount if and to the extent that
- the *Consultant* replaces any *key person* named to do the job stated in the Contract Data for reasons other than
    - that person
      - leaves the employment of the *Consultant* or
      - no longer provides services to the *Consultant* or
    - circumstances which are otherwise beyond the reasonable control of the *Consultant* and
  - the *Service Manager*, acting reasonably, does not consider the replacement person to be of demonstrably equal or better competence than the *key person* being replaced.
- The Key Person Compensation Amount is a genuine pre-estimate of the costs incurred by the *Client* and the *Service Manager* in managing the handover, ensuring the replacement is inducted, repeating instructions, developing the new relationship and addressing issues arising from interruptions in the continuity of the *Consultant's key persons*.
- 21.5 The *Service Manager* may instruct the *Consultant* to remove a person for any reason. The *Consultant*, at no additional cost and expense to the *Client* and without any entitlement to a compensation event
- immediately upon receipt of the *Service Manager's* instruction arranges that the person has no further connection with the work included in this Contract and
  - within seven days of the *Service Manager's* instruction proposes a suitably competent, qualified, and experienced replacement person in accordance with clause 21.1.
- 21.6 Without prejudice to any other provision of this Contract, the *Consultant* employs sufficient staff to ensure that the *service* is provided in accordance with the Contract, including (without limitation) during periods of absence of its staff due to sickness, maternity leave, staff holidays, staff training or otherwise.

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**Working with the**

22

**Client and Others**

- 22.1 The *Consultant* co-operates with the *Client*, the *Service Manager*, and Others, including in obtaining and providing information which they need in connection with the *service*.
- 22.2 Where necessary to Provide the Service, the *Consultant* holds or attends meetings with Others. The *Consultant* informs the *Service Manager* of these meetings as soon as reasonably practicable beforehand and the *Service Manager* may attend them.
- 22.3 If the *Service Manager* decides that the work does not meet the Condition stated for a Key Date by the date stated and, as a result, the *Client* incurs additional cost
- in carrying out work,
  - by paying an additional amount to Others in carrying out work or services,
  - arising out of any liability to Others and/or
  - arising out of a delay to the NHP,
- the additional cost the *Client* has paid or will incur is paid by the *Consultant*. The *Service Manager* assesses the additional cost within eight (8) weeks of the date when the Condition for the Key Date is met.
- 22.4 The *Consultant* shall afford any other consultants and contractors engaged by the *Client* in relation to the *services* its full co-operation to facilitate the performance of the duties assigned to them, including (but not limited to) provision of information (with copies to the *Service Manager*), regular co-ordination meetings, and the provision of any licences, consents, approvals or permissions which are within its power to provide.

**Subcontracting****23**

- 23.1 If the *Consultant* subcontracts work
- it is responsible for Providing the Service as if it had not subcontracted (and it is responsible for the acts and omissions of its Subcontractors and any subcontractors at a lower tier of the supply chain as if they were the acts and omissions of the *Consultant*),
  - this Contract applies as if the people used to provide the subcontracted services were the *Consultant's*,
  - the *Consultant* carries out subcontracting in accordance with the relevant procedures and other requirements stated in the Scope,
  - each subcontract includes a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation and
  - the *Consultant* gives the *Client* a true copy of each subcontract entered into by the *Consultant* as soon as it is entered into.
- 23.2 The *Consultant* submits the name of each proposed Subcontractor to the *Service Manager* for acceptance. A reason for not accepting the Subcontractor is that
- the Subcontractor was not procured in accordance with the procedures in the Scope,
  - the appointment of the Subcontractor will not allow the *Consultant* to Provide the Service or comply with its obligations under the Contract,
  - there is a Conflict of Interest in respect of the Subcontractor and/or
  - the Subcontractor does not possess the appropriate degree of skill, resources, reputation and financial standing relative to the provision of the proposed work to be subcontracted.
- The *Consultant* does not appoint a proposed Subcontractor until the *Service Manager* has
- accepted the Subcontractor and
  - to the extent these *conditions of contract* require, accepted the subcontract documents.
- Once the Subcontractor has been appointed in accordance with this clause 23.2 the *Consultant*
- does not vary or amend the pricing provisions of the subcontract unless expressly agreed by the *Service Manager* and
  - unless the *Service Manager* has agreed in writing when accepting the applicable

Subcontractor that this bullet does not apply in respect of the applicable subcontract, does not vary or amend any other provision of the subcontract unless expressly agreed by the *Service Manager*.

23.3 The *Consultant* submits the proposed subcontract documents for each subcontract to the *Service Manager* for acceptance unless the *Service Manager* has agreed that no submission is required.

23.4 The *Consultant* submits the proposed subcontract documents (including any advanced payment terms or breakage costs) for each Key Subcontractor subcontract to the *Service Manager* for acceptance unless the *Service Manager* has agreed that no submission is required. The *Consultant* does not appoint a Key Subcontractor on the proposed subcontract documents submitted until the *Service Manager* has accepted the Key Subcontractor. A reason for not accepting the Key Subcontractor subcontract documents is that

- they do not adequately reflect the terms of this Contract or are inconsistent with the terms of this Contract,
- they would not permit compliance with clause 7 (Intellectual Property Rights),
- their use will not allow the *Consultant* to Provide the Service in accordance with, or to comply with its obligations under, this Contract,
- they are unduly disadvantageous to the Subcontractor,
- they do not include a statement that the parties to the subcontract act in a spirit of mutual trust and co-operation,
- they do not include a statement that on the *Client's* termination of the *Consultant's* obligation to Provide the Service
  - for any reason that is R1 – R15, R18 or R22 – R25 in the Termination Table or
  - in accordance with Appendix 6 (Financial Distress), Appendix 7 (Data Protection), Appendix 9 (Cyber Essentials Scheme), Appendix 14 (Service Continuity Plan and Corporate Resolution Planning), Appendix 15 (Benchmarking) or Appendix 16 (Modern Slavery),

that the proposed Subcontractor agrees to the assignment, transfer or novation of the *Consultant's* interests in its subcontract to the *Client* or an Other employed by the *Client*, unless the *Service Manager* has instructed or agreed that this is not required,

- they are not to be executed as a deed or are not to carry a twelve (12) year limitation period, unless the *Service Manager* has instructed or agreed that this is not required,
- they are not governed by the law of England and Wales,
- the *Consultant* does not demonstrate that there are no refunds or reverse payments from the proposed Key Subcontractor to the *Consultant*,
- the proposed subcontract services represent too large a proportion of the total *service*,
- they do not require the Key Subcontractor (and its guarantor(s) if applicable) to execute and deliver deeds of collateral warranty in favour of the beneficiaries, in the forms and at the times required by this Contract or
- any other reason stated in this Contract.

It is a condition of the *Service Manager's* acceptance of the Key Subcontractor that the *Consultant* delivers to the *Service Manager* all collateral warranties required from the Key Subcontractor in accordance with clause Z7.2. If this condition is not fulfilled, the *Service Manager's* approval of the relevant Key Subcontractor is null and void and the *Consultant* ceases to employ that Key Subcontractor.

23.5 The *Consultant* submits the pricing information in the proposed subcontract documents for each subcontract to the *Service Manager* unless the *Service Manager* has agreed that no submission is required.

23.6 Where the proposed Subcontractor is an Affiliate, further reasons for the *Service Manager* not accepting the proposed Subcontractor or subcontract documents are

- the proposed Subcontractor was not procured in a fair and transparent competition in accordance with the Scope or
- the *Consultant* does not demonstrate that



- the subcontract represents an arm's length commercial arrangement,
- there are appropriate systems and procedures in place to operate and manage the subcontract at arm's length,
- the proposed Subcontractor's fee or other commercial terms are reflective of a fair and competitive market rate or represent value for money,
- the proposed subcontract has been competitively tendered or
- there are no refunds or reverse payments from the proposed Subcontractor to the *Consultant*.

**Other responsibilities** **24**

- 24.1 Using the standard of reasonable skill and care set out in clause 20.2, the *Consultant* identifies and makes applications, including developing supporting information, on behalf of the *Client* for Consents from Others where necessary to Provide the Service unless
- the Scope expressly states that a Consent will be obtained by the *Client*; or
  - the *Client* notifies the *Consultant* that it will obtain a Consent itself.
- The *Consultant* shall maintain and comply with such requirements or documents while Providing the Service.
- 24.2 The *Consultant* obeys an instruction which is lawful and is given by the *Service Manager*.
- 24.3 The *Consultant* acts in accordance with the health and safety requirements stated in the Scope and all relevant health and safety legislation (and any amendment or re-enactment thereof).
- 24.4 The *Consultant* obtains approval of its design from Others where necessary.
- 24.5 The *Consultant* prepares the plans, procedures or systems it is required to prepare and submits these to the *Service Manager* for acceptance, as stated in the Scope. The *Consultant* complies with the plans, procedures and systems accepted by the *Service Manager*. A reason for not accepting is the *Consultant* will not be able to comply with its obligations under this Contract or any other reason stated in this Contract.
- 24.6 The *Consultant* operates on an Open Book basis in relation to demonstrating compliance with the requirements of this Contract.

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**Assignment** **25** The provisions set out in clause Z6 apply.

**Disclosure** **26**

- 26.1 The Parties do not disclose information obtained in connection with the *service* except when necessary to carry out their duties under the Contract.
- 26.2 The *Consultant* does not, except with the prior written consent of the *Client*, make any press announcements or publicise this Contract or the NHP in any way unless the purpose of such disclosure is to allow compliance with a requirement to disclose information concerning this Contract as required by law or an applicable stock exchange. The provisions of this clause shall not apply to any information relating to this Contract which is (or which pursuant to this clause 26.2) is public knowledge (otherwise than by breach of this clause) or which is limited to the fact of the *Consultant* being a party to this Contract.
- 26.3 The *Consultant* does not use the *Client's* name or brand in any promotion or marketing or announcement of the Contract.
- 26.4 The *Client* owns the copyright in this Contract and any data relating to this Contract.
- 26.5 The *Client* reserves the right to determine whether the results of the *service* shall be published and if so on what conditions.

### 3. TIME

#### Starting and Key Dates

30

- 30.1 The *Consultant* does not start work until the *Service Manager* issues its first Task Order and Provides the Service throughout the Service Period.
- 30.2 The *Consultant* does the work so that
- the Condition stated for each Key Date is met by the Key Date and
  - Task Completion is on or before the Task Completion Date.
- 30.3 The *Client* may extend the Service Period at its absolute discretion by up to four (4) further periods of one (1) year each and each such extension automatically changes the *service period*. The *Client* notifies the *Consultant* of an extension not less than three (3) months prior to the end of the then current Service Period.
- 30.4 If Task Completion of any Task has not occurred at the end of the Service Period, the Service Period is extended until the latest Task Completion. During this extended period
- the *Service Manager* does not issue a Task Order and
  - the *Consultant* only Provides the Service related to the outstanding Tasks.

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#### The programme

31

- 31.1 If a programme is not identified in the Contract Data, the *Consultant* submits a first programme to the *Service Manager* for acceptance within the period stated in the Contract Data.
- 31.2 The *Consultant* shows on each programme submitted for acceptance
- the *starting date* and *access dates*,
  - for each Task
    - the Task starting date,
    - the dates when the *Consultant* plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the *Client* and *Others* to do their work,
    - planned Task Completion and
    - the Task Completion Date,
  - the order and timing of the operations which the *Consultant* plans to do in order to Provide the Service or to be taken in order to reduce or mitigate any delay in the progress of the *service*,
  - the order and timing of the work of the *Client* and *Others* as last agreed with them by the *Consultant* or, if not so agreed, as stated in the Scope,
  - provisions for
    - float,
    - time risk allowances,
    - health and safety requirements and
    - the procedures set out in the Contract,
  - the dates when, in order to Provide the Service in accordance with the programme, the *Consultant* will need
    - access to a person, place or thing if later than its *access date*,
    - information and things to be provided by the *Client* and
    - information and approval from *Others*,
  - for each operation, a statement of how the *Consultant* plans to do the work identifying the resources which will be used,
  - Strategic Deliverable Completion Dates,
  - planned Strategic Deliverable Completion for each Strategic Deliverable and

- other information which the Scope requires the *Consultant* to show on a programme submitted for acceptance.

A programme issued for acceptance is in the form stated in the Scope.

31.3 Within two (2) weeks of the *Consultant* submitting a programme for acceptance, the *Service Manager* notifies the *Consultant* of the acceptance of the programme or the reasons for not accepting it. Reasons for not accepting a programme are that

- the *Consultant's* plans which it shows are not practicable,
- it does not show the information which this Contract requires,
- it does not represent the *Consultant's* plans realistically,
- it does not enable the *Consultant* to comply with the Scope,
- it does not comply with the Scope or any other obligation in the Contract,
- it materially changes the proposed timing (from that shown on the existing Accepted Programme) for any of the following
  - any acceptance by the *Service Manager*,
  - for the *Client* or an Other to provide something which the *Client* or the Other is to provide to the *Consultant* under this Contract,
  - the grant or discharge of any Consent which is to be obtained or discharged (as applicable) by the *Client*,
  - obtaining any Consent or approval which is to be obtained by the *Client*, the *Service Manager* or an Other,
  - for the *Consultant* to provide something to an Other or
  - the *Client* or an Other to do any work or
- any other reason stated in this Contract.

If the *Service Manager* does not notify acceptance or non-acceptance within the time allowed, the *Consultant* may notify the *Service Manager* of that failure. If the failure continues for a further one (1) week after the *Consultant's* notification, it is treated as acceptance by the *Service Manager* of the programme.

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## Revising the programme

32

32.1 The *Consultant* shows clearly, and in a manner such that any of the following can be separately identified one from the other, on each revised programme

- the actual progress achieved on each operation and its effect upon the timing of the remaining work,
- the effects of decisions made at early warning meetings, as recorded by the *Service Manager* in the Early Warning Register,
- how the *Consultant* plans to deal with any delays (including all measures to be taken to reduce or mitigate any delay) and to correct notified Defects and
- any other changes which the *Consultant* proposes to make to the Accepted Programme.

32.2 The *Consultant* submits a revised programme to the *Service Manager* for acceptance

- within the *period for reply* after the *Service Manager* has instructed the *Consultant* to,
- when the *Consultant* chooses to and, in any case,
- at no longer interval than the interval stated in the Contract Data from the *starting date* until the end of the Service Period.

32.3 The *Service Manager* may withhold acceptance to a revised programme submitted by the *Consultant* for any of the reasons which are stated in clause 31.3.

32.4 If the *Service Manager* does not accept a revised programme submitted for acceptance, the *Consultant* submits a further revised programme for acceptance which addresses the reason for non-acceptance within one week of the *Service Manager's* notification.

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## Task Order programme

33

- 33.1 The *Consultant* submits a Task Order programme to the *Service Manager* for acceptance within the period stated in the Task Order.
- 33.2 The *Consultant* shows on each Task Order programme submitted for acceptance
- the Task starting date and the Task Completion Date,
  - planned Task Completion,
  - the order and timing of the operations which the *Consultant* plans to do in order to complete the Task,
  - the dates when the *Consultant* plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the *Client* and Others to do their work,
  - the order and timing of the work of the *Client* and Others as last agreed with them by the *Consultant* or, if not so agreed, as stated in the Scope,
  - the order and timing of when the *Consultant* plans to submit to the *Service Manager* the particulars of its design or other information for acceptance,
  - provisions for
    - float,
    - time risk allowances,
    - health and safety requirements and
    - the procedures set out in the contract,
  - the dates when, in order to Provide the Service in accordance with the Task Order programme, the *Consultant* will need
    - access to a person, place or thing,
    - information and things to be provided by the *Client* and
    - information and approval from Others,
  - for each operation, a statement of how the *Consultant* plans to do the work identifying the resources which will be used and
  - other information which the Scope requires the *Consultant* to show on a Task Order programme submitted for acceptance.

A Task Order programme issued for acceptance is in the form stated in the Scope.

- 33.3 Within two (2) weeks of the *Consultant* submitting a Task Order programme for acceptance, the *Service Manager* notifies the *Consultant* of the acceptance of the Task Order programme or the reasons for not accepting it. A reason for not accepting the Task Order programme is that
- the *Consultant's* plans which it shows are not practicable,
  - it does not show the information which this Contract requires,
  - it does not represent the *Consultant's* plans realistically,
  - it does not comply with the Scope or any other obligation in the Contract,
  - it does not enable the *Consultant* to comply with the Scope,
  - it materially changes the proposed timing (from that shown on the existing accepted Task Order programme) for any of the following
    - any acceptance by the *Service Manager*,
    - for the *Client* or an Other to provide something which the *Client* or the Other is to provide to the *Consultant* under this Contract,
    - the grant or discharge of any Consent which is to be obtained or discharged (as applicable) by the *Client*,
    - obtaining any Consent or approval which is to be obtained by the *Client*, the *Service Manager* or an Other,
    - for the *Consultant* to provide something to an Other or
    - the *Client* or an Other to do any work or

- any other reason stated in this Contract.

If the *Service Manager* does not notify acceptance or non-acceptance within the time allowed, the *Consultant* may notify the *Service Manager* of that failure. If the failure continues for a further one (1) week after the *Consultant's* notification, it is treated as acceptance by the *Service Manager* of the Task Order programme.

- 33.4 For a Fixed Price Task Order only, the *Consultant* provides information which shows how each activity on the Activity Schedule relates to the operations on each Task Order programme submitted for acceptance.

**Revising the Task Order programme**

34

- 34.1 The *Consultant* shows clearly, and in a manner such that any of the following can be separately identified one from the other, on each revised Task Order programme
- the actual progress achieved on each operation and its effect upon the timing of the remaining work,
  - the effects of decisions made at early warning meetings, as recorded by the *Service Manager* in the Early Warning Register,
  - how the *Consultant* plans to deal with any delays (including all measures to be taken to reduce or mitigate any delay) and to correct notified Defects and
  - any other changes which the *Consultant* proposes to make to the Task Order programme.

- 34.2 The *Consultant* submits a revised Task Order programme to the *Service Manager* for acceptance
- within the *period for reply* after the *Service Manager* has instructed the *Consultant* to and
  - when the *Consultant* chooses to.

The latest Task Order programme accepted by the *Service Manager* supersedes a previously accepted Task Order programme.

**Access to people, places and things**

35

- 35.1 The *Client* provides access to a person, place or thing to the *Consultant* as stated in the Contract Data on or before the later of
- its *access date*,
  - the date for access shown on the Accepted Programme and
  - the date for access shown on the latest accepted Task Order programme.
- 35.2 The *Client* provides information and things which the Contract requires the *Client* to provide in accordance with the Accepted Programme and the latest accepted Task Order programme.

**Instructions to stop or not to start work**

36

- 36.1 The *Service Manager* may instruct the *Consultant* to stop or not to start any work. The *Service Manager* subsequently gives an instruction to the *Consultant* to
- re-start or start the work or
  - remove the work from the Scope.

**Acceleration**

37

- 37.1 The *Consultant* and the *Service Manager* may propose to the other an acceleration to meet a Condition stated for a Key Date before the Key Date, and/or to achieve Task Completion before the Task Completion Date. If the *Service Manager* and *Consultant* are prepared to consider the proposed change, the *Service Manager* instructs the *Consultant* to provide a quotation. The *Consultant* provides a quotation within three (3) weeks of the instruction to do so. The *Service Manager* replies to the quotation within three (3) weeks. The reply is
- a notification that the quotation is accepted or

- a notification that the quotation is not accepted and that the Key Date(s) and/or Task Completion Date is/are not changed.
- 37.2 A quotation for an acceleration comprises proposed changes to the Prices for the Task and a revised programme and Task Order programme showing the changed Key Date(s) and/or Task Completion Date. The *Consultant* submits details of the assessment with each quotation.
- 37.3 When a quotation for an acceleration is accepted, the *Service Manager* changes the Prices for the Task, the Key Date(s), and/or the Task Completion Date accordingly and accepts the revised programme and Task Order programme.

## 4. QUALITY MANAGEMENT

### Quality management system 40

- 40.1 The *Consultant* operates a quality management system which complies with the requirements stated in the Scope.
- 40.2 Within the period stated in the Contract Data, the *Consultant* provides the *Service Manager* with a quality policy statement and a quality plan for acceptance. A reason for not accepting a quality policy statement or quality plan is that it does not allow the *Consultant* to Provide the Service.
- If any changes are made to the quality plan, the *Consultant* provides the *Service Manager* with the changed quality plan for acceptance.
- 40.3 The *Service Manager* may instruct the *Consultant* to correct a failure to comply with the quality plan. This instruction is not a compensation event.

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### Correcting Defects 41

- 41.1 Until the *defects date* the *Service Manager* and the *Consultant* notifies the other as soon as they become aware of a Defect. At the end of the Service Period the *Consultant* notifies the *Service Manager* of the Defects which have not been corrected. The *Client's* rights in respect of a Defect which the *Service Manager* has not found or notified by the *defects date* are not affected.
- 41.2 The *Consultant* corrects a Defect whether or not the *Service Manager* has notified it. The *Consultant* corrects Defects within a time which minimises the adverse effect on the *Client* or Others. If the *Consultant* does not correct a notified Defect within the time required by this Contract, the *Service Manager* assesses the cost to the *Client* of having the Defect corrected by other people or the *Client* correcting the Defect itself and, without prejudice to any other right or remedy of the *Client*, the *Consultant* pays this amount or the *Service Manager* deducts this amount from the amount due to the *Consultant*. The Scope is treated as having been changed to accept the Defect.
- 41.3 The *Consultant* is responsible for obtaining any additional approvals and Consents from Others necessary in order to correct a Defect.
- 41.4 The *Consultant* continues to be liable for Defects after
- the *defects date*,
  - the operation of this clause 41 and
  - the termination or expiry of this Contract for any reason (including breach by the *Client*),
- in accordance with the *law of the Contract*.

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### Accepting Defects 42

- 42.1 The *Consultant* and the *Service Manager* may propose to the other that the Scope should be changed so that a Defect does not have to be corrected.
- 42.2 If the *Consultant* and the *Service Manager* are prepared to consider the change, the *Consultant* submits a quotation for reduced Prices for the Task or an earlier Task Completion Date or any earlier Key Dates or all or any of them to the *Service Manager* for acceptance. If the quotation is accepted, the *Service Manager* gives an instruction to change the Scope, the Task, the Prices for the Task the Key Date(s), and/or the Task Completion Date accordingly and accepts the revised programme or Task Order programme. If the *Service Manager* does not accept the quotation, the *Service Manager* gives an instruction to change the Scope and the Task and assesses the change to the Prices for the Task, the Task Completion Date and/or the Key Date(s).

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### Other Remedies 43

- 43.1 The provisions for or relating to the correction of Defects do not affect the *Client's* other rights or remedies under this Contract (including for breach), in tort (including negligence) or at law.

43.2 The rights and remedies which the *Client* may have in respect of Defects are unaffected by any change to the Scope to accept a Defect or the issue of the Defects Certificate.



## 5. PAYMENT

### Assessing the amount due

50

- 50.1 The *Service Manager* assesses the amount due at each assessment date. The first assessment date is decided by the *Service Manager* to suit the procedures of the Parties and is not later than the *assessment interval* after the *starting date*. Later assessment dates occur at the end of each *assessment interval* until
- four (4) weeks after the *defects date* or
  - the *Service Manager* issues a termination certificate.
- 50.2 The *Consultant* submits an application for payment to the *Service Manager* before each assessment date setting out the amount the *Consultant* considers is due at the assessment date. The *Consultant's* application for payment includes details of how the amount has been assessed and is in the form stated in the Scope. Receipt by the *Service Manager* of an application for payment is a pre-condition to the *Consultant's* entitlement to be paid. If the *Consultant* does not submit an application for payment by the assessment date the *Service Manager* may nevertheless assess the amount due.
- In assessing the amount due, the *Service Manager* considers an application for payment submitted by the *Consultant* before the assessment date.
- 50.3 If the *Consultant* submits an application for payment before the assessment date, the amount due at the assessment date is
- the Price for Service Provided to Date,
  - plus the amount of the *expenses* properly spent by the *Consultant* in Providing the Service,
  - plus other amounts to be paid to the *Consultant*,
  - less amounts to be paid by, retained, deducted, or withheld from the *Consultant* (including without limitation pursuant to the Incentive Schedule).
- 50.4 If the *Consultant* does not submit an application for payment before the assessment date, the amount due at the assessment date is the lesser of
- the amount the *Service Manager* assesses as due at the assessment date, assessed as though the *Consultant* had submitted an application before the assessment date and
  - the amount due at the previous assessment date.
- 50.5 If
- no programme is identified in the Contract Data and the *Consultant* has not submitted a first programme for acceptance which is capable of acceptance in accordance with the requirements of this Contract or
  - the *Consultant* has not submitted a revised programme for acceptance which is capable of acceptance in accordance with the requirements of this Contract,
- an amount is retained in the assessment of the amount due and, notwithstanding anything else in this Contract, is not owing to, due or payable until the *Consultant* has submitted a first programme or revised programme to the *Service Manager* for acceptance which is capable of acceptance in accordance with the requirements of this Contract. The amount retained is one quarter of the amount which would otherwise (but for this retained amount) be the change in the amount due since the last payment certificate or, if applicable, the last application for payment.
- 50.6 The *Service Manager* corrects any incorrectly assessed amount due and any change to the amount previously due in a later payment certificate.
- 50.7 For a Cost Reimbursable Task Order, payments of Defined Cost made by the *Consultant* in a currency other than the *currency of the Contract* are converted to the *currency of the contract* using the *exchange rates* and included in the amount due.
- The applicable Wider Team Rate for any Wider Team person whose salary is paid in a currency other than the *currency of the Contract* is selected by converting the applicable salary to the *currency of the Contract* using the *exchange rates*

50.8 For a Cost Reimbursable Task Order, within three (3) months of the end of each Contract Year the *Consultant* submits for finalisation all Defined Cost it incurred in the previous Contract Year for the *Service Manager's* review and makes available for inspection the records necessary to demonstrate that it has been correctly assessed. The *Service Manager* reviews the records made available, and no later than thirteen (13) weeks after the *Consultant's* notification

- accepts that part of Defined Cost as correct,
- notifies the *Consultant* that further records are needed or
- notifies the *Consultant* of errors in its assessment.

The *Consultant* provides any further records requested or advises the correction of the errors in its assessment within four (4) weeks of the *Service Manager's* notification. The *Service Manager* reviews the records provided, and within four (4) weeks

- accepts that part of Defined Cost as correct or
- notifies the *Consultant* of the correct assessment of that part of Defined Cost.

If the *Service Manager* does not notify a decision on that part of Defined Cost within the time stated, the *Consultant's* assessment is treated as correct.

**Payment**

**51**

51.1 The *Service Manager* certifies a payment within one week of each assessment date. The *Service Manager's* certificate includes details of how the amount due has been assessed. The first payment is the amount due. Other payments are the change in the amount due since the previous assessment. A payment is made by the *Consultant* to the *Client* if the change reduces the amount due. Other payments are made by the *Client* to the *Consultant*. Payments are in the *currency of the Contract* unless otherwise stated in the Contract.

51.2 Each payment is made in accordance with clause Y(UK)2. If a certified payment is late, or if a payment is late because the *Service Manager* has not issued a certificate which should be issued, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made and is included in the first assessment after the late payment is made.

51.3 If an amount due is corrected in a later certificate

- in relation to a mistake or a compensation event or
- following a decision of the *Adjudicator* or the *tribunal*,

interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the changed amount is certified and is included in the assessment which includes the changed amount.

51.4 Interest is calculated annually on a simple basis at the *interest rate*.

51.5 Where the *Consultant* is a Joint Venture, the *Consultant* undertakes to the *Client* that if any of the events referred to in clause 91.1 occurs in respect of any Joint Venture Member (the "Insolvent JV Member"), subject to the following provision, no part of any amounts which are paid by the *Client* pursuant to this contract after the occurrence of such event will be received by the Insolvent JV Member. The *Consultant* also undertakes to the *Client* that if and to the extent that such amounts represent payment to which the Insolvent JV Member is entitled for work properly performed up to the date of the occurrence of such event, such amounts will be paid to the administrator, administrative receiver, receiver, manager, liquidator or other insolvency practitioner duly appointed in relation to such event.

51.6 Where the *Consultant* is not a Joint Venture, no further sum becomes due to the *Consultant* and the *Client* need not pay any sum that has already become due if any of the events referred to in clause 91.1 occurs after the last date upon which a pay less notice could have been given in respect of that sum.

51.7 Any tax which the law requires a Party to pay to the other Party is added to any payment made under this Contract.

**Defined Cost**

**52**

52.1 All the *Consultant's* costs which are not included in the Defined Cost are treated as included in the Fee; the Fee is inclusive of (without limitation) the constituents set out in the Fee Percentage Buildup. Defined Cost includes only amounts calculated using the rates and

percentages stated in the Contract Data, the Schedule of Cost Components, and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.

- 52.2 The *Consultant* operates on an Open Book basis in relation to claims for payment of the Defined Cost including in providing access to salary data for Wider Team People. Without limitation to the foregoing, the *Consultant* keeps these records
- accounts of payments of Defined Cost and *expenses*,
  - proof that the payments have been made,
  - communications about and assessments of compensation events for Subcontractors and
  - other records as stated in the Scope.
- 52.3 Unless the *Service Manager* agrees otherwise, the *Consultant* ensures that each subcontractor (of any tier) operates on a similar Open Book basis and keeps records of a similar nature to those that the *Consultant* is required to keep in relation to contractors or suppliers it has engaged.
- 52.4 The *Consultant* allows the *Service Manager* to inspect at any time within working hours the accounts and records which the *Consultant* and any Subcontractor (at any tier of the supply chain) is required to keep.

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**Final assessment**      **53**

- 53.1 The *Service Manager* makes an assessment of the final amount due and certifies a final payment, if any is due, no later than
- four (4) weeks after the later of the *defects date* and the date the last Defect is corrected or
  - thirteen (13) weeks after the *Service Manager* issues a termination certificate, in either case the 'assessment date'.
- The *Service Manager* gives the *Consultant* details of how the amount due has been assessed. The Party to which payment is due submits an invoice to the other Party for the amount to be paid by the 'final date for payment' (which term shall have the meaning given in clause Y(UK)2).
- Not later than one (1) week prior to the assessment date, the *Consultant* submits to the *Service Manager* a final account in respect of the amount due on termination to or from the *Consultant* in the form and containing the supporting information specified in the Scope and showing the basis on which that amount has been calculated.
- 53.2 If the *Service Manager* does not make this assessment within the time allowed, the *Consultant* may issue to the *Client* an assessment of the final amount due, giving details of how the final amount due has been assessed. If the *Client* agrees with this assessment, the Party to which payment is due submits an invoice for the amount agreed for payment within one week of the date of the assessment. The final payment is made by the 'final date for payment' (which term shall have the meaning given in clause Y(UK)2).
- 53.3 An assessment of the final amount due issued within the time stated in this Contract is conclusive evidence of the final amount due under or in connection with this Contract unless a Party
- refers a dispute about the assessment of the final amount due to the *Senior Representatives* or to the *Adjudicator* within four (4) weeks of the assessment being issued,
  - refers any issues referred to but not agreed by the *Senior Representatives* to the *Adjudicator* within three (3) weeks of the list of issues not agreed being produced or when it should have been produced and
  - refers to the tribunal its dissatisfaction with a decision of the *Adjudicator* as to the final assessment of the amount due within four (4) weeks of the decision being made.
- 53.4 The assessment of the final amount due is changed to include
- any agreement the Parties reach and
  - a decision of the *Adjudicator* which has not been referred to the *tribunal* within four (4) weeks of that decision.

A changed assessment becomes conclusive evidence of the final amount due under or in connection with this Contract.

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**The Activity Schedule**

- 55 This clause applies to a Fixed Price Task Order only.
- 55.1 If the activities on the Activity Schedule do not relate to the Scope, the *Consultant* corrects the Activity Schedule.
- 55.3 If the *Consultant*
- changes a planned method of completing the *service* at its discretion so that the activities on the Activity Schedule do not relate to the operations on the Accepted Programme and/or the latest accepted Task Order programme or
  - corrects the Activity Schedule so that the activities on the Activity Schedule relate to the Scope,
- the *Consultant* submits a revision of the Activity Schedule to the *Service Manager* for acceptance.
- 55.4 A reason for not accepting a revision of the Activity Schedule is that
- it does not relate to the operations on the Accepted Programme and/or the latest accepted Task Order programme,
  - any changed Prices are not reasonably distributed between the activities which are not completed or
  - the total of the Prices is changed.

## 6. COMPENSATION EVENTS

### Compensation events 60

- 60.1 The following events are compensation events.
- (1) The *Service Manager* gives an instruction changing the Scope (including any Task) except
    - a change made in order to accept a Defect or
    - a change to the Scope provided by the *Consultant* which is made
      - at the *Consultant's* request.
      - in order to comply with the Scope provided by the *Client* or
      - in order to comply with Consents or Applicable Law.
  - (2) The *Client* does not allow access to a person, place or thing by the later of its *access date*, the date for access shown on the Accepted Programme, and the latest accepted Task Order programme.
  - (3) The *Client* does not provide something which it is to provide by the date shown on
    - the Accepted Programme and/or
    - the latest accepted Task Order programme.
  - (4) The *Service Manager* gives an instruction to stop or not to start any work, or to change a Key Date.
  - (5) The *Client* or Others do not work in accordance with
    - the Accepted Programme,
    - the latest accepted Task Order programme and/or
    - the conditions stated in the Scope.
  - (6) The *Service Manager* does not reply to a communication from the *Consultant* within the period required by this Contract.
  - (7) The *Service Manager* changes a decision which the *Service Manager* had previously communicated to the *Consultant*.
  - (8) The *Service Manager* unreasonably withholds an acceptance for a reason not stated in this Contract except in respect of
    - an acceptance that is at the *Service Manager's* absolute discretion,
    - a quotation for acceleration or
    - a proposal or quotation to accept a Defect.

In all cases, reasons for the *Service Manager* to withhold an acceptance include those listed in clause 31.3 of this Contract.
  - (9) An event which is a *Client's* liability stated in these *conditions of contract*.
  - (10) The *Service Manager* notifies the *Consultant* of a correction to an assumption which the *Service Manager* stated about a compensation event.
  - (11) A material breach of contract by the *Client* (except to the extent that it is caused or contributed to by the *Consultant* or any Subcontractor or any person for whom those parties are responsible) which is not one of the other compensation events in this Contract.
  - (12) A Force Majeure Event or an instruction from the *Service Manager* dealing with a Force Majeure Event.
  - (13) The *Service Manager* gives an instruction correcting information provided by the *Client*.
  - (14) The *Consultant* corrects a Defect for which it is not liable under the Contract and which it is instructed by the *Service Manager* to correct.
- 60.4 The *Client* may, in its absolute discretion, authorise the *Service Manager*
- to change any Key Date or the Completion Date to a later date or
  - to increase the Prices by any amount
- for any reason which is not a compensation event or if the procedures for the

notification, quotation and assessment of a compensation event set out in this Contract have not been followed.

- 60.5 Without prejudice to any other provision of this Contract the *Consultant* takes all practicable steps to reduce or mitigate the effects of any compensation event.

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**Notifying compensation events**

61

- 61.1 For a compensation event which arises from the *Service Manager* giving an instruction or notification or changing an earlier decision the *Service Manager* notifies the *Consultant* of the compensation event at the time of that communication.
- 61.2 The *Service Manager* includes in the notification of a compensation event an instruction to the *Consultant* to submit quotations unless
- the event arises from a fault of the *Consultant* or
  - the event has no effect upon Defined Cost, meeting a Key Date, or a Task Completion.
- 61.3 The *Consultant* notifies the *Service Manager* of an event which has happened or which is expected to happen as a compensation event if
- the *Consultant* believes that the event is a compensation event and
  - the *Service Manager* has not notified the event to the *Consultant*.

If the *Consultant* does not notify a compensation event falling under this clause 61.3 within four (4) weeks of becoming aware that the event has happened the Prices for each affected Task, Task Completion, or a Key Date are not changed.

- 61.4 The *Service Manager* replies to the *Consultant's* notification of a compensation event within
- one (1) week after the *Consultant's* notification or
  - a longer period to which the *Consultant* has agreed.

If the *Service Manager* decides that an event

- arises wholly from a fault of the *Consultant* and/or any act, breach of contract, negligence, omission or default of any Subcontractor,
- has not happened and is not expected to happen,
- has not been notified within the timescales set out in these *conditions of contract*,
- has no effect upon Defined Cost, meeting a Key Date, or a Task Completion or
- is not one of the compensation events stated in this Contract,

the *Service Manager* notifies the *Consultant* that the Prices for each affected Task, the Key Dates, and the Task Completion Dates are not to be changed and states the reasons in the notification. Otherwise, the *Service Manager* notifies the *Consultant* that the event is a compensation event and includes in the notification an instruction to the *Consultant* to submit quotations.

If the *Service Manager* fails to reply to the *Consultant's* notification of a compensation event within the time allowed, the *Consultant* may notify the *Service Manager* of that failure. If the failure continues for a further two (2) weeks after the *Consultant's* notification it is treated as acceptance by the *Service Manager* that the event is a compensation event and an instruction to submit quotations.

- 61.5 If the *Service Manager* decides that the *Consultant* did not give an early warning of the event which an experienced consultant could have given, the *Service Manager* states this in the instruction to the *Consultant* to submit quotations.
- 61.6 If the *Service Manager* decides that effects of a compensation event are too uncertain to be forecast reasonably, the *Service Manager* states assumptions about the compensation event or its effects in the instruction to the *Consultant* to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the *Service Manager* notifies a correction.

The *Consultant* notifies the *Service Manager* within two weeks of being instructed to submit a quotation for a compensation event if it considers the *Service Manager* should have made an assumption that it has not made or should not have made an assumption

that it has made.

- 61.7 A compensation event is not notified by the *Service Manager* or the *Consultant* after the *defects date*.

**Quotations for compensation events**

**62**

- 62.1 After discussing with the *Consultant* different ways of dealing with the compensation event which are practicable, the *Service Manager* may instruct the *Consultant* to submit alternative quotations. The *Consultant* submits the required quotations to the *Service Manager* and may submit quotations for other methods of dealing with the compensation event which it considers practicable.
- 62.2 Quotations for a compensation event comprise proposed changes to the Prices for each affected Task and any delay to the Key Dates and Task Completion Date assessed by the *Consultant*. The *Consultant* submits details of the assessment with each quotation. If the programme for remaining work is altered by the compensation event, the *Consultant* includes the alterations to the Accepted Programme and/or the latest accepted Task Order programme in the quotation.
- 62.3 The *Consultant* submits quotations within three (3) weeks of being instructed to do so by the *Service Manager*. The *Service Manager* replies within two weeks of the submission. The reply is
- a notification of acceptance of the quotation,
  - an instruction to submit a revised quotation or
  - that the *Service Manager* will be making the assessment.
- 62.4 The *Service Manager* instructs the *Consultant* to submit a revised quotation only after explaining the reasons for doing so to the *Consultant*. The *Consultant* submits the revised quotation within three (3) weeks of being instructed to do so.
- 62.5 The *Service Manager* extends the time allowed for
- the *Consultant* to submit quotations for a compensation event or
  - the *Service Manager* to reply to a quotation,
- if the *Service Manager* and the *Consultant* agree to the extension before the submission or reply is due. The *Service Manager* informs the *Consultant* of the extension that has been agreed.
- 62.6 If the *Service Manager* does not reply to a quotation within the time allowed, the *Consultant* may notify the *Service Manager* of that failure. If the *Consultant* submitted more than one quotation for the compensation event, the notification states which quotation the *Consultant* proposes is to be used. If the failure continues for a further two (2) weeks after the *Consultant's* notification it is treated as acceptance by the *Service Manager* of the quotation.

**Assessing compensation events**

**63**

- 63.1 The change to the Prices for each affected Task is assessed as the effect of the compensation event upon
- the actual Defined Cost of the work done by the dividing date,
  - the forecast Defined Cost of the work not done by the dividing date and
  - the resulting Fee,
- save that the Rates are not changed as a result of a compensation event.
- For a compensation event that arises from the *Service Manager* giving an instruction or notification or changing an earlier decision, the dividing date is the date of that instruction or notification.
- For other compensation events, the dividing date is the date of the notification of the compensation event.
- 63.2 The *Service Manager* and the *Consultant* may agree rates or lump sums to assess the change to the Prices for each affected Task.

- 63.3 If the effect of a compensation event is to reduce the total Defined Cost, the Prices for each affected Task are not reduced unless otherwise stated in these *conditions of contract*.
- 63.4 If the effect of a compensation event is to reduce the total Defined Cost and the event is
- a change to the Scope or
  - a correction to an assumption stated by the *Service Manager* for assessing an earlier compensation event,
- the Prices for each affected Task are reduced.
- 63.5 A delay to a Task Completion Date is assessed as the length of time that, due to the compensation event and taking into account appropriate measures to mitigate or reduce delay, planned Task Completion is later than planned Task Completion as shown on the Task Order programme current at the dividing date.
- A delay to a Key Date is assessed as the length of time that, due to the compensation event and taking into account appropriate measures to mitigate or reduce delay, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Task Order programme current at the dividing date.
- The assessment takes into account
- any delay caused by the compensation event already in the Task Order programme and
  - events which have happened between the date of the Task Order programme and the dividing date.
- 63.6 The rights of the *Client* and the *Consultant* to changes to the Prices for each affected Task, Key Dates and Task Completion Dates are their only rights in respect of a compensation event and accordingly they waive any rights at common law which are not stated in this Contract (including in tort or for negligence) in respect of a compensation event.
- 63.7 If the *Service Manager* has stated in the instruction to submit quotations that the *Consultant* did not give an early warning of the event which an experienced consultant could have given, the compensation event is assessed as if the *Consultant* had given the early warning.
- 63.8 The assessment of the effect of a compensation event includes risk allowances for cost and time for matters which have a significant chance of occurring and are not compensation events.
- 63.9 The assessment of the effect of a compensation event is based upon the assumptions that the *Consultant* reacts competently and promptly to the event, that the *Consultant* takes appropriate measures to reduce or mitigate any delay howsoever caused, and that any Defined Cost and time due to the event are reasonably incurred.
- 63.11 If a change to the Scope makes the description of the Condition for a Key Date or of any pre-condition to be satisfied by a Task Completion Date incorrect, the *Service Manager* corrects the description. This correction is taken into account in assessing the compensation event for the change to the Scope.
- 63.12 For a Fixed Price Task Order, assessments for changed Prices for compensation events are in the form of changes to the Activity Schedule.
- 63.13 If, when assessing a compensation event the Rates do not include a rate for a category of person required, the *Service Manager* and *Consultant* may agree a new rate. If they do not agree, the *Service Manager* assesses the rate based on the Rates. The agreed or assessed rate becomes the rate for that category of person.
- 63.14 The assessment of a compensation event takes into account any fault or responsibility on the part of the *Consultant* in the occurrence of the compensation event.

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**The Service Manager's assessments**      **64**

- 64.1 The *Service Manager* assesses a compensation event
- if the *Consultant* has not submitted the quotation and details of its assessment within the time allowed,
  - if the *Service Manager* decides that the *Consultant* has not assessed the



compensation event correctly in the quotation and has not instructed the *Consultant* to submit a revised quotation,

- if, when the *Consultant* submits quotations for the compensation event, it has not submitted a programme or alterations to a programme which this Contract requires it to submit,
- if, when the *Consultant* submits quotations for the compensation event, the *Service Manager* has not accepted the *Consultant's* latest programme for one of the reasons stated in this Contract or
- if the *Consultant* has not submitted alterations to a Task Order programme which this Contract requires it to submit or the *Service Manager* has not accepted the programme for one of the reasons stated in this Contract.

64.2 The *Service Manager* assesses the programme for the remaining work and uses it in the assessment of a compensation event if

- there is no Accepted Programme and/or Task Order programme,
- the *Consultant* has not submitted a programme and/or Task Order programme or alterations to a programme and/or Task Order programme for acceptance, as required by the Contract or
- the *Service Manager* has not accepted the *Consultant's* latest programme and/or Task Order programme for one of the reasons stated in the Contract.

64.3 The *Service Manager* notifies the *Consultant* of the assessment of a compensation event and gives details of the assessment within the period allowed for the *Consultant's* submission of its quotation for the same compensation event. This period starts when the need for the *Service Manager's* assessment becomes apparent.

64.4 If the *Service Manager* does not assess a compensation event within the time allowed, the *Consultant* may notify the *Service Manager* of that failure. If the *Consultant* submitted more than one quotation for the compensation event, the notification states which quotation the *Consultant* proposes is to be used. If the failure continues for a further two (2) weeks after the *Consultant's* notification it is treated as acceptance by the *Service Manager* of the quotation.

**Proposed instructions      65**

65.1 Without prejudice to the *Service Manager's* right to give a direct instruction pursuant to clause 14, the *Service Manager* may instruct the *Consultant* to submit a quotation for a proposed instruction. The *Service Manager* states in the instruction the date by which the proposed instruction may be given. The *Consultant* does not put a proposed instruction into effect.

65.2 The *Consultant* submits quotations for a proposed instruction within three (3) weeks of being instructed to do so by the *Service Manager*. The *Consultant* ensures that its quotation addresses all of the consequences of the proposed instruction or proposed changed decision, including the effects that the proposed instruction or proposed changed decision, if issued, would have on any part of the *services*. The quotation is assessed as a compensation event. The *Service Manager* replies to the *Consultant's* quotation by the date when the proposed instruction may be given. The reply is

- an instruction to submit a revised quotation including the reasons for doing so,
- the issue of the instruction together with a notification of the instruction as a compensation event and acceptance of the quotation or
- a notification that the quotation is not accepted.

If the *Service Manager* does not reply to the quotation within the time allowed, the quotation is not accepted.

65.3 If the quotation is not accepted, the *Service Manager* may issue the instruction, notify the instruction as a compensation event and instruct the *Consultant* to submit a quotation.

**Implementing compensation events      66**

66.1 A compensation event is implemented when

- the *Service Manager* notifies acceptance of the *Consultant's* quotation,

- the *Service Manager* notifies the *Consultant* of an assessment made by the *Service Manager*
  - a *Consultant's* quotation is treated as having been accepted by the *Service Manager* or
  - it is so determined under Option W2 or as the parties may agree.
- 66.2 When a compensation event is implemented the Prices for each affected Task, the Key Dates, and the Task Completion Dates are changed accordingly.
- 66.3 The assessment of an implemented compensation event is not revised except as stated in these *conditions of contract*.

## 7. RIGHTS TO MATERIAL

### Intellectual Property Rights 70

- 70.1 The *Client* and the *Consultant* shall comply with the provisions of Appendix 10 (Intellectual Property Rights).
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### General 71

- 71.1 The *Consultant* ensures that any contracts between the *Consultant* and any Subcontractor impose obligations on the Subcontractor which are identical in effect to the obligations imposed on the *Consultant* under this clause 7.
- 71.2 The *Consultant* agrees to provide all assistance reasonably requested by the *Client* on termination or expiry of this Contract to handover the Documents and/or the Provision of the Service to a third party nominated by the *Client*, including making any Documents readable on commonly available software. The *Consultant* hands over the Documents in their pre-handover hierarchy, complete with catalogue structures, tags, and indexes, such that they can be accessed by the *Client* and/or its nominated third party (with the appropriate software), as before the handover event.

## 8. LIABILITIES AND INSURANCE

### *Client's liabilities*

80

80.1 The following are *Client's* liabilities.

- Claims and proceedings from Others and compensation and costs payable to Others which are due to
  - the unavoidable result of the *service* or
  - negligence, breach of statutory duty or interference with any legal right by the *Client* or by any person employed by or contracted to it to perform work for the NHP except the *Consultant*.
- A fault of the *Client* or any person employed by or contracted to it, except the *Consultant*.
- Additional *Client's* liabilities stated in the Contract Data.

### *Consultant's liabilities*

81

81.1 From the *starting date* until the end of the Service Period, the liabilities which are not carried by the *Client*, and arise from or in connection with a failure by the *Consultant* to use the standard of care at clause 20.2 and/or to comply with Applicable Law, are carried by the *Consultant*.

81.2 Save as expressly provided otherwise in this Contract, Defects and the correction of Defects are a liability carried by the *Consultant* and not the *Client*.

### Indemnity

82

82.1 Each Party indemnifies the other against claims, proceedings, compensation and costs due to an event which is their liability.

82.2 Without prejudice to clause 82.1, the *Consultant* indemnifies the *Client* against claims, proceedings, compensation and costs payable due to

- default, negligence, breach of contract, breach of statutory duty by the *Consultant* or any of its employees or agents acting within the course of their employment or any of its Subcontractors and their employees or agents,
- claims and proceedings from Others and compensation and costs payable to Others which arise from or in connection with the *Consultant* Providing the Service,
- fines or penalties incurred for failure by the *Consultant* to comply with or discharge any Consent,
- costs incurred by the *Client* which arise from a Defect or failure by the *Consultant* to carry out the *service* in accordance with the Contract and
- death or bodily injury to the employees of the *Consultant*.

82.3 The liability of each Party to indemnify the other is reduced if an event for which the other Party was liable contributed to the claims, proceedings, compensation and costs. The reduction is in proportion to the extent that the event for which that Party is liable contributed, taking into account each Party's responsibilities under this Contract.

82.4 Each Party notifies the other Party as soon as reasonably practicable after its receipt of any formal written claim and

- does not settle or compromise any claim without the prior agreement of the other Party (such agreement not to be unreasonably withheld or delayed) and
- takes reasonable steps to mitigate any loss or damage

in respect of which each Party is entitled to be indemnified by the other Party.

### Insurance cover

83

83.1 Without prejudice to its obligation to indemnify the *Client* under this Contract, the *Consultant* takes out and maintains or procures the taking out and maintenance in full force and effect insurances in accordance with the requirements specified in the Insurance Table.

- 83.2 The *Consultant's* insurances required pursuant to this Contract are taken out and maintained with insurers who
- (in the reasonable opinion of the *Client*) are of good financial standing and of good repute in the international insurance market and
  - hold a minimum rating of A- (Standard & Poor's) or equivalent unless agreed otherwise by the Parties.
- 83.3 Where the minimum limit of indemnity required in relation to any of the insurances in the Insurance Table is specified as being "in the annual aggregate" and a claim or claims which do not relate to this Contract are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available to below that minimum, the *Consultant* ensures that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Contract.
- If the *Consultant* is, or has reason to believe that it will be, unable to reinstate cover in order to maintain at all times the minimum amount of cover specified in the Insurance Table in respect of any insurance it promptly submits to the *Client* details of the policy concerned and its proposed solution for maintaining the required minimum amount of cover.
- 83.4 It is agreed that nothing in this clause relieves the *Consultant* from any of its obligations and liabilities under this Contract.
- 83.5 Neither Party by any act or neglect causes any insurance policy to be void or voidable or entitles the insurer to refuse any claim (in whole or in part) in respect of any risk or amount for which such policy is expressed to provide indemnity.
- 83.6 Each insurance is maintained throughout the relevant Period of Insurance provided in the Insurance Table substantially subject to the terms as specified in the Insurance Table.
- 83.5 The *Consultant* ensures that Subcontractors and subcontractors of any tier of the supply chain provide cover in the amounts required by applicable law for liability for death or injury to employees of Subcontractors and subcontractors of any tier of the supply chain (as applicable) or any person under a contract of apprenticeship with a Subcontractor or a subcontractor of any tier of the supply chain, arising out of and in the course of their employment or apprenticeship in connection with this Contract.
- 83.6 The *Consultant*
- promptly notifies insurers of any material increase in any risk insured under a policy to be arranged by either Party under this Contract of which the *Consultant* is aware,
  - uses reasonable endeavours to ensure that insurance brokers through whom it arranges insurance cover pursuant to this Contract keep and maintain proper records of communications with insurers (including documents disclosed to insurers, correspondence about the placement of the insurance policies, payment of premiums and any claims made under the policies) and
  - complies with any claims handling requirements which are applicable for making any claim under an insurance policy provided pursuant to this Contract.

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**Insurance policies** 84

- 84.1 Before the *starting date* and on each renewal of each insurance policy until the end of the Period of Insurance stated in the Insurance Table for which insurance is to be maintained, the *Consultant* submits to the *Service Manager* certificates and/or broker letters in a form satisfactory to the *Client* which state that the insurance required by the Contract is in full force and effect. The certificates and/or broker letters are signed by the *Consultant's* insurer or insurance broker.
- After the *defects date* and on each renewal of the insurance policy until the end of the Period of Insurance stated in the Insurance Table for which insurance is to be maintained, the *Consultant* submits to the *Client* for acceptance certificates and/or broker letters which state that the insurance required by the Contract is in force.
- Neither inspection, nor receipt of such certificates and/or broker letters
- constitutes acceptance by the *Client* of the terms thereof,

- implies acceptance by the *Client* that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory or
  - in any way waives the *Consultant's* liability under this Contract.
- 84.2 The Parties comply with the terms and conditions of the insurance policies to which they are a party.
- 84.3 Insurance policies, with the exception of Professional Indemnity Insurance, include a waiver by the insurers of their subrogation rights against the Parties and the directors and other employees of every insured except where there is fraud.
- 84.4 In the event of cancellation of the Third Party Liability Policy, the *Consultant* provides the *Client* with notice of the cancellation.
- 84.6 The *Consultant* shall discharge in full all duties and obligations in respect of the Insurance Act 2015 when procuring, maintaining, or amending all insurances required by this Contract.
- 84.7 Where any insurance policy required pursuant to this Contract requires the payment of a premium, the *Consultant* shall be liable for such premium. All deductibles payable under insurance policies of the *Consultant* required pursuant to this Contract shall be for the account of the *Consultant*.
- 84.8 Neither failure to comply (in whole or part) nor full compliance with the insurance provisions of this Contract limits or relieves the *Consultant* of its liabilities and obligations under this Contract or at law and in particular the *Consultant's* obligations in respect of the indemnity provisions contained in this Contract.
- 84.9 Not used.
- 84.10 The following two (2) bullet points apply where
- (a) the *Consultant* consists of a Joint Venture, (b) the insurance is a liability insurance identified in the Insurance Table up to a minimum amount of indemnity (other than a 'Compulsory Insurance' as set out in the Insurance Table) and (c) a Joint Venture Member is to rely on insurance in its own name (rather than a policy obtained specifically for this Contract by the Joint Venture Members collectively)
- each Joint Venture Member is to individually obtain such insurance to the minimum limit of indemnity and
  - such insurance save for Cyber Liability Insurance is to expressly insure both
    - the liability of the Joint Venture Member (and others as required elsewhere in this Contract) and
    - the liability of the Joint Venture Member for the liabilities, acts and omissions of the *Consultant* and all other Joint Venture Members, such joint and several liability being set out in clause Z31 (Joint and Several Liability). Any terms in the policy or exclusions for contractual liability to the contrary are to be expressly disappplied.
- 84.11 Where the insurers purport to cancel, suspend or terminate any of the insurances required pursuant to this Contract, the *Consultant* shall procure that the insurers shall, as soon as is reasonably practicable, notify the *Consultant* in writing in the event of any such proposed suspension, cancellation, or termination.
- 84.12 Where the *Consultant* receives notification from an insurer(s) pursuant to clause 84.11, the *Consultant* shall promptly notify the *Client* in writing of receipt of such proposed suspension, cancellation, or termination.
- 84.13 The *Service Manager* may instruct the *Consultant* to increase the minimum indemnity limit for the Professional Indemnity Insurance required pursuant to this Contract. The *Consultant* takes out and maintains in accordance with the requirements of this Contract Professional Indemnity Insurance with the applicable increased minimum indemnity limit within three (3) months of the instruction. Any such instruction is a compensation event.

- 85.1 If without the approval of the *Client* the *Consultant* fails to effect and maintain any insurance that it is required to effect and maintain under clause 83 or obtains a different policy of insurance or fails to provide a copy of insurance certificates or brokers' letters evidencing such insurance when required to do so, the *Client* may, but is not required to, effect and maintain appropriate insurance cover and deduct the cost of doing so (together with all reasonable expenses incurred in procuring such insurance) from any payment due to the *Consultant* under this Contract, or recover such sum from the *Consultant* as a debt.

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**Insurance by the  
*Client***

86

- 86.1 The *Service Manager* submits certificates and/or broker letters for insurance provided by the *Client* to the *Consultant* for acceptance before the *starting date* and afterwards as the *Consultant* instructs. The *Consultant* accepts the certificates and/or broker letters if the insurance complies with the Contract and if the insurer's commercial position is strong enough to carry the insured liabilities.
- 86.2 The *Consultant's* acceptance of an insurance certificate provided by the *Client* does not change the responsibility of the *Client* to provide the insurances stated in the Contract Data (if any).
- 86.3 The *Consultant* may insure an event or liability which the Contract requires the *Client* to insure if the *Client* does not submit a required certificate. The cost of this insurance to the *Consultant* is paid by the *Client*.

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**Limitation of liability**

87

- 87.1 The *Consultant's* total liability to the *Client* for all matters arising under or in connection with the Contract, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort, negligence, breach of statutory duty, delict, under indemnity and otherwise to the extent allowed under the *law of the Contract*.

The excluded matters are amounts payable by the *Consultant* as stated in this Contract for

- the cost of carrying out the *service* and rectifying Defects,
- an infringement by the *Consultant* of the rights of Others due to negligence or default in Providing the Service,
- death or personal injury (including sickness or disease) suffered by any person as a result of negligence, breach of statutory duty, omission or default by the *Consultant* or any person employed by or contracted to it (except the *Client*), nuisance or trespass,
- any liability of the *Consultant* under clause 26 (Disclosure), clause 7 (Rights to Material), Z3 (Freedom of Information), Z5 (Staff Transfer), Z9 (Data Protection) or Z10 (Confidential Information),
- liability arising from fraud, fraudulent misrepresentation, Wilful Default or a Corrupt Act,
- payment by the *Consultant* of any VAT, income tax and national insurance,
- fines, penalties or other statutory imposts incurred for failure by the *Consultant* to comply with or discharge any Applicable Law or Consent,
- liability which is not for one of the other excluded matters, and so would ordinarily be within the cap on the *Consultant's* total liability stated in the Contract Data, but is covered by an insurance policy which the *Client* or the *Consultant* is to take out or maintain under this Contract, to the extent (i) the *Consultant* is able to recover amounts under such insurance policy up to the minimum amount stated in the Insurance Table at Appendix 5 to this Contract or would have been able to recover those amounts but for any act or omission on the part of the *Consultant* and (ii) the aggregate liability cap in the Contract Data is, or would be, exceeded as a result of the relevant liability. For the avoidance of doubt, all *Consultant* liabilities covered by insurance policies which are not one of the other excluded matters are, in the first instance, included within the cap on the *Consultant's* total liability stated in the Contract Data and this excluded matter applies only to insurance proceeds recovered in excess of that total liability cap,
- repayment of Disallowed Costs,

- liability of the *Consultant* in the event of abandonment or suspension by the *Consultant*,
- loss of or damage to the *Client's* property,
- insurance deductibles paid by the *Consultant* where the claim arises from an event which is a *Consultant's* risk and
- any other liability to the extent that it cannot be limited or excluded by law.

87.2 The *Consultant* is not liable to the *Client* for a matter unless details of the matter are notified to the *Consultant* before the 6<sup>th</sup> anniversary of the end of the Service Period.

87.3 Notwithstanding any other term in this Contract, in respect of

- the fire safety or fire performance of a building or structure and
- the combustibility of composite panels or external wall systems (and the combustibility of any associated insulation material or any ancillary fixing systems),

the *Consultant* has no liability whatsoever in respect of any claims for costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients. The *Consultant's* liability under this Contract in respect of the matters set out in this clause 87.3 are not in any other way reduced or impacted by the provisions of this clause 87.3.

87.4 Neither party has any claim against the other party on its own account or on the account of any subcontractor at any tier of the supply chain for

- loss of profit,
- loss of business,
- loss of opportunity,
- any consequential loss,
- any indirect loss,
- loss of goodwill,
- loss of contract,
- financing charges,
- ex gratia payments or compensation payments of any kind to patients or
- re-housing, decamping or any waking watch or walking costs,

whether caused by negligence, breach of duty (statutory or otherwise), breach of contract or otherwise.



## 9. TERMINATION

### Termination 90

- 90.1 If either Party wishes to terminate the *Consultant's* obligation to Provide the Service it notifies the *Service Manager* and the other Party giving details of the reason for terminating. The *Service Manager* issues a termination certificate promptly if the reason stated complies with the Contract.
- 90.2 A Party may terminate for a reason identified in the Termination Table. The procedures followed and the amounts due on termination are in accordance with the Termination Table.

TERMINATION TABLE			
TERMINATING PARTY	REASON	PROCEDURE	AMOUNT DUE
The <i>Client</i>	R1-R15, R18, R22, R23 or R25	P1 and P2	A1 and A2
	R17 or R20	P1 and P2	A1
	R21 or R24	P1 and P2	A1
The <i>Consultant</i>	R1-R10, R16 or R19	P1	A1
	R17 or R20	P1	A1

- 90.3 The procedures for termination are implemented immediately after the *Service Manager* has issued a termination certificate.
- If the *Client* terminates for one of reasons R1 to R15, R18, or R22 to R25 and a certified payment has not been made at the date of the termination certificate, the *Client* makes the certified payment unless
- it has notified the *Consultant* in accordance with the Contract that it intends to pay less than the notified sum or
  - the termination is for one of reasons R1 to R10 and the reason occurred after the last date on which it could have notified the *Consultant* in accordance with the Contract that it intends to pay less than the notified sum.
- 90.4 After a termination certificate has been issued, the *Consultant* does no further work necessary to Provide the Service.

### Reasons for termination 91

- 91.1 Either Party may terminate if the other Party has done one of the following or its equivalent.
- If the other Party is an individual and has
    - presented an application for bankruptcy (R1),
    - had a bankruptcy order made against it (R2),
    - had a receiver appointed over its assets (R3) or
    - made an arrangement with its creditors (R4).
  - If the other Party or its Group Company is a company or partnership and has
    - had a winding-up order made against it (R5),
    - had a provisional liquidator appointed to it (R6),
    - passed a resolution for winding-up (other than in order to amalgamate or reconstruct) (R7),
    - had an administration order made against it or had an administrator appointed over it (R8),

- had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9) or
- made an arrangement with its creditors (R10).

The *Client* may terminate if the *Consultant* is a Joint Venture and any of the events described in this clause 91.1 has occurred in respect of any Joint Venture Member or any parent company of any Joint Venture Member which has provided a parent company guarantee pursuant to clause X4.

- 91.2 The *Client* may terminate if the *Service Manager* has notified that the *Consultant* has not put one of the following defaults right within four (4) weeks of the date when the *Service Manager* notified the *Consultant* of the default.
- Substantially failed to comply with its obligations (R11).
  - Not provided a guarantee which the Contract requires (R12).
  - Appointed a Subcontractor for substantial work before the *Service Manager* has accepted the Subcontractor (R13).
- 91.3 The *Client* may terminate if the *Service Manager* has notified that the *Consultant* has not stopped one of the following defaults within one (1) week of the date when the *Service Manager* notified the *Consultant* of the default.
- Substantially hindered the *Client* or Others (R14).
  - Substantially broken a health or safety regulation (R15).
- 91.4 The *Consultant* may terminate if the *Client* has not paid two successive amounts certified by the *Service Manager* (or if no certificate has been issued, the amounts stated in the relevant applications for payment), except for any amount which is the subject of a pay less notice, for a period of not less than two months after each applicable final date for payment. (R16).
- For the purposes of this clause 91.4 'final date for payment' has the meaning given in clause Y2.2.
- 91.5 Either Party may terminate if the Parties have been released under the law from further performance of the whole of the Contract (R17).
- 91.6 If the *Service Manager* has instructed the *Consultant* to stop or not to start any substantial work or all work and an instruction allowing the work to re-start or start or removing work from the Scope has not been given within thirteen (13) weeks
- the *Client* may terminate if the instruction was due to a default by the *Consultant* (R18),
  - the *Consultant* may terminate if the instruction was due to a default by the *Client* (R19) and
  - either Party may terminate if the instruction was due to any other reason (R20).
- 91.7 The *Client* may terminate if a Force Majeure Event occurs which stops the *Consultant* Providing the Service for a period of thirteen (13) weeks (R21).
- 91.8 The *Client* may terminate if the *Consultant* does a Corrupt Act, unless it was done by a Subcontractor or supplier and the *Consultant*
- was not and should not have been aware of the Corrupt Act or
  - informed the *Service Manager* of the Corrupt Act and took action to stop it as soon as the *Consultant* became aware of it (R22).
- 91.9 The *Client* may terminate the *Consultant's* engagement under this Contract with immediate notice if one of the mandatory grounds for exclusion referred to in Regulation 57(1) of the PCR 2015, including as a result of the application of Regulation 57(2) of the PCR 2015 (or any equivalent provisions in any successor legislation), applied to the *Consultant* at the Contract Date and the *Consultant* should therefore have been excluded from the procurement process (R23).
- 91.10 The *Client* may terminate the *Consultant's* engagement under this Contract with immediate notice if

- this Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72 of the PCR 2015,
- any of the grounds listed in Regulation 73(1)(a) and (c) of the PCR 2015 apply to this Contract, or Regulation 73(1)(b) of the PCR 2015 applies to the *Consultant* or
- the highest court of appeal at the relevant time (being the UK Supreme Court) declares that a serious infringement of procurement obligations UK law has occurred and the *Consultant* should not have been awarded the Contract.

If the modification or infringement was due to a default by the *Consultant*, this is treated as a termination because of a failure of the *Consultant* to comply with its obligations (R11), otherwise this is treated as R24.

- 91.11 The *Client* may terminate in the event of an actual, or potential, conflict of interest between the pecuniary or personal interests of the *Consultant* and the duties owed to the *Client* under this Contract or in the event of a conflict of interest which has not been resolved to the *Client's* satisfaction (R25).
- 91.12 The *Client* may terminate a part only of the *service* or a Task if it is practicable for the *Consultant* to continue to provide separately the remaining part or parts of the *service*. In that event:
- with regard to the part of the *service* or the Task terminated, the procedures followed and the amounts due on termination are in accordance with clauses 92 and 93,
  - the provisions of clause 9 which would have been applicable if the *service* had been terminated in its entirety are applicable to the part of the *service* terminated and
  - all other provisions of this Contract continue to apply to the part or parts of the *service* which are not terminated.

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**Procedures on termination**

92

92.1 (P1) On termination

- the *Client* may complete the *service* and may use any material to which it has title,
- the *Consultant* gives to the *Client* information and materials resulting from work carried out to date and information and materials the *Consultant* has obtained which it has a responsibility to provide under the Contract which it has not so far provided in accordance with the Contract (including information and other things which the Scope states the *Consultant* is to provide at the end of the Contract),
- the *Consultant* destroys or returns to the *Client* any Confidential Information instructed by the *Service Manager*,
- the *Consultant* promptly provides the *Client* with all relevant receipts and documents that the *Client* reasonably requests in order to prepare an account,
- the *Consultant* liaises, assists and co-operates fully with the *Client* for the handover of the *service* to the *Client* or Others if the *Service Manager* instructs it to do so and
- the *Consultant* takes all necessary steps to ensure compliance with clause 7 (Rights to Material).

92.2 (P2) On termination the *Client* may (at its absolute discretion) exercise step-in rights contained in the deeds of collateral warranty which have been executed by Subcontractors in favour of the *Client* or instruct the *Consultant* to novate or assign the benefit of any subcontract or other contract related to the performance of the Contract to the *Client* or Others.

92.3 Termination is without prejudice to any accrued rights and obligations under this Contract as at the date of such termination.

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**Payment on termination**

93

93.1 The amount due on termination includes (A1)

- an amount due assessed as for normal payments,
- the Defined Cost reasonably incurred in expectation of completing the whole of the *service* (including breakage costs in subcontracts but not loss of profit for any

Subcontractor at any tier, where the *Service Manager* has accepted the terms of those subcontracts), if and to the extent that

- the *Consultant* has previously notified those costs to the *Service Manager* and
- those costs cannot be mitigated or avoided,

but no breakage costs will be payable in respect of any subcontract or other contract which is novated or the benefit of which is assigned to the *Client* under P2 or any such subcontract or contract where the relevant Subcontractor has entered into a new contract with the *Client* to complete the relevant services and

- any amounts retained by the *Client*.

93.2 The amount due on termination also includes the following if set out in the Termination Table.

A deduction of the forecast of the additional cost to the *Client* of completing the whole of the *service* and any other additional cost to the *Client* arising as a direct consequence of the termination of the *Consultant's* obligation to Provide the Service (including payments of additional amounts to Others in carrying out work on the same programme) (A2).

93.3 The *Consultant* has no claim against the *Client* on the *Consultant's* own account or on the account of any Subcontractor (of any tier) for

- loss of profit,
- loss of business,
- loss of opportunity,
- any consequential loss,
- any indirect loss,
- loss of goodwill,
- loss of contract or
- any other loss or cost not provided for in the Termination Table

(in each case) if the *Consultant's* obligation to Provide the Service is terminated for any reason whatsoever, including (without limitation) termination by the *Consultant* for a reason that is R1 – R10, R16, R17, R19 or R20 in the Termination Table or by the *Client* under clause X11, even if it is intended that the remainder of the *service* will be completed by Others, whether or not for a lower price.

# Resolving and Avoiding Disputes

## OPTION W2

Used when the United Kingdom Housing Grants, Construction and Regeneration Act 1996 applies.

### Resolving Disputes

#### W2

- W2.1
- (1) If the Parties agree, a dispute arising under or in connection with the Contract may be referred to the *Senior Representatives*. If the dispute is not resolved by the *Senior Representatives*, it is referred to and decided by the *Adjudicator*. A Party may replace a *Senior Representative* after notifying the other Party of the name of the replacement.
  - (2) The Party referring a dispute notifies the *Senior Representatives*, the other Party and the *Service Manager* of the nature of the dispute it wishes to resolve. Each Party submits to the other their statement of case within one week of the notification. Each statement of case is limited to no more than ten sides of A4 paper together with supporting evidence, unless otherwise agreed by the Parties.
  - (3) The *Senior Representatives* attend as many meetings and use any procedure they consider necessary to try to resolve the dispute over a period of up to three (3) weeks. At the end of this period the *Senior Representatives* produce a list of the issues agreed and issues not agreed. The *Service Manager* and the *Consultant* put into effect the issues agreed.
  - (4) No evidence of the statement of case or discussions is disclosed, used or referred to in any subsequent proceedings before the *Adjudicator* or the *tribunal*.

### The Adjudicator

#### W2.2

- (1) A dispute arising under or in connection with the Contract is referred to and decided by the *Adjudicator*. A Party may refer a dispute to the *Adjudicator* at any time whether or not the dispute has been referred to the *Senior Representatives*.
- (2) In this Option, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.
- (3) The Parties appoint the *Adjudicator* under the NEC Dispute Resolution Service Contract current at the *starting date*.
- (4) The *Adjudicator* acts impartially and decides the dispute as an independent adjudicator and not as an arbitrator.
- (5) If the *Adjudicator* is not identified in the Contract Data or if the *Adjudicator* resigns or becomes unable to act
  - the Parties may choose an adjudicator jointly or
  - a Party may ask the *Adjudicator nominating body* to choose an adjudicator.

The *Adjudicator nominating body* chooses an adjudicator within four (4) days of the request. The chosen adjudicator becomes the *Adjudicator*.

- (6) A replacement *Adjudicator* has the power to decide a dispute referred to a predecessor but not decided at the time when the predecessor resigned or became unable to act. The *Adjudicator* deals with an undecided dispute as if it had been referred on the date of appointment as replacement *Adjudicator*.
- (7) A Party does not refer a dispute to the *Adjudicator* that is the same or substantially the same as one that has already been decided by the *Adjudicator*.
- (8) The *Adjudicator*, and the *Adjudicator's* employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.

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**The adjudication**

- W2.3 (1) Before a Party refers a dispute to the *Adjudicator*, it gives a notice of adjudication to the other Party with a brief description of the dispute and the decision which it wishes the *Adjudicator* to make. If the *Adjudicator* is named in the Contract Data, the Party sends a copy of the notice of adjudication to the *Adjudicator* when it is issued. Within three (3) days of the receipt of the notice of adjudication, the *Adjudicator* informs the Parties that the *Adjudicator*
- is able to decide the dispute in accordance with the Contract or
  - is unable to decide the dispute and has resigned.
- If the *Adjudicator* does not so inform within three (3) days of the issue of the notice of adjudication, either Party may act as if the *Adjudicator* has resigned.
- (2) Within seven (7) days of a Party giving a notice of adjudication it
- refers the dispute to the *Adjudicator*
  - provides the *Adjudicator* with the information on which it relies, including any supporting documents and
  - provides a copy of the information and supporting documents it has provided to the *Adjudicator* to the other Party.
- (3) If a matter disputed by the *Consultant* under or in connection with a subcontract is also a matter disputed under or in connection with the Contract, the *Consultant* may, with the consent of the Subcontractor and the *Client*, refer the subcontract dispute to the *Adjudicator* at the same time as the main contract referral. The *Adjudicator* then decides the disputes together and references to the Parties for the purposes of the dispute are interpreted as including the Subcontractor.
- (4) The *Adjudicator* decides the procedure and timetable to be followed in the adjudication. In doing so the *Adjudicator* may
- take the initiative in ascertaining the facts and the law related to the dispute and
  - instruct a Party to take any other action within a stated time which is considered necessary to reach a decision.
- (5) If a Party does not comply with any instruction within the time stated by the *Adjudicator*, the *Adjudicator* may continue the adjudication and make a decision based upon the information and evidence received.
- (6) A communication between a Party and the *Adjudicator* is communicated to the other Party at the same time.
- (7) If the *Adjudicator's* decision includes assessment of additional cost or delay caused to the *Consultant*, the assessment is made in the same way as a compensation event is assessed. If the *Adjudicator's* decision changes an amount notified as due, the date on which payment of the changed amount becomes due is seven (7) days after the date of the decision.
- (8) The *Adjudicator* decides the dispute and informs the Parties and the *Service Manager* of the decision and reasons within twenty-eight (28) days of the dispute being referred. This period may be extended by up to fourteen (14) days with the consent of the referring Party or by any other period agreed by the Parties. The *Adjudicator* may in the decision
- review and revise any action or inaction of the *Service Manager* related to the dispute,
  - alter a matter which has been treated as accepted or correct and
  - allocate the *Adjudicator's* fees and expenses between the Parties.
- (9) Unless and until the *Adjudicator* has informed the Parties of the decision, the Parties and the *Service Manager* proceed as if the matter disputed was not disputed.
- (10) If the *Adjudicator* does not inform the Parties of the decision within the time provided by the Contract, the Parties and the *Adjudicator* may agree to extend the period for making a decision. If they do not agree to an extension, either Party may act as if

the *Adjudicator* has resigned.

- (11) The *Adjudicator's* decision is binding on the Parties unless and until revised by the *tribunal* and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The *Adjudicator's* decision is final and binding if neither Party has notified the other within the times required by the Contract that it is dissatisfied with a matter decided by the *Adjudicator* and intends to refer the matter to the *tribunal*.
- (12) The *Adjudicator* may, within five (5) days of giving the decision to the Parties, correct the decision to remove a clerical or typographical error arising by accident or omission.

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**The *tribunal***

- W2.4
- (1) A Party does not refer any dispute under or in connection with the Contract to the *tribunal* unless it has first been decided by the *Adjudicator* in accordance with the Contract.
  - (2) If, after the *Adjudicator* makes a decision, a Party is dissatisfied, that Party may notify the other Party of the matter which is disputed and state that it intends to refer the disputed matter to the *tribunal*. The dispute may not be referred to the *tribunal* unless this notification is given within four (4) weeks of being informed of the *Adjudicator's* decision.
  - (3) The *tribunal* settles the dispute referred to it. The *tribunal* has the powers to reconsider any decision of the *Adjudicator* and to review and revise any action or inaction of the *Service Manager* related to the dispute. A Party is not limited in *tribunal* proceedings to the information, evidence or arguments put to the *Adjudicator*.
  - (4) If the *tribunal* is arbitration, the *arbitration procedure*, the place where the arbitration is to be held and the method of choosing the arbitrator are those stated in the Contract Data.
  - (5) A Party does not call the *Adjudicator* as a witness in *tribunal* proceedings.

# Secondary Option Clauses

## OPTION X1: PRICE ADJUSTMENT FOR INFLATION

### Defined Terms

### X1

- X1.1 (a) The Base Date Index (B) is the latest published value of the *index* before the *base date*.
- (b) The Latest Index (L) is the latest published value of the *index* before the date of the relevant annual adjustment in accordance with clause X1.2.
- (c) The Price Adjustment Factor (PAF) is  $(L - B)/B$ .

X1.2 On each anniversary of the Contract Date

- [REDACTED]
- | [REDACTED]
- | [REDACTED]
- | [REDACTED]
- | [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

**Illustrative Example - X1.2 (2<sup>nd</sup> bullet) Annual Adjustment of the Leadership Team Rate Cap:**

Leadership Team Rate Cap as at the Contract Date is £ [REDACTED]

[REDACTED]

[REDACTED]





**Compensation events**

X1.3 The Defined Cost for compensation events is assessed using

[REDACTED]

**OPTION X2: CHANGES IN THE LAW**

**Changes in the law X2**

X2.1 A change in the *law of the programme* is a compensation event provided that the *Consultant* could not have reasonably foreseen such a change in law at the Contract Date or had notice of such a change in law before the Contract Date and an experienced consultant would have judged at the Contract Date that such change would have such a small chance of occurring that it would have been unreasonable for it to have allowed for it. If the effect of a compensation event which is a change in the *law of the programme* is to reduce the total Defined Cost, the Prices for each affected Task are reduced.

**OPTION X4: ULTIMATE HOLDING COMPANY GUARANTEE**

**Ultimate holding company guarantee X4**

X4.1 If the *Consultant* is a subsidiary of another company, the *Consultant* gives to the *Client* a guarantee of the *Consultant's* performance from

- the ultimate holding company of substance of the *Consultant* who has been accepted by the *Client*,
- if the *Consultant* has relied on the financial strength of a third party for the purposes of the tender process, the third party relied upon or
- where the *Consultant* so requests and the *Client* provides its written consent, another entity within the *Consultant's* group of companies,

in the relevant form set out in Appendix 1 (Form of Guarantee). If the guarantee was not given by the Contract Date, it is given to the *Client* within four (4) weeks of the Contract Date.

If the *Consultant* is a Joint Venture, then the guarantee is issued by the guarantor of each of the Joint Venture Members on a joint and several basis.

X4.2 In each case, at the same time as giving the guarantee(s), the *Consultant* gives to the *Client*, in a form acceptable to the *Service Manager*, opinion letters evidencing the authority of each guarantor to give the relevant guarantee unless the *Service Manager* has instructed or agreed that no legal opinion letter is required. No legal opinion letter is required where the parent company is a company registered in England and Wales.

X4.3 If at any time, a guarantee provided by a guarantor of the *Consultant* becomes or is rendered invalid or unenforceable, the *Consultant* procures, at its own cost and expense,

that an Affiliate of the guarantor which meets the criteria in clause X4.1 provides as soon as reasonably practicable a guarantee in the form set out in this Contract.

X4.4 If the financial standing of a guarantor that has provided a guarantee under this clause X4 falls below the economic and financial standing tests set out in the Programme Delivery Partner Selection Questionnaire Questions 5.1-5.3 (inclusive), the *Consultant* notifies the *Client* immediately and the *Client* seeks to clarify the reasons for this with the *Consultant*. If the clarification does not address the shortfall to the satisfaction of the *Client*, the *Client* may notify the *Consultant* that it requires the *Consultant* to provide an alternative guarantee at the *Consultant's* cost in the form set out in Appendix 1 (Form of Guarantee) and provided by another entity within the *Consultant's* organisation structure who is accepted by the *Client*. A reason for not accepting an alternative guarantee or proposed guarantor is that

- the alternative guarantee will not be provided in the form set out in Appendix 1 (Form of Guarantee),
- the proposed guarantor's commercial position is not strong enough to satisfy the economic and financial standing tests set out in the Programme Delivery Partner Selection Questionnaire Questions 5.1-5.3 (inclusive) or
- in the *Client's* absolute discretion, the commercial position of the proposed guarantor is not strong enough to carry the guarantee.

The alternative guarantee is given to the *Client* within four (4) weeks of the *Client's* notification under this clause X4.4.

## OPTION X10: INFORMATION MODELLING

### Defined terms

### X10

- X10.1 (1) The Information Execution Plan is the *information execution plan* or is the latest Information Execution Plan accepted by the *Service Manager*. The latest Information Execution Plan accepted by the *Service Manager* supersedes the previous Information Execution Plan.
- (2) Project Information is information provided by the *Consultant* which is used to create or change the Information Model.
- (3) The Information Model is the electronic integration of Project Information and similar information provided by the *Client* and other Information Providers and is in the form stated in the Information Model Requirements.
- (4) The Information Model Requirements are the requirements identified in the Scope for creating or changing the Information Model.
- (5) Information Providers are the people or organisations who contribute to the Information Model and are identified in the Information Model Requirements.

### Collaboration

- X10.2 The *Consultant* collaborates with other Information Providers as stated in the Information Model Requirements.

### Early warning

- X10.3 The *Consultant* and the *Service Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could adversely affect the creation or use of the Information Model.

<b>Information Execution Plan</b>	<p>X10.4 If an Information Execution Plan is not identified in the Contract Data, the <i>Consultant</i> submits a first Information Execution Plan to the <i>Service Manager</i> for acceptance within the period stated in the Contract Data.</p> <p>Within two weeks of the <i>Consultant</i> submitting an Information Execution Plan for acceptance, the <i>Service Manager</i> notifies the <i>Consultant</i> of the acceptance of the Information Execution Plan or the reasons for not accepting it. A reason for not accepting an Information Execution Plan is that</p> <ul style="list-style-type: none"> <li>• it does not comply with the Information Model Requirements or</li> <li>• it does not allow the <i>Consultant</i> to Provide the Service.</li> </ul> <p>If the <i>Service Manager</i> does not notify acceptance or non-acceptance within the time allowed, the <i>Consultant</i> may notify the <i>Service Manager</i> of that failure. If the failure continues for a further one (1) week after the <i>Consultant's</i> notification, it is treated as acceptance by the <i>Service Manager</i> of the Information Execution Plan.</p> <p>The <i>Consultant</i> submits a revised Information Execution Plan to the <i>Service Manager</i> for acceptance</p> <ul style="list-style-type: none"> <li>• within the <i>period for reply</i> after the <i>Service Manager</i> has instructed it to and</li> <li>• when the <i>Consultant</i> chooses to.</li> </ul> <p>The <i>Consultant</i> provides the Project Information in the form stated in the Information Model Requirements and in accordance with the accepted Information Execution Plan.</p>
<b>Compensation events</b>	<p>X10.5 If the Information Execution Plan is altered by a compensation event, the <i>Consultant</i> includes the alterations to the Information Execution Plan in the quotation for the compensation event.</p>
<b>Use of the Information Model</b>	<p>X10.6 The <i>Client</i> owns the Information Model and the <i>Consultant's</i> rights over Project Information except as stated otherwise in the Information Model Requirements. The <i>Consultant</i> obtains from a Subcontractor equivalent rights for the <i>Client</i> over information prepared by the Subcontractor. The <i>Consultant</i> provides to the <i>Client</i> the documents which transfer these rights to the <i>Client</i>.</p>
<b>Liability</b>	<p>X10.7 The following are <i>Client's</i> liabilities</p> <ul style="list-style-type: none"> <li>• a fault in the Information Model not caused by a Defect in the Project Information and</li> <li>• a fault in information provided by Information Providers other than the <i>Consultant</i>.</li> </ul> <p>The <i>Consultant</i> is not liable for a Defect in the Project Information unless it failed to provide the Project Information using the skill and care normally used by professionals providing information similar to the Project Information.</p> <p>If the <i>Service Manager</i> does not notify acceptance or non-acceptance within the time allowed, the <i>Consultant</i> may notify the <i>Service Manager</i> of that failure. If the failure continues for a further one (1) week after the <i>Consultant's</i> notification, it is treated as acceptance by the <i>Service Manager</i> of the Information Execution Plan.</p> <p>The <i>Consultant</i> submits a revised Information Execution Plan to the <i>Service Manager</i> for acceptance</p> <ul style="list-style-type: none"> <li>• within the <i>period for reply</i> after the <i>Service Manager</i> has instructed it to and</li> <li>• when the <i>Consultant</i> chooses to.</li> </ul> <p>The <i>Consultant</i> provides the Project Information in the form stated in the Information Model Requirements and in accordance with the accepted Information Execution Plan.</p>

## OPTION X11: TERMINATION BY THE *CLIENT*

<b>Termination by the <i>Client</i></b>	<b>X11</b>	
	X11.1	The <i>Client</i> may terminate the <i>Consultant's</i> obligation to Provide the Service (in whole or in part) for a reason not identified in the Termination Table by providing three (3) months' written notice to the <i>Service Manager</i> and the <i>Consultant</i> .
	X11.2	If the <i>Client</i> terminates for a reason not identified in the Termination Table the termination procedure followed is P1 and the amounts due on termination are A1.

## OPTION X12: MULTIPARTY COLLABORATION

<b>Identified and defined terms</b>	<b>X12</b>	
	X12.1	<p>(1) Partners are those who have a contract in connection with the subject matter of this Contract which includes this multiparty collaboration Option or equivalent. The <i>Promoter</i> is a Partner.</p> <p>(2) The Schedule of Partners is a list of the Partners which the <i>Client</i> provides upon notification that this clause is effected in accordance with clause X12.2(1) and Partners subsequently added by agreement of the Partners. It sets out the objectives of the Partners and includes targets for performance.</p> <p>(3) An Own Contract is a contract between two Partners.</p> <p>(4) The Core Group comprises the Partners selected to take decisions on behalf of the Partners.</p> <p>(5) The Schedule of Core Group Members is a list of the Partners forming the Core Group.</p> <p>(6) Partnering Information is information which specifies how the Partners collaborate and is either in the documents which the Contract Data states it is in or in an instruction given in accordance with the Contract.</p> <p>(7) A Key Performance Indicator is an aspect of performance for which a target is stated in the Schedule of Partners.</p>
<b>Actions</b>	X12.2	<p>(1) The provisions of this clause X12 only come into effect upon the issue of notice by the <i>Client</i> (at its absolute discretion) to the <i>Consultant</i> at any time during the Contract. Any such notice includes the information required in section X12 Contract Data Part One and such information is deemed to form part of the Contract Data Part One.</p> <p>(2) The Partners collaborate with each other to achieve the <i>Promoter's objective</i> stated in the Contract Data and the objectives of every other Partner stated in the Schedule of Partners.</p> <p>(3) Each Partner nominates a representative to act for it in dealings with other Partners.</p> <p>(4) The Core Group acts and takes decisions on behalf of the Partners on those matters stated in the Partnering Information.</p> <p>(5) The Partners select the members of the Core Group. The Core Group decides how they will work and decides the dates when each member joins and leaves the Core Group. The <i>Promoter's</i> representative leads the Core Group unless stated otherwise in the Partnering Information.</p> <p>(6) The Core Group keeps the Schedule of Core Group Members and the Schedule of Partners up to date and issues copies of them to the Partners each time either is revised.</p>

- (7) This Option does not create a legal partnership or joint venture between Partners who are not one of the Parties in this Contract.

**Collaboration**

- X12.3
- (1) The Partners collaborate as stated in the Partnering Information and in a spirit of mutual trust and co-operation.
  - (2) A Partner may ask another Partner to provide information which it needs to carry out the work in its Own Contract and the other Partner provides it.
  - (3) Each Partner gives an early warning to the other Partners when it becomes aware of any matter that could affect the achievement of another Partner’s objectives stated in the Schedule of Partners.
  - (4) The Partners use common information systems as set out in the Partnering Information.
  - (5) A Partner implements a decision of the Core Group by issuing instructions in accordance with its Own Contracts.
  - (6) The *Client* may give an instruction to the Partners to change the Partnering Information. Each such change to the Partnering Information is a compensation event which may lead to reduced Prices for each affected Task.
  - (7) The Core Group prepares and maintains a timetable showing the proposed timing of the contributions of the Partners. The Core Group issues a copy of the timetable to the Partners each time it is revised. The *Consultant* changes its programme if it is necessary to do so in order to comply with the revised timetable. Each such change is a compensation event which may lead to reduced Prices for each affected Task.
  - (8) A Partner gives advice, information and opinion to the Core Group and to other Partners when asked to do so by the Core Group. This advice, information and opinion relates to work that another Partner is to carry out under its Own Contract and is given fully, openly and objectively. The Partners show contingency and risk allowances in information about costs, prices and timing for future work.
  - (9) A Partner informs the Core Group before subcontracting any work.

**Incentives**

- X12.4
- (1) A Partner is paid the amount stated in the Schedule of Partners if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved and is made as part of the amount due in the Partner’s Own Contract.
  - (2) The *Promoter* may add a Key Performance Indicator and associated payment to the Schedule of Partners but may not delete or reduce a payment stated in the Schedule of Partners.

**OPTION X20: KEY PERFORMANCE INDICATORS**

**Incentives**

**X20**

- X20.1 A Key Performance Indicator is an aspect of performance by the *Consultant* for which a target is stated in the Incentive Schedule. The Incentive Schedule is the *incentive schedule* unless later changed in accordance with the Contract.
- X20.2 From the *starting date* until the end of the Service Period, on each monthly anniversary of the *starting date* (each such date being a “**KPI Assessment Date**”) the *Consultant* reports to the *Service Manager* its performance against each of the applicable Key Performance Indicators (as determined in accordance with the Incentive Schedule).
- X20.3 On each KPI Assessment Date the *Service Manager* carries out and notifies the *Consultant* of its assessment of the *Consultant’s* performance against each of the applicable Key Performance Indicators (as determined in accordance with the Incentive Schedule). If the *Consultant* disagrees with the *Service Manager’s* assessment, subject to its right to refer the dispute to adjudication at any time in accordance with clause W2,

the dispute is dealt with in accordance with clause W2.1.

- X20.4 Each Key Performance Indicator is only reported on by the *Consultant* in accordance with clause X20.2 and assessed by the *Service Manager* in accordance with clause X20.3 at the end of the applicable Measurement Interval.
- X20.5 If
  - the *Consultant's* forecast final measurement against a Key Performance Indicator will not achieve the target stated in the Incentive Schedule and/or
  - the *Consultant* has failed to meet a target stated in the Incentive Schedule,
 it submits to the *Service Manager* its proposals for improving performance to meet the target in the future.
- X20.6 The amount due is increased or reduced (as applicable) in accordance with the terms of the Incentive Schedule by an amount calculated in accordance with the Incentive Schedule.
- X20.7 Any deduction from the amount due in accordance with clause X20.6 is a deduction to reflect that the *Consultant* is not performing to the standards in this Contract.
- X20.8 The *Client* may add new Key Performance Indicators and associated payments to the Incentive Schedule but may not delete or reduce a payment stated in the Incentive Schedule.
- X20.9 An annual performance review meeting (**Annual Incentivisation Performance Meeting**) will be held between the *Service Manager* and the *Consultant* after each anniversary of the *starting date* to review the *Consultant's* performance against the Key Performance Indicators in the previous Contract Year.

## OPTION X29: CLIMATE CHANGE

<b>Identified and defined terms</b>	X29	(1) The Climate Change Requirements are the requirements relating to climate change stated in Scope S209.3.
	X29.1	(2) The Climate Change Plan is the <i>climate change plan</i> or is the latest climate change plan accepted by the <i>Service Manager</i> . The latest climate change plan accepted by the <i>Service Manager</i> supersedes previous Climate Change Plans.
		(3) The Climate Change Partners are the people or organisations who contribute to the achievement of the Climate Change Requirements and are identified in the Climate Change Requirements.
<b>Collaboration</b>	X29.2	The <i>Consultant</i> collaborates with other Climate Change Partners as stated in the Climate Change Requirements.
<b>Early warning</b>	X29.3	The <i>Consultant</i> and the <i>Service Manager</i> give an early warning by notifying the other as soon as either becomes aware of any matter which could adversely affect the achievement of the Climate Change Requirements.
<b>Climate change plan</b>	X29.4	(1) If a climate change plan is not identified in the Contract Data, the <i>Consultant</i> submits a first climate change plan to the <i>Service Manager</i> for acceptance within the period stated in the Contract Data.
		(2) The Climate Change Plan shows how the <i>Consultant</i> plans to meet the Climate Change Requirements.
		(3) Within three (3) weeks of the <i>Consultant</i> submitting a climate change plan for acceptance, the <i>Service Manager</i> notifies the <i>Consultant</i> of the acceptance of the climate change plan or the reasons for not accepting it. A reason for not accepting a climate change plan is that <ul style="list-style-type: none"> <li>• it does not comply with the Climate Change Requirements or</li> <li>• it will not allow the <i>Consultant</i> to Provide the Service.</li> </ul>
		(4) The <i>Consultant</i> submits a revised climate change plan to the <i>Service Manager</i> for acceptance <ul style="list-style-type: none"> <li>• within the period for reply after the <i>Service Manager</i> has instructed it to and</li> </ul>

- when the *Consultant* chooses to.

**Disclosure**

X29.5 The Parties may use, disclose and publicise information relating to climate change as stated in and for the purposes stated in the Climate Change Requirements.

**Consultant's proposals**

X29.6 The *Consultant* may propose to the *Service Manager* that the Scope is changed in order to reduce the impact of the service or the results of the service on climate change. The *Service Manager* considers the change and if it is of interest instructs

- a change the Scope or
- the *Consultant* to submit a quotation for a proposed change to the Scope.

# Option Y

## OPTION Y(UK)2: THE HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996

### The Housing Grants, Construction and Regeneration Act 1996

### Y(UK)2

<b>Definitions</b>	Y2.1	<p>(1) The Act is the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.</p> <p>(2) A period of time stated in days is a period calculated in accordance with Section 116 of the Act.</p>
<b>Dates for payment</b>	Y2.2	<p>The date on which a payment (including a final payment on termination) becomes due (the 'payment due date') is the later of</p> <ul style="list-style-type: none"> <li>• the date falling fourteen (14) days after the assessment date and</li> <li>• the date of receipt by the <i>Client</i> of a properly prepared VAT invoice issued by the <i>Consultant</i> in accordance with clause Y2.4(1).</li> </ul> <p>The 'final date for payment' is fourteen (14) days after the payment due date.</p> <p>The <i>Service Manager's</i> certificate is, for the purposes of Section 110 of the Act, the notice of payment specifying the amount due at the payment due date and stating the basis on which the amount was calculated.</p>
<b>Notice of intention to pay less</b>	Y2.3	<p>If either Party intends to pay less than the notified sum (as defined in Section 111(2) of the Act), it notifies the other Party not later than five (5) days before the final date for payment by stating the amount considered to be due on the day such notice is served and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under the Contract unless it has notified its intention to pay less than the notified sum as required by the Contract.</p>
<b>VAT invoices</b>	Y2.4	<p>(1) After the assessment date the <i>Consultant</i> promptly issues to the <i>Client</i> a properly prepared VAT invoice showing the notified sum stated in (as applicable) the</p> <ul style="list-style-type: none"> <li>• <i>Service Manager's</i> payment certificate</li> <li>• <i>Service Manager's</i> final payment certificate or</li> <li>• if the <i>Service Manager</i> does not issue a certificate in accordance with this contract the application for payment or the <i>Consultant's</i> assessment of the final amount due,</li> </ul> <p>and (in each case) the correct amount of value added tax due.</p> <p>(2) If either of the Parties gives to the other a pay less notice, the <i>Consultant</i> issues a revised VAT invoice within three (3) days of the date of the pay less notice showing the revised amount and the correct amount of VAT due.</p> <p>(3) Where the <i>Consultant</i> fails to issue a revised VAT invoice in accordance with clause Y2.4(2) the <i>Client</i> pays the sum in the pay less notice or may at its discretion make a payment of a previous notified sum under clause Y2.4(1). The amount due at the next assessment date is adjusted to take account of such discretionary payment.</p>
<b>Suspension of performance</b>	Y2.5	<p>(4) If the <i>Consultant</i> exercises its right under the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 to suspend performance, it is a compensation event.</p>



**OPTION Y(UK)3: THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999****Third party rights****Y(UK)3**

- Y3.1 A *beneficiary* may enforce the terms of the Contract stated in the Contract Data under the Contracts (Rights of Third Parties) Act 1999.
- Y3.2 Other than the Parties or a *beneficiary*, no person can enforce any of the terms of the Contract under the Contracts (Rights of Third Parties) Act 1999.
- Y3.3 If a *beneficiary* is identified by class or description and not as a named person or organisation, the *Client* notifies the *Consultant* of the name of the *beneficiary* once it has been identified.

**OPTION Z: ADDITIONAL CONDITIONS OF CONTRACT**

**Additional conditions of contract**

Z1 The *additional conditions of contract* stated in the Contract Data are part of this Contract.

**Task Orders**

**Z2**

Z2.1 The *Consultant* shall only Provide the Service or part thereof on the issuance of a Task Order by the *Service Manager*.

Z2.2 The *Service Manager* may issue a Task Order to the *Consultant*. Before issuing a Task Order, the *Service Manager* instructs the *Consultant* to submit a quotation for the Task. The instruction includes

- a detailed description of the work in the Task,
- the Task starting date and Task Completion Date,
- the applicable pricing option for the Task, being either a Cost Reimbursable Task Order or a Fixed Price Task Order and
- any Key Date(s) and associated Conditions applicable to the Task.

Z2.3 The *Consultant* submits a quotation for a Task within the period stated in the Task Order. The quotation includes

- the Prices for the Task Order,
- for a Fixed Price Task Order, an Activity Schedule,
- where instructed by the *Service Manager* for a Cost Reimbursable Task Order, the Lump Sum Fee for the Task,
- any other requirements as set out in the Scope and
- any other information requested in the Task Order.

The *Consultant* submits details of its assessment with the quotation.

The *Service Manager* replies within four (4) weeks of the submission. The reply is

- acceptance of the quotation and the issue of the Task Order,
- an instruction to submit a revised quotation,
- that the *Service Manager* will be making the assessment or
- a notification that the Task will not be instructed.

Z2.3A For a Fixed Price Task Order, the Prices

- are substantially based on historic Defined Cost data from the delivery of previous comparable Task Orders for comparable services (subject to an inflationary uplift to such Defined Cost from the date the historic Defined Cost was incurred to the latest published value of the *index* prior to the Task starting date of the relevant Fixed Price Task Order) and
- (as necessary based on the duration of the Fixed Price Task Order) include a reasonable allowance for inflationary risk substantially based upon the change in the index in the twelve (12) months preceding issue of the Fixed Price Task Order.

Z2.4 The *Service Manager* instructs the *Consultant* to submit a revised quotation only after explaining the reasons for doing so to the *Consultant*. The *Consultant* submits the revised quotation within two (2) weeks of being instructed to do so.

Z2.5 The *Service Manager* extends the time allowed for

- the *Consultant* to submit quotations for a Task or
- the *Service Manager* to reply to a quotation,

if the *Service Manager* and the *Consultant* agree to the extension before the submission or reply is due. The *Service Manager* informs the *Consultant* of the extension which has been agreed.

- Z2.6 The *Service Manager* assesses the pricing for the Task if
- the *Consultant* has not submitted a quotation and details of its assessment within the time allowed or
  - the *Service Manager* decides that the *Consultant* has not assessed the Task correctly in a quotation (including where the *Service Manager* considers that the *Consultant* has failed to comply with clause Z2.3A) and has not instructed the *Consultant* to submit a revised quotation.
- Z2.7 The *Service Manager* notifies the *Consultant* of the assessment of the pricing for a Task, gives details of the assessment and issues the Task Order within the period allowed for the *Consultant's* submission of its quotation for the same Task. This period starts when the need for the *Service Manager's* assessment becomes apparent.
- Z2.7A Notwithstanding any other provision of this Contract, before issuing a Task Order the *Service Manager* consults with the *Consultant* in accordance with clause 10.2 to agree the content of such Task Order.
- Z2.8 When a Task Order is issued
- as applicable, additional rates are inserted into the Rates and
  - the work involved is added to the Scope.
- Neither an instruction to provide a quotation for a Task nor the issue of a Task is a compensation event.
- Z2.9 The *Consultant* does not start any work included in the Task until the *Service Manager* has instructed it to carry out the Task and does the work so that Task Completion is on or before the Task Completion Date. No Task Order is issued after the end of the Service Period.
- The *Service Manager* may issue an instruction changing a Task Order.
- The *Service Manager* decides the date of Task Completion and certifies it within two weeks of the date.
- Z2.10 The *Consultant* provides information which shows how each item included in a Task relates to the operations on each programme which it submits for acceptance. The *Consultant* provides an updated programme to the *Service Manager* within fourteen (14) days of receiving each Task Order.
- Z2.11 The following are compensation events.
- (1) The *Service Manager* gives an instruction changing a Task Order.
  - (2) The *Consultant* receives the Task Order after the Task starting date stated in the Task Order.
  - (3) The *Client* does not provide something which it is to provide as stated in the Scope in accordance with the latest accepted Task Order programme.
- Z2.12 If, due to a compensation event, Task Completion is delayed, the delay to the Task Completion Date is stated in the *Consultant's* quotation for the compensation event and a programme is submitted with details of the assessment of the delay.
- Assessments of delay include time risk allowances and are based on the assumption that the programme can be changed and that delays were or will be reasonably incurred.
- A delay to the Task Completion Date is assessed as the length of time that, due to the compensation event, planned Task Completion is delayed.
- The *Service Manager* may assess the delay if, when the *Consultant* submits quotations for a compensation event, the *Consultant* has not submitted an updated programme required by this Contract.
- Z2.13 The changes to the calculated total of the Prices for the Task Order and any delay to the Task Completion Date are included in the *Service Manager's* notification implementing a compensation event.
- Z2.14 For a Fixed Price Task Order, information in the Activity Schedule is not Scope.
- Z2.15 For a Cost Reimbursable Task Order, the *Service Manager* may instruct that the Task Order will be subject to a fixed lump sum Fee (**Lump Sum Fee**). The Lump Sum Fee for

a Task is calculated by applying the *fee percentage* to the forecast Defined Cost for the Task.

The Lump Sum Fee is adjusted by an amount equal to the *fee percentage* applied to the change in the forecast Defined Cost for the applicable Task as included in a notification implementing a compensation event.

At each assessment date, the Fee for a Cost Reimbursable Task Order pursuant to which a Lump Sum Fee is applicable is calculated as follows:

[REDACTED]

Z2.16 For each Cost Reimbursable Task Order, the *Consultant* prepares forecasts of the total Defined Cost for the Task Order in consultation with the *Service Manager* and submits them to the *Service Manager*. Such forecasts are submitted for information purposes only and do not change the Prices (or the total of the Prices) for the applicable Cost Reimbursable Task Order. Forecasts are submitted on a monthly basis from the *starting date* until the end of the Service Period. An explanation of the changes made since the previous forecast is submitted with each forecast.

Z2.17 The *Consultant* acknowledges that entering into this Contract does not grant any form of exclusivity or guarantee the instruction of any Task Orders or any volume of services. The *Client* reserves the right at any time to carry out all or any part of the *services*, or services of a similar nature itself to or procure a third party to do so (whether or not for a lower price).

**Freedom of Information**

**Z3**

Z3.1 Where used in this clause Z3 the following terms have the following meanings

- (1) EIR is the Environmental Information Regulations 2004 together with any guidance and/or code of practice issued by the Information Commissioner or relative government department in relation to such regulations.
- (2) FOIA is the Freedom of Information Act 2000 and any subordinate legislation made under it together with any guidance and/or codes of practice issued by the Information Commissioners or relevant government department in relation to such legislation.
- (3) Information is information as defined in Section 84 of the FOIA and which relates to the Contract (or any preceding tender process leading up to it), the *Consultant*, or any Subcontractor.
- (4) A Request for Information is a request for information or an apparent request that is made or could be considered to have been made pursuant to the Code of Practice on Access to Government Information, the FOIA or the EIR.

Z3.1 The *Consultant* acknowledges that unless the *Service Manager* has notified the *Consultant* that the *Client* is exempt from the provisions of the FOIA, the *Client* is subject to the requirements of the Code of Practice on Government Information, the FOIA and the EIR. The *Consultant* cooperates with and assists the *Client* to enable it to comply with its information disclosure obligations.

Z3.2 The *Consultant*

- transfers to the *Client* all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information,
- provides the *Client* with a copy of all information in its possession, or power in the form that the *Client* requires within five (5) Working Days (or such other period as

the *Client* may specify) of the *Client's* request,

- provides all necessary assistance as reasonably requested by the *Client* to enable the *Client* to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the EIR and
- procures that its Subcontractors comply with the preceding three (3) bullet points.

Z3.3 The *Client* is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, the FOIA or the EIR.

Z3.4 The *Consultant* does not respond directly to a Request for Information unless authorised to do so by the *Client*.

Z3.5 The *Consultant* acknowledges that the *Client* may, in accordance with the Cabinet Office Freedom of Information Code of Practice, be obliged to disclose information without consulting or obtaining consent from the *Consultant* or despite the *Consultant* having expressed negative views when consulted.

Z3.6 The *Consultant* ensures that all information is retained for disclosure throughout the *period for retention* and permits the *Service Manager* to inspect such records as and when reasonably requested from time to time.

**Execution of Contract**

Z4 The *Client* withholds payment of [REDACTED] of the Price for Service Provided to Date if the *Consultant* does not commence the *service* on the *starting date* as a result of the *Consultant's* failure to properly execute the Contract.

**Staff Transfer**

**Z5**

Z5.1 Where used in this clause Z5 the following terms have the following meanings

- (1) Former Consultant is a consultant supplying services to the *Client* before the Relevant Transfer Date that are the same as or substantially similar to the *services* (or any part of the *services*) including any subcontractor of any such consultant (or any subcontractor of any such subcontractor).
- (2) A Relevant Transfer is a transfer of employment to which TUPE applies.
- (3) Relevant Transfer Date is in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place.
- (4) Transferring Client Employees means those employees of the *Client* to whom TUPE will apply on the Relevant Transfer Date.
- (5) Transferring Former Consultant Employees means in relation to a Former Consultant, those employees of the Former Consultant to whom TUPE will apply on the Relevant Transfer Date.
- (6) TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- (7) TUPE Information is information regarding the *Consultant's* staff including identity, number, age, sex, length of service, job title, grade and terms and conditions of employment, details of any disciplinary procedure taken against a member of staff, detail of any grievance procedure taken by a member of staff, together with any other matters affecting each of those staff including but not limited to the information which a transferor is obliged to notify to a transferee pursuant to Regulation 11(2) of TUPE.

Z5.1 Where the commencement of the provision of the *services* or any part of the *services* results in one (1) or more Relevant Transfers involving the transfer of Transferring Former Consultant Employees, Part B of Appendix 12 (Staff Transfer) applies.

Z5.2 Not Used.

Z5.3 Part E of Appendix 12 (Staff Transfer) applies on the termination of the *Consultant's* obligation to Provide the Services or any part of the *services*.

**Assignment and Novation**

**Z6**

Z6.1 The *Consultant* does not assign, novate or otherwise transfer this Contract or any part

thereof or any benefit or interest therein or thereunder without the prior written consent of the *Client*. In the absence of the *Client's* consent under this clause, no such transfer by the *Consultant* shall be effective and no sum of money becoming due under this Contract is payable to anyone other than the *Consultant*.

- Z6.2 The *Client* may in its absolute discretion assign, novate or otherwise transfer this Contract or any part thereof or any benefit or interest therein or thereunder to a Government Body and will give written notice to the *Consultant* of any such transfer. This clause shall stand as the *Consultant's* consent to any such transfer by the *Client*.
- Z6.2A Other than as provided for in Clause Z6.2, the *Client* does not assign, novate or otherwise transfer this Contract or any part thereof or any benefit or interest therein or thereunder without the prior written consent of the *Consultant* (not to be unreasonably withheld or delayed).
- Z6.3 The *Consultant* executes and delivers (and shall procure that its parent company which has provided a parent company guarantee pursuant to clause X4 executes and delivers) to the *Client* a deed of novation and a deed of collateral warranty in the form set out in Appendix 2 (Forms of Novation Agreement and Associated Collateral Warranty) within fourteen (14) days of the *Client's* request, for the purpose of novating this Contract from the *Client* to a Government Body.
- Z6.4 Without prejudice to any other right or remedy the *Client* has under this Contract, if the deed of novation and deed of collateral warranty referred to in clause Z6.3 are not executed and delivered to the *Client* in accordance with, and within the time required by, clause Z6.3, the *Client* may retain from each payment to the *Consultant* one tenth of the amount which would otherwise be payable to the *Consultant* until such deed of novation and deed of collateral warranty have been so executed and delivered.
- Z6.5 A change in the legal status of the *Client* such that it ceases to be a Crown Body shall not affect the validity of this Contract and this Contract shall be binding on any successor body to the *Client*.

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#### Collateral Warranties

#### Z7

- Z7.1 The *Consultant* gives and procures deeds of collateral warranty in the form set out in Appendix 3 (Forms of Consultant and Subcontractor Collateral Warranty) in favour of any Government Body within twenty one (21) days of a request made by the *Service Manager*.
- The *Consultant* gives and procures a deed of collateral warranty in the form set out in Appendix 3 (Forms of Consultant and Subcontractor Collateral Warranty) in favour of the Secretary of State for Health and Social Care (acting as part of the Crown) within fourteen (14) days of the Contract Date.
- Each such collateral warranty shall be duly executed by the *Consultant* and each party acting as the *Consultant's* guarantor which has provided a guarantee under clause X4.
- Z7.2 The *Consultant* procures a deed of collateral warranty from any Key Subcontractor guaranteed by its ultimate substantial parent company, in the form set out in Appendix 3 (Forms of Consultant and Subcontractor Collateral Warranty) within twenty eight (28) days of a request made by the *Service Manager* in favour of
- the *Client* and/or
  - any Government Body.

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#### Subcontracting requirements

#### Z8

- Z8.1 The *Consultant* does not appoint a Subcontractor or supplier if there are compulsory grounds for excluding it under Regulation 57 of the PCR 2015.
- Z8.2 The *Consultant* assesses the amount due to a Subcontractor without taking into account the amount certified by the *Service Manager*.
- Z8.3 The *Consultant* includes in any Subcontract awarded by it
- a period for payment of the amount due to the Subcontractor not greater than five (5) days after the final date for payment in this Contract. The amount due includes, but is not limited to, payment for work which the Subcontractor has completed from

the previous assessment date up to the current assessment date in this Contract,

- a provision requiring the Subcontractor to include in each subsubcontract the same requirement (including this requirement to flow down), except that the period for payment is to be not greater than nine (9) days after the final date for payment in this Contract and
- a provision requiring the Subcontractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the *Consultant*.

Z8.4 The *Consultant* notifies any non-compliance with clause Z8.3 to the *Client* and the *Service Manager*.

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**Data Protection**

Z9 The *Client* and the *Consultant* shall comply with the provisions of Appendix 7 (Data Protection).

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**Confidential Information**

Z10

Z10.1 Where used in this clause Z10 the following term has the following meaning

(1) Contracting Body is any Contracting Body as defined in Regulation 5(2) of the Public Contracts (Works, Service and Supply) (Amendment) Regulations 2000 other than the *Client*.

Z10.2 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall

- treat the other Party's Confidential Information as confidential and safeguard it accordingly,
- not disclose the other Party's Confidential Information to any other person without prior written consent,
- immediately notify the other Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information and
- notify the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

Z10.3 The clause above shall not apply to the extent that

- such disclosure is a requirement of the Applicable Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR pursuant to clause Z1 (Freedom of Information),
- such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner,
- such information was obtained from a third party without obligation of confidentiality,
- such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract or
- it is independently developed without access to the other Party's Confidential Information.

Z10.4 The *Consultant* may only disclose the *Client's* Confidential Information to people directly involved in Providing the Service and who need to know the Confidential Information and shall ensure that such people are aware of and comply with the obligations as to confidentiality in this clause Z10. The *Consultant* shall not, and shall procure that the *Consultant's* people do not, use any of the *Client's* Confidential Information received otherwise than for the purposes of this Contract.

Z10.5 The *Consultant* may only disclose the *Client's* Confidential Information to *Consultant's* people who need to know the Confidential Information, and shall ensure that such people are aware of, acknowledge the importance of, and comply with the obligations as to confidentiality in this clause Z10. If any default, act or omission of any *Consultant's* people causes or contributes (or could cause or contribute) to the *Consultant* breaching its confidentiality obligations under or in connection with this Contract, the *Consultant* shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any *Consultant's* people, the *Consultant* shall provide such evidence to the *Client* as the *Client* may reasonably require (though not so as to

risk compromising or prejudicing the case) to demonstrate that the *Consultant* is taking appropriate steps to comply with this clause Z10.5, including copies of any written communications to and/or from the *Consultant's* people, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with the *Consultant's* people in connection with obligations as to confidentiality.

Z10.6 At the written request of the *Client*, the *Consultant* shall procure that those members of the *Consultant's* people identified in the *Client's* request sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.

Z10.7 Nothing in this Contract shall prevent the *Client* from disclosing the *Consultant's* Confidential Information

- to any Crown Body or any other Contracting Body. All Crown Bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the *Consultant's* Confidential Information to other Crown Bodies or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Body,
- to a professional adviser, contractor, consultant, supplier or other person engaged by the *Client* or any Crown Body (including any benchmarking organisation) for any purpose connected with this contract, or any person conducting an Office of Government Commerce Gateway Review,
- for the purpose of the examination and certification of the *Client's* accounts,
- for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources,
- for the purpose of the exercise of its rights under this Contract or
- to a proposed successor body of the *Client* in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing, disclosure of the *Consultant's* Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Client* under this clause Z10.7.

Z10.8 The *Client* shall use all reasonable endeavours to ensure that any government department, Contracting Body, people, third party or subcontractor to whom the *Consultant's* Confidential Information is disclosed pursuant to the above clause is made aware of the *Client's* obligations of confidentiality.

Z10.9 Nothing in this clause Z10 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property.

Z10.10 The *Client* may disclose the *Consultant's* Confidential Information to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement, to the extent that the *Client* (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions.

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**Change of Ownership**

**Z11**

Z11.1 Where used in this clause Z11 the following term has the following meaning

- (1) A Change of Ownership is in respect of the *Consultant* (or if the *Consultant* is a Joint Venture, in any of the parties comprising the Joint Venture) or in respect of the party providing the parent company guarantee pursuant to clause X4.1
- a change of control (within the meaning of Section 1124 of the Corporation Tax Act 2010),
  - a sale, transfer or disposal of any legal, beneficial or equitable interest in 25% or more of its shares (including control over the right to appoint or remove directors or the rights to dividends) and/or
  - any other arrangements that have or may have or which result in the same effect as either of the immediately preceding two (2) bullet points,



other than a change in the legal or beneficial ownership of shares that (i) are listed on a recognised investment exchange (as defined in Section 285 of the Financial Services and Markets Act 2000) or (ii) arises out of or in connection with any such listing on a recognised investment exchange.

- Z11.1 The *Consultant* notifies the *Client* and the *Service Manager* immediately in writing and as soon as it is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Ownership and provided such notification does not contravene any Applicable Law. The *Consultant* ensures that any such notification sets out full details of the Change of Ownership including the circumstances suggesting and/or explaining the Change of Ownership.
- Z11.2 The *Client* may terminate the *Consultant's* obligation to Provide the Service (which shall take effect as termination under reason R11) within six (6) months from
- being notified in writing that a Change of Ownership is anticipated or is in contemplation or has occurred or
  - where no notification has been made, the date that the *Client* becomes aware that a Change of Ownership is anticipated or is in contemplation or has occurred, but shall not be permitted to terminate where an approval was granted prior to the Change of Ownership,

unless the *Consultant* evidences to the *Client's* reasonable satisfaction that the parent company following the Change of Ownership would have passed the selection criteria as set out in the Selection Questionnaire against which the original parent company was assessed.

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**Evidence of financial stability**

**Z12**

- Z12.1 The *Consultant* promptly provides such documentation evidencing its financial stability and that of a parent company (which has given a guarantee required under this Contract) as the *Client* may request.
- Z12.2 The *Consultant* complies with the provisions of Appendix 6 (Financial Distress) in relation to the assessment of the financial standing of the *Consultant* and the consequences of a change to that financial standing.
- Z12.3 The *Client* may terminate the *Consultant's* obligation to Provide the Service (which shall take effect as termination under reason R11) where in the reasonable opinion of the *Client* there is a material detrimental change in the financial standing and/or the credit rating of the *Consultant* which
- adversely impacts on the *Consultant's* ability to perform its obligations under this Contract or
  - could reasonably be expected to have an adverse impact on the *Consultant's* ability to perform its obligations under this Contract.

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**Resolution planning**

**Z13**

The *Client* and the *Consultant* shall comply with the provisions of Appendix 14 (Service Continuity Plan and Corporate Resolution Planning).

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**Equality and Diversity**

**Z14**

- Z14.1 Where used in this clause Z14 the following term has the following meaning
- (1) Equality Legislation means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998.
- Z14.1 The *Consultant* ensures that
- it does not, whether as employer or as supplier of the *services*, engage in any act or omission that would contravene the Equality Legislation and
  - it complies with all its obligations as an employer or supplier of the *services* as set out in the Equality Legislation and takes reasonable endeavours to ensure the

*Consultant's* staff do not unlawfully discriminate within the meaning of the Equality Legislation.

Z14.2 The *Consultant* cooperates with the *Client* in the management of its affairs and the development of its equality and diversity policies in light of the *Client's* obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The *Consultant* takes such reasonable and proportionate steps as the *Client* considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age.

Z14.3 The *Consultant* imposes on all its Subcontractors and suppliers obligations substantially similar to those in this clause Z14.

Z14.4 The *Consultant* meets all reasonable requests by the *Client* for information evidencing the *Consultant's* compliance with the provisions of this clause Z14.

**Official Secrets**

**Z15**

Z15.1 The Official Secrets Acts 1911 to 1989 and section 182 of the Finance Act 1989 apply to this Contract.

Z15.2 The *Consultant* notifies its employees and its Subcontractors of their duties under these Acts.

**Living Wage**

**Z16**

Z16.1 Where used in this clause Z16, the following term has the following meaning

- Dedicated Staff means any member of staff (other than an intern or unpaid work placement) who provides a service to or on behalf of the *Consultant* involving two (2) or more hours of work in a week, for eight (8) or more consecutive weeks in a year.

Z16.2 The *Consultant* pays, and procures that Subcontractors pay, all staff (including apprentices) assigned to this Contract, as a minimum

- The Real Living Wage (as calculated from time to time by the Resolution Foundation and overseen by the Living Wage Commission or such replacement organisations as may fulfil that or a similar role) to all Dedicated Staff based outside of London or Providing the Service to an NHP scheme based outside of London and
- The London Living Wage (as calculated from time to time by the Resolution Foundation and overseen by the Living Wage Commission or such replacement organisations as may fulfil that or a similar role) to all Dedicated Staff based in London or Providing the Service to an NHP scheme based in London.

The *Consultant* provides evidence, information and/or records as reasonably required by the *Client* to demonstrate that the working conditions of staff are such as to secure the welfare of the workforce and the maintenance of stable and skilled teams. This obligation includes the salaries paid to each member of staff and evidence that this is sufficient to maintain such a workforce, training and other workforce matters.

**Not Used**

**Z17**

**Admittance to *Client's* Premises**

**Z18**

Z18.1 Where used in this clause Z18 the following term has the following meaning

- (1) *Client's* Premises are premises owned, occupied or leased by the *Client* and the site of any works to which the *service* relates.

Z18.1 The *Consultant* submits to the *Service Manager* details of its and its Subcontractors' people that are involved in Providing the Service. The details include a list of names and addresses, the capacities in which they are employed, and other information required by the *Service Manager*.

Z18.2 The *Service Manager* may instruct the *Consultant* to take measures to prevent unauthorised persons being admitted to the *Client's* Premises.

- Z18.3 The *Consultant's* and its Subcontractors' people are to carry a *Client's* pass and comply with all conduct requirements from the *Client* whilst they are on the parts of the *Client's* Premises identified in the Scope.
- Z18.4 The *Consultant* submits to the *Service Manager* for acceptance a list of the names of the people for whom passes are required. On acceptance, the *Service Manager* issues the passes to the *Consultant*. Each pass is returned to the *Service Manager* when the person no longer requires access to that part of the *Client's* Premises or after the *Service Manager* has given notice that the person is not to be admitted to the *Client's* Premises.
- Z18.5 The *Consultant* does not take photographs of the *Client's* Premises or of work carried out in connection with the *service* unless it has obtained the acceptance of the *Service Manager*.
- Z18.6 The *Consultant* takes the measures needed to prevent its and its Subcontractors' people taking, publishing or otherwise circulating such photographs.

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**Conflicts of Interest**                      **Z19**

- Z19.1 The *Consultant* takes appropriate steps to ensure that neither the *Consultant* nor any of its people (or any Subcontractor or any of its people) are placed in a position where (in the reasonable opinion of the *Client*) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the *Consultant*, the Subcontractor, or their people and the duties owed to the *Client* under this Contract.
- Z19.2 The *Consultant* promptly notifies and provides full particulars to the *Client* if such conflict referred to in clause Z19.1 arises or may reasonably be foreseen as arising. The *Consultant* works with the *Client* to do whatever is necessary (including the separation of staff working on, and data relating to, the *service* from the matter in question) to manage such conflict to the *Client's* satisfaction.

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**Security Requirements**                      **Z20**

- Z20.1 Where used in this clause Z20 the following term has the following meaning
- (1) Security Policy means the *Client's* security policy attached at Annex 1 to Appendix 8 (Security Provisions) as may be updated from time to time.
- Z20.2 The *Consultant* complies with (and procures the compliance of its people and its Subcontractors and their people with) the Security Policy and the Security Management Plan produced by the *Consultant* and the *Consultant* shall ensure that the Security Management Plan fully complies with the Security Policy and Appendix 8 (Security Provisions).

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**Tax Compliance**                              **Z21**

- Z21.1 Where used in this clause Z21 the following terms have the following meanings
- (1) DASVOIT is the Disclosure of Tax Avoidance Schemes for VAT and other indirect taxes contained in the Finance (No.2) Act 2017.
- (2) DOTAS is the Disclosure of Tax Avoidance Schemes regime which requires a promoter of tax schemes to tell His Majesty's Revenue and Customs of any specified notable 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 s.132A Social Security Administration Act 1992.
- (3) General Anti-Abuse Rule is
- the legislation in Part 5 of the Finance Act 2013 (as amended) and
  - any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements and to avoid national insurance contributions.
- (4) Halifax Abuse Principle is the principle explained in the Court of Justice of the

European Union Case C-255/02 (Halifax and others).

- (5) An Occasion of Tax Non-Compliance is
- where any tax return of the *Consultant* submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of
    - a Relevant Tax Authority successfully challenging the *Consultant* 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 or
    - the failure of an avoidance scheme which the *Consultant* was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DASVOIT, DOTAS or VADR or any equivalent or similar regime and/or
  - where any tax return of the *Consultant* submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Contract Date or to a civil penalty for fraud or evasion.
- (6) Relevant Tax Authority is His Majesty's Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the *Consultant* is established.
- (7) VADR is the VAT disclosure regime under Schedule 11A of the Value Added Tax Act 1994 (as amended by Schedule 1 of the Finance (No. 2) Act 2005).

Z21.1 The *Consultant* represents and warrants that at the Contract Date, it has notified the *Client* in writing of any Occasion of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasion of Tax Non-Compliance.

Z21.2 If, at any point prior to the *defects date*, an Occasion of Tax Non-Compliance occurs, the *Consultant* shall

- notify the *Client* in writing of such fact within five (5) days of its occurrence and
- promptly provide to the *Client*
  - details of the steps which the *Consultant* is taking to address the Occasions of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant and
  - such other information in relation to the Occasion of Tax Non-Compliance as the *Client* may reasonably require.

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<b>Not Used</b>	<b>Z23</b>
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<b>Records, audit access and Open Book data</b>	<b>Z24</b>
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Z24.1 Where used in this clause Z24 the following term has the following meaning

(1) Auditor is:

- the *Client's* internal and external auditors,
- the *Client's* statutory or regulatory auditors,
- the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office,
- HM Treasury or the Cabinet Office,
- any party formally appointed by the *Client* to carry out audit or similar review functions and/or
- successors or assigns of any of the above.

Z24.1 The *Consultant* keeps and maintains for the *period for retention* full and accurate records and accounts of the operation of this Contract including the *service* provided under it, any subcontracts and the amounts paid by the *Client*.

Z24.2 The *Consultant*

- keeps the records and accounts referred to in clause Z24.1 in accordance with the Applicable Law,

- affords any Auditor access to the records and accounts referred to in clause Z24.1 at the *Consultant's* premises and/or provides records and accounts (including copies of the *Consultant's* published accounts) or copies of the same, as may be required by any Auditor from time to time during the *Consultant* Providing the Service and until the *end of liability date* in order that the Auditor may carry out an inspection to assess compliance by the *Consultant* and/or its Subcontractors of any of the *Consultant's* obligations under this Contract including in order to
  - verify the accuracy of any amounts payable by the *Client* under this Contract (and proposed or actual variations to them in accordance with this Contract),
  - verify the costs of the *Consultant* (including the costs of all Subcontractors and any third party suppliers) in connection with Providing the Service,
  - identify or investigate an actual or suspected Corrupt Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the *Client* has no obligation to inform the *Consultant* of the purpose or objective of its investigations,
  - obtain such information as is necessary to fulfil the *Client's* obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General and/or
  - 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 *Client* has used its resources and
- subject to the *Consultant's* rights in respect of *Consultant's* Confidential Information, the *Consultant* provides the Auditor on demand with all reasonable co-operation and assistance in respect of
  - all reasonable information requested by the *Client* within the scope of the audit,
  - reasonable access to sites controlled by the *Consultant* and to any *Consultant's* equipment used to Provide the Service and
  - access to the *Consultant's* personnel.

Z24.3 The Parties bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause Z24, unless the audit reveals a default by the *Consultant* in which case the *Consultant* reimburses the *Client* for the *Client's* reasonable costs incurred in relation to the audit.

Z24.4 This clause does not constitute a requirement or agreement for the purposes of Section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the *Consultant* and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the *Consultant* is not a function exercisable under this Contract.

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<b>Cyber Essentials</b>	<b>Z25</b>	The <i>Client</i> and the <i>Consultant</i> comply with the provisions of Appendix 9 (Cyber Essentials Scheme).
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<b>Exit Management</b>	<b>Z26</b>	The <i>Client</i> and the <i>Consultant</i> comply with the provisions of Appendix 13 (Exit Management).
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<b>Conduct of Claims</b>	<b>Z27</b>	
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Z27.1 This clause applies to the conduct, by a Party from whom an indemnity is sought under this Contract ("Indemnifier"), of claims made by a third person against a Party having (or claiming to have) the benefit of the indemnity ("Beneficiary").

Z27.2 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 Contract (a "Claim"), the Beneficiary gives 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.

Z27.3 Subject to clauses Z27.6 and Z27.7, 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 (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) is 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 gives the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to clause Z28.7, the Beneficiary does not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.

- Z27.4 With respect to any Claim conducted by the Indemnifier pursuant to clause Z27.3
  - the Indemnifier keeps the Beneficiary fully informed and consults with it about material elements of the conduct of the Claim,
  - the Indemnifier does not bring the name of the Beneficiary into disrepute,
  - the Indemnifier does not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed and
  - the Indemnifier conducts the Claim with all due diligence.
  
- Z27.5 The Beneficiary is entitled to have conduct of the Claim and is free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Contract if
  - the Indemnifier is not entitled to take conduct of the Claim in accordance with clause Z27.3,
  - 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
  - the Indemnifier fails to comply in any material respect with the provisions of clause Z27.4.
  
- Z27.6 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 is 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 conducts the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier is only 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.
  
- Z27.7 The Beneficiary is 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 clause Z27.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.
  
- Z27.8 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 forthwith repays to the Indemnifier whichever is the lesser of
  - 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
  - the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.
  
- Z27.9 Each of the *Client* and the *Consultant* at all times takes 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 clause.

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<b>Consents</b>	<b>Z28</b> The <i>Consultant</i> identifies, obtains, complies with and discharges any Consents in accordance with the Scope.
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<b>Benchmarking</b>	<b>Z29</b> The <i>Client</i> and the <i>Consultant</i> comply with the provisions of Appendix 15 (Benchmarking).
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**Modern Slavery**                      **Z30**    The *Client* and the *Consultant* comply with the provisions of Appendix 16 (Modern Slavery).

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**Joint Ventures and Several Liability**                      **Z31**    If the *Consultant* is a Joint Venture

- each of the parties comprising the Joint Venture are jointly and severally liable to the *Client* for the performance of this Contract and all liabilities, acts and omissions of the *Consultant* under or in connection with this Contract are the liabilities, acts or omissions of each party comprising the Joint Venture under or in connection with this Contract,
- without limiting or prejudicing any other provisions of this Contract, if any of the parties comprising the Joint Venture ceases to be a member of the Joint Venture or suffers one of the events described in clause 91.1, the other parties or party carry out and complete the *services* in accordance with this Contract,
- the *Consultant* gives notice to the *Client* as to which of the parties comprising the Joint Venture has the authority to bind the *Consultant* for all the purposes of this Contract and
- the *Consultant* keeps the *Client* informed promptly of any changes in the Joint Venture whether in relation to any incorporated entity or its constituent entities or the entities forming an unincorporated Joint Venture, including changes in legal status, the occurrence of any of the events described in clause 91.1, amalgamation, demerger, merger, deterioration in financial condition, de-ratings, major legal claims and suits, and any other matter or circumstance that could reasonably be deemed to be of concern to the *Client*.

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**Social value**    **Z32**

**Identified and defined terms**                      **Z32.1**    Where used in this clause Z32, the following terms have the following meanings

- (1) Committed Economic Value Targets are the target economic values to which the *Consultant* has committed in the Social Value Plan for each of the Committed Social Value Measures.
- (2) Committed Social Value Measure is a Social Value Measure against which the *Consultant* has committed to deliver in the Social Value Plan.
- (3) Contract Value Estimate is the estimated value of the Contract for the SVP Validity Period set out in the Social Value Plan.
- (4) Framework Guidance is the Framework Guidance in Appendix 17 as may be updated by the *Client* and notified to the *Consultant* from time to time.
- (5) Quantity Targets are the target quantities to which the *Consultant* has committed for the Committed Social Value Measures in the Social Value Plan.
- (6) Quarter is a period of three (3) months with the first Quarter commencing on the *starting date* and each subsequent Quarter commencing on the date that is every three (3) months thereafter.
- (7) Quarterly Delivery Targets are the Quantity Targets and Committed Economic Value Targets to which the *Consultant* has committed in the Social Value Plan for each Quarter.
- (8) Social Value Measures are the Social Value Measures in the Social Value Measurement Framework as updated from time to time in accordance with clause Z32.4(2).
- (9) Social Value Measurement Framework is the Social Value Measurement Framework in Appendix 17 as updated from time to time in accordance with clause Z32.4(2).
- (10) Social Value Percentage is calculated as follows:  

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
- (11) Social Value Plan is the social value plan in Appendix 17 or is the latest social value plan accepted by the *Service Manager* in accordance with clause Z32. The latest social value plan accepted by the *Service Manager* supersedes previous Social Value Plans.

(12) Social Value Statement means the *Client's* Social Value Statement in Appendix 18 as may be updated by the *Client* and notified to the *Consultant* from time to time.

(13) Social Value Tracker is the Social Value Tracker set out in Appendix 17.

(14) Strategic Social Value Initiatives are any Social Value Measures additional to those in the Social Value Measurement Framework in Appendix 17 developed collaboratively between the *Client*, contractors and consultants working on the NHP (including the *Consultant*), NHS Trusts, the supply chain, and various industry bodies and partners through the *Client's* various social value meetings and working groups (including those referenced in the Social Value Statement).

(15) SVP Validity Period has the meaning given in clause Z32.5.

(16) Total Committed Economic Value Target is the total of the Committed Economic Value Targets for all of the Committed Social Value Measures.

**Social value** Z32.2 In Providing the Service the *Consultant* delivers social value in accordance with the Social Value Plan and this clause Z32.

**Social Value and Legacy Manager** Z32.3 The *Consultant* nominates a suitably qualified and experienced member of staff to act as its Social Value and Legacy Manager responsible for managing the *Consultant's* delivery of social value in accordance with the Social Value Plan and the provisions of this clause Z32.

At the Contract Date, the Social Value and Legacy Manager is [REDACTED].

The *Consultant* may at any time replace the Social Value and Legacy Manager with another suitably qualified and experienced member of staff and notifies the *Client* within one (1) week of any such replacement.

**Collaboration and progressive improvement** Z32.4 The *Consultant*

- commits to and delivers ambitious social value targets in support of the *Client's* aims, objectives and governance requirements set out in the Social Value Statement,
- attends and collaborates with the *Client* and the other attendees at the *Client's* various social value meetings and working groups (including those referenced in the Social Value Statement) at reasonable frequencies as may be specified by the *Client* on reasonable notice,
- identifies and implements opportunities to progressively improve and expand its delivery of social value outcomes in delivering the Social Value Plan and
- collaborates with the *Client* to develop Strategic Social Value Initiatives.

The *Client* may update the Social Value Framework and/or the Social Value Measures at any time (including to (but not limited to) incorporate Strategic Social Value Initiatives) and notifies the *Consultant* of any such updates.

**Social Value Plan** Z32.5 Each Social Value Plan is valid for two (2) Contract Years ("**SVP Validity Period**"). Subject to any updates to the Social Value Plan implemented in accordance with clause Z32.7

- the first Social Value Plan is in Appendix 17 and
- subsequent Social Value Plans are those accepted by the *Service Manager* in accordance with clause Z32.6.

**Revising the Social Value Plan** Z32.6 Three (3) months before the end of the SVP Validity Period for each Social Value Plan the *Service Manager* notifies the *Consultant* of

- the estimated value of the Contract and
- any amendments to the Social Value Framework

for the following two (2) Contract Years.

Two (2) months before the end of the SVP Validity Period for each Social Value Plan, the *Consultant* submits a revised Social Value Plan for the following two (2) Contract Years to the *Service Manager* for acceptance. The revised Social Value Plan

- is prepared in accordance with the Framework Guidance and on the basis of the information notified by the *Service Manager* in accordance with clause Z32.6(1),



- includes a Social Value Percentage at least equal to the Social Value Percentage in the Social Value Plan in Appendix 17.
- includes Quarterly Delivery Targets,
- aligns with the Social Value Statement and
- incorporates lessons learned from the *Consultant's* delivery against previous Social Value Plans.

If the *Service Manager* does not notify the *Consultant* of the information specified in clause Z32.6(1) within the time allowed, the *Consultant* may notify the *Service Manager* of that failure. If the failure continues for a further two (2) weeks after the *Consultant's* notification, the *Consultant* prepares a revised Social Value Plan on the basis of the Contract Value Estimate and the Social Value Framework in the latest accepted Social Value Plan.

Within three (3) weeks of the *Service Manager* receiving the *Consultant's* revised Social Value Plan the *Service Manager* notifies the *Consultant* of its acceptance of the revised Social Value Plan or its reasons for withholding acceptance. Reasons for withholding acceptance include that

- the revised Social Value Plan does not comply with the requirements set out in clause Z32.6(2) and/or
- any other reason stated in this Contract.

If the *Service Manager* does not accept the *Consultant's* revised Social Value Plan, the *Consultant* submits a further revised Social Value Plan for acceptance which addresses the reason(s) for non-acceptance within two (2) weeks of the *Service Manager's* notification.

If the *Service Manager* does not notify acceptance or non-acceptance within the time allowed, the *Consultant* may notify the *Service Manager* of that failure. If the failure continues for a further two (2) weeks after the *Consultant's* notification, the latest accepted Social Value Plan will be the Social Value Plan for the following two (2) Contract Years.

**Updating the Social Value Plan**

Z32.7 Within four (4) weeks of the *starting date* the *Consultant* submits to the *Service Manager* Quarterly Delivery Targets for the Social Value Plan and the Social Value Plan is updated accordingly.

The *Consultant* may submit updates to the Social Value Plan to the *Service Manager* for acceptance at any time

- if the *Service Manager* notifies the *Consultant* of a material change to the Contract Value Estimate provided that any change the *Consultant* makes to the Quantity Targets is proportionate to the change in the Contract Value Estimate (for example, if the Contract Value Estimate is increased by 100%, each of the Quantity Targets should be increased by 100%),
- if, for reasons outside the reasonable control of the *Consultant*, the Social Value Plan (or any part thereof) is no longer deliverable by the *Consultant* provided that the *Consultant's* updates are limited to those necessary to ensure that the Social Value Plan is deliverable by the *Consultant*,
- in accordance with clause Z32.8(4), to reflect any necessary updates to its Quarterly Delivery Targets and/or
- to better align with
  - the Social Value Statement,
  - the Social Value Framework and/or the Social Value Measures and/or
  - the Strategic Social Value Initiatives,

in each case, provided that the *Consultant's* updates ensure that the Social Value Percentage is at least equal to the Social Value Percentage in the Social Value Plan in Appendix 17.

Acceptance of any updates to the Social Value Plan submitted by the *Consultant* in accordance with this clause Z32.7 is at the *Service Manager's* absolute discretion.

**Reporting**

Z32.8 In the last week of each Quarter the *Consultant* submits a report in the form of the Social Value Tracker to the *Service Manager* assessing its performance against the Social Value Plan ("**Social Value Report**").

Within two (2) weeks of the *Service Manager* receiving the Social Value Report the *Service Manager*

- approves the Social Value Report or
- notifies the *Consultant* that its evidence is incomplete or inconclusive or that the *Consultant's* performance has not been assessed in accordance with the Framework Guidance and the *Service Manager* amends the Social Value Report to reflect its assessment of the *Consultant's* performance against the Social Value Plan.

Following the *Service Manager's* approval or amendment (as applicable) of the Social Value Report the *Service Manager* notifies the *Consultant* of a rating for the Social Value Report based on the *Consultant's* performance against the Quarterly Delivery Targets as follows:

<b>Consultant's performance against the Quarterly Delivery Targets</b>	<b>Rating</b>
Less than 50% achieved	<b>Red</b>
50-90% (inclusive) achieved	<b>Amber, without confidence of recovery</b> (i.e., the Social Value Report lacks evidence that the <i>Consultant</i> is likely to meet its next Quarterly Delivery Target)
	<b>Amber, with confidence of recovery</b> (i.e., the Social Value Report includes evidence that the <i>Consultant</i> is likely to meet its next Quarterly Delivery Target)
More than 90% achieved	<b>Green</b>

Within two (2) weeks of the *Service Manager's* notification that the Social Value Report is rated "Red" or "Amber, without confidence of recovery" the *Consultant* submits a recovery plan to the *Service Manager* for acceptance setting out

- updates to its Quarterly Delivery Targets for the remainder of the SVP Validity Period which are necessary to ensure that it delivers the Total Committed Economic Value Target and
- its delivery plan for the remainder of the SVP Validity Period to ensure that it achieves its Quarterly Delivery Targets and Total Committed Economic Value Target.

Z32.9 Within one (1) month of the end of the SVP Validity Period for each Social Value Plan, the *Consultant* submits to the *Service Manager* a report (including detailed case studies and supporting data) evidencing the quantitative and qualitative social, economic, and environmental impact of its social value delivery during the relevant SVP Validity Period.

Z32.10 Within one (1) month of the end of the Service Period, the *Consultant* submits to the *Service Manager* a report (including detailed case studies and supporting data) evidencing the quantitative and qualitative social, economic, and environmental impact of its social value delivery throughout the Service Period.

Z32.11 The reports provided by the *Consultant* to the *Service Manager* in accordance with clauses Z32.8 to Z32.10

- are not Confidential Information and clause Z10.2 shall not apply and
- may be freely shared and disclosed by the *Client*.

# Schedule of Cost Components

An amount is included

- only if it does not form part of the *expenses*,
- only in one cost component and
- only if it is incurred in order to Provide the Service.

---

**People**

- 1 The following components of the cost of people.
- 11 For Leadership Team People, amounts calculated by multiplying each of the Leadership Team Rates by the total time appropriate to that rate properly spent on work in the Contract.
- 12 For Wider Team People, amounts calculated by multiplying each of the Wider Team Rates by the total time appropriate to that rate properly spent on work in the Contract.

**Supplementary Notes – Section 1 (People)**

Excepting people engaged through a Small Enterprise Subcontractor or an Umbrella Organisation, the Rates apply to all people whether directly employed by the *Consultant* or engaged through a Subcontractor.

Notwithstanding any other provision in this Contract, no Leadership Team Rate exceeds the Leadership Team Rate Cap (as adjusted in accordance with clause X1.2) unless approved by the *Service Manager* in writing.

For the avoidance of doubt, both the Leadership Team Rates and the Wider Team Rates are inclusive of all cost in relation to people including

- contributions, National Insurance, levies or taxes imposed by the Applicable Law,
- pensions and life assurance,
- death benefit,
- occupational accident benefits,
- medical, aid and health insurance,
- any vehicle / car allowance and
- personal IT equipment inclusive of laptops and mobile phones.

Each Working Day shall consist of 8 (eight) working hours. Rates are payable on a pro rata basis where less than 8 (eight) hours are worked in a Working Day. Where more than 8 hours are worked in a Working Day, the applicable Rate only is payable.

Any part-time people will be paid for at the rate of their equivalent full-time salary band in the Wider Team People Rates.

---

**Small Enterprise Subcontractors**

- 2 The following components of the cost of Small Enterprise Subcontractors.
- 21 Payments to Small Enterprise Subcontractors for work which is subcontracted without taking into account any amounts paid to or retained from the Subcontractor by the *Consultant*, which would result in the *Client* paying or retaining the amount twice.

---

**Umbrella Organisation**

- 3 The following components of the cost of Umbrella Organisations.
- 31 Payments to Umbrella Organisations for work which is subcontracted without taking into account any amounts paid to or retained from the Umbrella Organisation by the *Consultant*, which would result in the *Client* paying or retaining the amount twice. The *Consultant* submits to the *Service Manager* for acceptance proposed rates for each person engaged through an Umbrella Organisation prior to that person being onboarded in accordance with the Scope.  
  
Acceptance of any rate for people engaged through an Umbrella Organisation is at the *Service Manager's* absolute discretion.

---

**Insurance**

- 4

- 
- 41 The following are deducted from cost
- the cost of events for which the contract requires the *Consultant* to insure and
  - other costs paid to the *Consultant* by insurers.

- 42 The following components of the cost of insurance.

The cost of insurance premia, broker's fees, insurance premium tax, and credit fees in respect of Professional Indemnity Insurance that the *Consultant* is required to take out and maintain as a result of an instruction in accordance with clause 84.13 provided (and to the extent) that such policy (or cost component) is solely related to this Contract and was procured in accordance with the Contract.

**CSMO Task Order  
Software**

- 5 The following components of the cost of providing the CSMO Task Order.

- 51 Payments for specialist software purchased by the *Consultant* and used exclusively for the CSMO Task Order pursuant to this Contract.

# Annex A – Rates

## **Rates Guidance Notes**





**Annex A1: Fee Percentage Buildup**





**Annex A2: Wider Team Rates**



**Annex A3: Leadership Team Rates**



# Contract Data

## PART ONE – DATA PROVIDED BY THE CLIENT

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

### 1 General

The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Professional Service Contract June 2017 (with amendments January 2023).

Main Option

E

Option for resolving and avoiding disputes

W2

Secondary Options

X1, X2, X4, X10, X11, X12, X20, X29, Y(UK)2, Y(UK)3

The *service* is

the provision of delivery partner services in relation to the Programme as more particularly described in the Scope.

The *Client* is

Name

NHS England

Address for communications

Wellington House, 133-155 Waterloo Road, London SE1 8UG

Address for electronic communications

[REDACTED]@nhs.net

The *Service Manager* is

Name

[REDACTED]

Address for communications

Wellington House, 133-155 Waterloo Rd, London SE1 8UG

Address for electronic communications

[REDACTED]@nhs.net

The Scope is in

Schedule 2

The *language of the Contract* is

English

The *law of the Contract* is the law of

England and Wales

The *period for reply* is

2 weeks

except that

• The *period for reply* for

[REDACTED]

is

[REDACTED]

• The *period for reply* for

[REDACTED]

is

[REDACTED]

The *period for retention* is

7

year(s) following termination

The following matters will be included in the Early Warning Register

N/A

Early warning meetings are to be held at intervals no longer than

Weekly

## 2 The *Consultant's* main responsibilities

The *Consultant* prepares forecasts of the total *expenses* at intervals no longer than

Monthly



### 3 Time

The *starting date* is

1<sup>st</sup> April 2025

The *service period* is

from the *starting date*  
to 31 March 2031

The *Client* provides access to the following persons, places and things

	access	access date
(1)	N/A	
(2)		
(3)		

The *Consultant* submits revised programmes at intervals no longer than

Monthly

If no programme is identified in part two of the Contract Data

The period after the Contract Date within which the *Consultant* is to submit a first programme for acceptance is

6 weeks

### 4 Quality management

The period after the Contract Date within which the *Consultant* is to submit a quality policy statement and quality plan is

8 weeks

The period between the end of the Service Period and the *defects date* is

24 months

## 5 Payment

The *currency of the Contract* is the

GBP

The *assessment interval* is

Monthly

If the *Client* states any  
*expenses*

The *expenses* stated by the *Client* are set out in Appendix 19 (Expenses Policy).

If Option E is used

The *exchange rates* are those published in the Financial Times

on

the date on which the Defined Cost or salary (as applicable) is converted to the *currency of the contract* in accordance with clause 50.7 of this Contract.

## 6 Compensation events

If there are additional  
Compensation events

These are additional compensation events

N/A

## 8 Liabilities and insurance

If there are  
additional  
*Client's* liabilities

These are additional *Client's* liabilities

(1) N/A

(2)

(3)

The *Client* provides these insurances from the Insurance Table

If the *Client* is to provide any of the insurances stated in the Insurance Table

(1) Insurance against

N/A

Minimum amount of cover is

The deductibles are

If additional insurances are

The *Client* provides these additional insurances to be provided

(1) Insurance against

N/A

Minimum amount of cover is

The deductibles are

The *Consultant* provides these additional insurances

(1) Insurance against

N/A

Minimum amount of cover is

The deductibles are

The *Consultant's* total liability to the *Client* for all matters arising under or in connection with the Contract (including under any collateral warranties) other than the excluded matters is limited to

£ [REDACTED] in the aggregate.

### Resolving and avoiding disputes

The *tribunal* is

the English Courts

The *Senior Representatives* of the *Client* are

Name (1)

[REDACTED]

Address for communications

Wellington House, 133-155 Waterloo Road,  
London SE1 8UG

Address for electronic communications

[REDACTED]@nhs.net

Name (2)

[REDACTED]

Address for communications

Wellington House, 133-155 Waterloo Road,  
London SE1 8UG

Address for electronic communications

[REDACTED]@nhs.net

The *Adjudicator* is nominated by the *Adjudicator nominating body*

The *Adjudicator nominating body* is

The Technology and Construction Solicitors'  
Association (TeCSA)

## X1: Price adjustment for inflation

If Option X1 is used

The proportions used to calculate the Price Adjustment Factor are

0.		linked to the index for	
0.			
0.			
0.			
0.			
0.			
0.		non-adjustable	
1.0 0			

The *base date* for indices is

27<sup>th</sup> September 2024

The *index* is

ONS "SPPI Index Output Domestic-M7112 Engineering services and related technical consulting services 2015=100" (or failing publication of any such index, such other index as the Parties may agree most closely resembles such index).

## X2: Changes in the law

If Option X2 is used

The *law of the programme* is

England and Wales

## X10: Information modelling

If Option X10 is used

If no *information*

The period after the Contract Date within which the *Consultant* is

12 weeks

*execution plan* is  
identified in part two  
of the Contract Data

to submit a first Information Execution Plan for acceptance is

---

**X12: Multiparty collaboration (not used with Option X20)**

If Option X12 is used

The *Promoter* is

[To be confirmed by the Client if X12 is engaged in accordance clause with X12.2(1)]

The Schedule of Partners is in

[To be confirmed by the Client if X12 is engaged in accordance clause with X12.2(1)]

The *Promoter's objective* is

[To be confirmed by the Client if X12 is engaged in accordance clause with X12.2(1)]

The Partnering Information is in

[To be confirmed by the Client if X12 is engaged in accordance clause with X12.2(1)]

**X20: Key Performance Indicators (not used with Option X12)**

If Option X20 is used

The *incentive schedule* for Key Performance Indicators is in

Appendix 4

A report of performance against each Key Performance Indicator is provided at intervals of

1 month

**X29: Climate change**

If Option X29 is used

If no *climate change plan* is identified in part two of the Contract Data

The period after the Contract Date within which the *Consultant* is to submit a first *climate change plan* for acceptance is

6 weeks

**Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996**

If Option Y(UK)2 is used and the final date for payment is not fourteen days after the date on which payment becomes due

The period for payment is

N/A

days after the date on which payment becomes due

**Y(UK)3: The Contracts (Rights of Third Parties) Act 1999**

If Option Y(UK)3 is used

term

*beneficiary*



**Z: Additional conditions of contract**

If Option Z is used

The *additional conditions of contract* are

Z1 to Z32

**PART TWO – DATA PROVIDED BY THE CONSULTANT**

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

**1 General**

The *Consultant* is

Name

Health Delivery Partnership, an unincorporated joint venture formed of:

- Mace Consult Limited, and
- Turner & Townsend Project Management Limited

Address for communications

Key Contact:

[REDACTED]

Mace Group Ltd.

155 Moorgate

London

EC2M 6XB

Deputy and cc:

[REDACTED]

Turner & Townsend

One New Change

St Paul's

London

Address for electronic communications

Key Contact:

[REDACTED]@macegroup.com

[REDACTED]

-

Deputy and cc:

[REDACTED]@turntown.co.uk

[REDACTED]

[REDACTED]

The *fee percentage* is

[REDACTED]%

The *profit percentage* is

[REDACTED]%

The *key persons* are

Name (1)

[REDACTED]

Leadership Team Role

[REDACTED]

Job

[REDACTED]

Responsibilities

[REDACTED]

Qualifications

[REDACTED]

Experience

[REDACTED]

Name (2)

[REDACTED]

Leadership Team Role

[REDACTED]

Job

[REDACTED]

Responsibilities

[REDACTED]

Qualifications

Experience

Name (3)

Leadership Team Role

Job

Responsibilities

Qualifications

Experience

Name (4)

Leadership Team Role

Job

Responsibilities

Qualifications

Experience

Name (5)

[REDACTED]

Leadership Team Role

[REDACTED]

Job

Responsibilities

Qualifications

Experience

Name (6)

[REDACTED]

Leadership Team Role

[REDACTED]

Job

Responsibilities

Qualifications

Experience

Name (7)

[REDACTED]

Leadership Team Role

[REDACTED]

Job

Responsibilities

Qualifications

Experience

A CV for each *key person* is set out in Annex B of this Contract Data Part Two.

The *key subcontractors* are

Deloitte LLP (OC303675)
Unipart Logistics Limited (4330119)
Amentum (UK) Ltd (03909808)
Mott MacDonald Limited (1243967)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The following matters will be included in the Early Warning Register

## 2 The *Consultant's* main responsibilities

If the *Consultant* is to provide Scope The Scope provided by the *Consultant* is in

Annex A to this Contract Data Part Two

## 3 Time

If a programme is to be identified in the Contract Data

The programme identified in the Contract Data is

## 5 Payment

If the *Consultant* states

The *expenses* stated by the *Consultant* are any *expenses*  
item amount

N/A

N/A

## Resolving and avoiding disputes

The *Senior Representatives* of the *Consultant* are

Name (1)

Address for communications

Address for electronic communications

Name (2)

Address for communications

Address for electronic communications

## X10: Information modelling

If Option X10 is used

If an *information execution plan* is to be identified in the Contract Data

The *information execution plan* identified in the Contract Data is

## X29: Climate change

If Option X29 is used

If a *climate change plan* is to be identified in the Contract Data

The *climate change plan* identified in the Contract Data is



**ANNEX A – SCOPE PROVIDED BY THE CONSULTANT (TENDER PROMISES)**

































































































**ANNEX B – KEY PERSON CVs**

















































Programme Delivery Partner Contract

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**APPENDIX 1: FORM OF GUARANTEE**

Programme Delivery Partner Contract

**Dated**

**20[ ]**

**(1) [GUARANTOR]**

**(2) [NHS ENGLAND]**

---

**GUARANTEE**  
**RELATING TO THE PROGRAMME DELIVERY PARTNER CONTRACT**

---

Programme Delivery Partner Contract

**THE PARTICULARS**

**Date of this Deed:** [DATE].

**The Guarantor:** [NAME] [(registered number [number])] [whose registered office is at] [of] [Address], including successors in title.

**The Beneficiary:** **NHS ENGLAND** of Quarry House, Leeds, LS2 7UE, including successors in title and permitted assigns.

**The [Subsidiary]<sup>1</sup>/[Consultant]:** [NAME] [(registered number [number])] [whose registered office is at] [of] [Address], including successors in title.

**[The Consultant JV:** An unincorporated joint venture comprising:  
the Subsidiary,  
[NAME] [(registered number [number])] [whose registered office is at] [of] [Address], including successors in title,  
***[insert company names and details of each of the other members of the joint venture that comprises the Consultant under the Contract]***<sup>1</sup>.

**The Contract:** the contract dated [DATE] between the Beneficiary and the Consultant [JV]<sup>1</sup> in respect of the NHP, which expression shall include any variations to the terms and conditions of contract and any new or replacement contract created by the novation of the Contract.

**The Services:** the services provided and to be provided by the Consultant [JV]<sup>1</sup> in accordance with the provisions of the Contract as more particularly set out in the Contract.

**The NHP:** the New Hospital Programme for the delivery of 40 new hospitals and establishment of the capability and capacity to deliver a longer-term pipeline of hospitals beyond 2030/31.

---

<sup>1</sup> Applies if the Consultant is a Joint Venture.

Programme Delivery Partner Contract

**THIS DEED** is made on the date set out in the Particulars.

**BETWEEN:**

- (1) the Guarantor; and
- (2) the Beneficiary,

(together the "Parties").

**BACKGROUND**

- (A) The Beneficiary has entered into the Contract with the Consultant [JV]<sup>1</sup>. Pursuant to the Contract the [Subsidiary, as part of the Consultant JV,]<sup>1</sup>/[Consultant] has agreed with the Beneficiary to execute the Services upon and subject to the terms and conditions set out within the Contract.
- (B) Pursuant to clause X4 of the Contract the Guarantor has, at the request of the Beneficiary, agreed to guarantee the due performance by the [Subsidiary]<sup>1</sup>/[Consultant] of its obligations under the Contract upon the terms and conditions of this Deed.
- (C) [Each of the parties comprising the Consultant JV is jointly and severally liable to the Beneficiary for the performance of the Contract and all liabilities, acts and omissions of the Consultant JV and of each other party comprising the Consultant JV under or in connection with the Contract.]<sup>1</sup>

**IT IS NOW AGREED**

**1 DEFINITIONS**

- 1.1 Terms defined in the Contract have the same meanings in this Deed unless otherwise defined in this Deed.

**2 GUARANTEE**

- 2.1 In consideration of the Beneficiary entering into the Contract and the payment of one pound (£1.00) by the Beneficiary to the Guarantor (receipt of which is hereby acknowledged by the Guarantor), the Guarantor irrevocably and unconditionally guarantees as a continuing obligation to the Beneficiary the full, proper and punctual performance and observance by the [Subsidiary]/[Consultant] of all its obligations and liabilities (actual or contingent) under the Contract, including the proper and punctual payment by the [Subsidiary]/[Consultant] of any amounts required to be paid under the Contract or as damages for any breach of any of the provisions of the Contract.
- 2.2 If there shall occur in any respect any failure fully and properly to perform and execute the Contract, or any breach of any obligations thereunder (including without limitation the occurrence of any of the events of insolvency referred to in clause [91.1] of the Contract), for which the [Subsidiary]Consultant] is liable under the Contract, then the Guarantor shall (without prejudice to clause 2.1 hereof) within 5 (five) days of receipt of the Beneficiary's written demand make good or procure the making good of such failure or breach and shall pay to the Beneficiary all losses, damages, costs, charges and expenses (including without limitation interest and enforcement costs) which are or may be incurred by the Beneficiary by reason of such failure or breach.
- 2.3 The Guarantor confirms that it has full power and capacity to give the guarantee set out in clauses 2.1 and 2.2 and to enter into this Deed.

## Programme Delivery Partner Contract

- 2.4 The Guarantor's obligations under clauses 2.1 and 2.2 are additional to and not in substitution for any security, right of action, bond or other guarantee or indemnity at any time existing in favour of the Beneficiary, whether from the Guarantor or otherwise.
- 2.5 The Beneficiary shall not be obliged, before enforcing any of its rights or remedies under this Deed, to enforce any other security, bond or other guarantee or indemnity from time to time existing in favour of the Beneficiary in respect of the obligations and liabilities of the [Subsidiary]/[Consultant] under the Contract.

### **3 NO GREATER LIABILITY**

- 3.1 Subject to clause 4 hereof and save in respect of any costs incurred by the Beneficiary in enforcing this Deed:
- 3.1.1 the costs of damages, costs, expenses and other sums recoverable under this Deed shall not exceed the damages, costs, expenses and any other sums for which the Subsidiary is liable to the Beneficiary under the Contract and the Guarantor shall have no greater liability or obligations to the Beneficiary by virtue of this Deed than it would have had if the Guarantor had been a party to the Contract in place of the [Subsidiary]/[Consultant]; and
- 3.1.2 the Guarantor shall be able to raise the same defences, set-offs and counterclaims in response to the enforcement of this Deed as the [Subsidiary]/[Consultant] is entitled to raise under the Contract (including under clause [87] of the Contract).

### **4 NO DISCHARGE OF LIABILITY**

- 4.1 The Guarantor shall not be discharged or released by any alteration of any of the terms of the Contract or in the extent or nature or method of performance of the Services, and no allowance of time, waiver, forbearance, forgiveness, compromise or other dealing under or with the Contract or any right or remedy arising thereunder, and no invalidity, illegality, unenforceability or irregularity of the Contract or of any provision thereof, and no legal limitation, disability or incapacity of the [Subsidiary]/[Consultant], and no other act or omission which (but for this provision) might have operated to release, exonerate or discharge the Guarantor or otherwise reduce, extinguish or adversely affect the Guarantor's liability under this Deed (including without limitation any novation, assignment, termination of the Contract, whether automatic or otherwise and whether by reason of the [Subsidiary]/[Consultant]'s insolvency or otherwise) shall in any way release, exonerate, discharge, reduce, extinguish or otherwise adversely affect the liability of the Guarantor under this Deed, and the Guarantor hereby waives notice to it of any such event.
- 4.2 For all purposes of the liability of the Guarantor to the Beneficiary under this Deed, all sums from time to time owing to the Beneficiary by the [Subsidiary]/[Consultant] (or which would have become so owing were it not for the liquidation or winding up of the [Subsidiary]/[Consultant]) shall, notwithstanding the liquidation or winding up of the Subsidiary, be deemed to continue to be owing to the Beneficiary by the [Subsidiary]/[Consultant] until actually paid.
- 4.3 No assurance, security or payment which may be avoided under any enactment relating to bankruptcy or liquidation, and no release, settlement or discharge which may have been given or made on the face of any such assurance, security or payment, shall prejudice or affect the right of the Beneficiary to recover from the Guarantor to the full extent of this Deed.

### **5 CONTINUING GUARANTEE**

- 5.1 Each of the Guarantor's obligations and liabilities under this Deed is and will remain in full force and effect by way of continuing security until the complete performance, observance and



## Programme Delivery Partner Contract

compliance by the [Subsidiary]/[Consultant] of and with all the terms and conditions specified in the Contract.

### 6 MODIFICATION, AMENDMENT, OR SUPPLEMENT

- 6.1 The Contract may be modified, amended, or supplemented in any manner whatsoever without the consent of the Guarantor, and no such modification, amendment or supplement shall release or impair the liability of the Guarantor under this Deed, which shall extend to the duties, obligations and liabilities of the [Subsidiary]/[Consultant] under the Contract as so modified, amended or supplemented.

### 7 GUARANTOR'S WAIVER

- 7.1 The Guarantor waives any right it may have of first requiring the Beneficiary to proceed against or enforce any claims against any of the parties to the Contract or any other person.

### 8 ASSIGNMENT AND NOVATION

- 8.1 The Beneficiary may assign, in whole or in part, the benefit of and its benefits and rights under this Deed (including by way of security) to any person to whom the Beneficiary lawfully assigns, novates or charges the Contract without the consent of the Guarantor being required. The Beneficiary shall give the Guarantor written notice following any assignment.
- 8.2 The Guarantor shall not contend that any assignee (in this clause 8.2 the "**New Beneficiary**") is precluded from recovering any loss resulting from any breach of this Deed by reason:
- 8.2.1 of the assignment; or
- 8.2.2 the Beneficiary (in this clause 8.2 excluding the New Beneficiary) having suffered no loss or a different loss to the New Beneficiary.
- 8.3 The Guarantor acknowledges that the Beneficiary is entitled to novate the Contract to a new employer (in this clause 8.3 the "**New Employer**"). Within fourteen (14) days of the Beneficiary's request the Guarantor shall execute and deliver to the Beneficiary a deed of novation in the form annexed to the Contract with the Beneficiary and the relevant New Employer identified in the Beneficiary's request.

### 9 GOVERNING LAW AND JURISDICTION

- 9.1 Any and all disputes and claims between the Beneficiary and the Guarantor as to the construction, interpretation, validity and application of this Deed, and any and all matters or things of whatsoever nature arising out of or in connection therewith (including without limitation in relation to any non-contractual obligations), shall be governed by English law and the non-exclusive jurisdiction of the English Courts.

### 10 ADDRESS FOR SERVICE

- 10.1 [The Guarantor hereby appoints [●] of [●] as its agent to receive on its behalf service of any proceedings arising out of or in connection with this Deed. Service upon such agent shall be deemed valid service upon the Guarantor whether or not the process is forwarded to or received by the Guarantor. The Guarantor shall inform the Beneficiary, in writing, of any change in the address of such agent within ten (10) business days of such change. If for any reason such agent ceases to be able to act as agent or no longer has an address in England, the Guarantor will forthwith appoint a substitute acceptable to the Beneficiary and deliver to the Beneficiary the new agent's name and address. The Guarantor may from time to time replace such agent with another

## Programme Delivery Partner Contract

process agent with an address in England provided that no less than five (5) business days' prior written notice is delivered to the Beneficiary. The Guarantor shall deliver to the Beneficiary within ten (10) business days a copy of a written acceptance of appointment by the new process agent. Nothing in this Deed shall affect the right to serve process in any other manner permitted by law.]<sup>2</sup>

10.2 The address for service of notices (including demands) shall be as set out below or such other address as the Party on whom the notice is to be served has notified in writing to the Party serving the notice.

10.2.1 **Guarantor**

Address: [ ]

Marked for the attention of [ ]

10.2.2 **Beneficiary**

Address: [ ]

Marked for the attention of [ ]

10.3 A Party may change its address for service to another address which is in the same country as the address stated above for that Party (but not to an address in any other country) by giving at least fourteen (14) days' prior written notice to the other Party.

## 11 SEVERABILITY

11.1 Each provision of this Deed is severable and distinct from the others. If a provision of this Deed is or becomes to any extent illegal, invalid or unenforceable in any jurisdiction, it shall not affect the legality, validity or enforceability of any other term of this Deed.

## 12 THIRD PARTY RIGHTS

12.1 The Parties do not intend that any term of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the Parties.

**THIS DOCUMENT** is executed as a deed and delivered on the date stated at the beginning of this Deed.

[ALL PARTIES TO EXECUTE]

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<sup>2</sup> Clause 10.1 only required for non-UK Guarantors.

Programme Delivery Partner Contract

**APPENDIX 2: FORMS OF NOVATION AGREEMENT AND ASSOCIATED COLLATERAL WARRANTY**

Part 1: Client Novation Agreement

Part 2: Novated Consultant Collateral Warranty

Part 3: Consultant Novation Agreement

Programme Delivery Partner Contract

**Dated**

**20[ ]**

- (1) [CONSULTANT]**
- (2) [EACH GUARANTOR]**
- (3) [NHS ENGLAND]**
- (4) [NEW CLIENT]**

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**NOVATION AGREEMENT  
RELATING TO THE  
PROGRAMME DELIVERY PARTNER CONTRACT**

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## Programme Delivery Partner Contract

**THIS AGREEMENT** is made the [ ] day of [ ] 20[ ]

**BETWEEN:**

- (1) **NHS ENGLAND** of Quarry House, Leeds LS2 7UE (the “**Client**”, which expression shall include successors in title and permitted assigns); and
- (2) [ ] (Company Number [ ]) whose registered office is at [ ] (the “**New Client**” which expression shall include successors in title and permitted assigns); and
- (3) [ ] (Company Number [ ]) whose registered office is at [ ] (including successors in title) [*insert company name and details of each party comprising the Consultant under the Contract*]<sup>3</sup> ([jointly and severally]<sup>1</sup> the “**Consultant**”); and
- (4) [ ] (Company Number [ ]) whose registered office is at [ ] [*insert company name and details of the Guarantor of each party comprising the Consultant under the Contract*]<sup>1</sup> ([each a]<sup>1</sup> [the] “**Guarantor**” which expression shall include successors in title).

**WHEREAS:**

- (A) The Client has appointed the Consultant [ ], which is an unincorporated joint venture,<sup>1</sup> to provide [ ] (the “**Services**”) by a contract dated [DATE] (the “**Contract**”, which expression shall include any variations to the terms and conditions of contract and any new contract created by the novation of the Contract) in relation to the NHP as defined in the Contract.
- (B) [Each of the parties comprising the Consultant is jointly and severally liable to the Client for the performance of the Contract and all liabilities, acts and omissions of the Consultant and of each other party comprising the Consultant under or in connection with the Contract.]<sup>1</sup>
- (C) [Each]<sup>1</sup>/[The] Guarantor has by a guarantee dated [DATE] (the “**Guarantee**”, which expression shall include any variations to the terms and conditions of the guarantee and any new guarantee created by the novation of the guarantee) guaranteed the obligations under the Contract of its subsidiary that [with others]<sup>1</sup> comprises the Consultant.
- (D) [The Client has entered into an agreement with the New Client in respect of the NHP.]<sup>4</sup>
- (E) The Client, the Consultant, [each]<sup>1</sup>/[the] Guarantor and the New Client have agreed that from the date of this Agreement the New Client shall assume the obligations, liabilities and rights of the Client under the Contract and [each]<sup>1</sup>/[the] Guarantee, and that the Consultant and [each]<sup>1</sup>/[the] Guarantor shall perform their obligations and discharge their liabilities under the Contract and the Guarantor's Guarantee in favour of the New Client, and that the Client on the one part and the Consultant and [each]<sup>1</sup>/[the] Guarantor on the other part shall each release the other from any and all obligations and liabilities owed by the other to them under the Contract and the Guarantor's Guarantee.

**NOW** in consideration of the payment of one pound (£1.00) by the New Client to the Consultant and [each]<sup>1</sup>/[the] Guarantor, receipt of which is hereby acknowledged by the Consultant and [each]<sup>1</sup>/[the] Guarantor **IT IS HEREBY AGREED** as follows:

<sup>3</sup> Applies if the Consultant comprises a Joint Venture.

<sup>4</sup> Recital to be amended to reflect the new client's interest.

## Programme Delivery Partner Contract

**1 NOVATION**

- 1.1 The Client releases the Consultant from any and all obligations and liabilities owed to the Client under the Contract (including obligations and liabilities which were incurred, or relate to events which occurred, before the date of this Agreement).
- 1.2 The Consultant releases the Client from any and all obligations and liabilities owed to the Consultant under the Contract (including obligations and liabilities which were incurred, or relate to events which occurred, before the date of this Agreement).
- 1.3 The Consultant undertakes to perform and to continue to perform the Contract and to be bound by its terms in every way as if the New Client were, and had been from the date of the Contract, a party to the Contract in lieu of the Client. For clarity, the rights to enforce the terms of the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 which are provided by the Contract will apply as if the New Client were, and had been from the date of the Contract, a party to the Contract in lieu of the Client.
- 1.4 Without prejudice to Clause 1.2, the Consultant warrants to the New Client that it shall be liable for any loss or damage suffered or incurred by the New Client arising out of any negligent act, default or breach by the Consultant in the performance of its obligations under the Contract prior to the date of this Agreement, provided that the Consultant shall be entitled in any action or proceedings brought by the New Client under this Clause 1.4 to rely on any limitation in the Contract (including under [clause 82] of the Contract) and to raise equivalent rights in defence of liability and counterclaims as it would have against the New Client if, in lieu of this Agreement, the New Client had been a party to the Contract as joint employer with the Client on a joint and several basis. The Consultant shall not contend that the New Client is precluded from recovering any loss or damage resulting from a breach of the Contract by reason that such loss or damage would not have been suffered or incurred by the Client (or suffered or incurred to the same extent by the Client).
- 1.5 The New Client undertakes to perform the Contract and to be bound by its terms in every way as if the New Client were, and had been from the date of the Contract, a party to the Contract in lieu of the Client.
- 1.6 Unless otherwise agreed in writing between the Consultant and the Client, the Consultant acknowledges that all sums due and payable by the Client to the Consultant under the Contract up to and including the date of this Agreement have been paid to the Consultant.
- 1.7 The Client releases [each]<sup>1</sup>/[the] Guarantor from any and all obligations and liabilities owed to the Client under its Guarantee (including obligations and liabilities which were incurred, or relate to events which occurred, before the date of this Agreement).
- 1.8 [Each]<sup>1</sup>/[The] Guarantor undertakes to discharge and to continue to discharge its Guarantee and to be bound by its terms of its Guarantee in every way as if the New Client were, and had been from the date of the Guarantee, a party to the Guarantee in lieu of the Client.
- 1.9 [Each]<sup>1</sup>/[The] Guarantor agrees that the obligations and liabilities it is guaranteeing under its Guarantee shall be construed having regard to clause 1.4.
- 1.10 The Consultant, the New Client and [each]<sup>1</sup>/[the] Guarantor shall execute and deliver a deed of collateral warranty in favour of the Client substantially in the form of the draft deed appended to this Agreement.

**2 PROPER LAW AND JURISDICTION**

Programme Delivery Partner Contract

2.1 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by the law of England and the exclusive jurisdiction of the English Courts.

**3 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

3.1 Unless otherwise expressly stated, nothing in this Agreement is intended to confer on any person any right to enforce any provisions of this Agreement which such person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

**THIS AGREEMENT** is executed as a deed and delivered on the date stated at the beginning of this Deed

[ALL PARTIES TO EXECUTE]

Programme Delivery Partner Contract

**Dated**

**20[ ]**

**(1) [[EACH OF THE PARTIES COMPRISING]¹ THE CONSULTANT]**

**(2) [NHS ENGLAND]**

**(3) [[EACH]¹/[THE] GUARANTOR]**

**(4) [NEW CLIENT]**

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**NOVATED CONSULTANT COLLATERAL WARRANTY  
RELATING TO THE PROGRAMME DELIVERY PARTNER CONTRACT**

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## Programme Delivery Partner Contract

**THE PARTICULARS**

<b>The Consultant:</b>	[An unincorporated joint venture comprising:] <sup>5</sup> [NAME] [(registered number [number])] [whose registered office is at] [of] [Address], including successors in title. <b><i>[insert company names and details of each party that comprises the Consultant under the Contract]</i></b> <sup>1</sup> .
<b>Each Guarantor:</b>	[NAME] [(registered number [number])] [whose registered office is at] [of] [Address], including successors in title. <b><i>[insert company names and details of the Guarantor of each party that comprises the Consultant under the Contract]</i></b> <sup>1</sup> .
<b>The Beneficiary:</b>	<b>NHS ENGLAND</b> of Quarry House, Leeds LS2 7UE, including successors in title and permitted assigns.
<b>The New Client:</b>	[NAME] [(registered number [number])][whose registered office is at] [of] [Address], including successors in title and permitted assigns.
<b>The Contract:</b>	the contract dated [DATE] made between the Consultant and the Beneficiary, which expression shall include any variation to the terms and conditions of contract and any new or replacement contract created by the novation of the Contract.
<b>The Novation Agreement</b>	the agreement dated [DATE] made between the Consultant, [each] <sup>1</sup> /[the] Guarantor, the Beneficiary and the New Client.
<b>The Services</b>	the services provided and to be provided by the Consultant in accordance with the provisions of the Contract as more particularly set out in the Contract.
<b>The NHP</b>	the New Hospital Programme for the delivery of 40 new hospitals and establishment of the capability and capacity to deliver a longer-term pipeline of hospitals beyond 2030/31.
<b>Professional Indemnity Insurance</b>	professional indemnity insurance in accordance with the Contract.

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<sup>5</sup> Applies if the Consultant comprises a Joint Venture.

Programme Delivery Partner Contract

**THIS DEED** is made on the date set out in the Particulars

**BETWEEN:**

- (1) the Consultant;
- (2) [each]<sup>1</sup>/[the] Guarantor;
- (3) the Beneficiary; and
- (4) the New Client,

(each a "**Party**" and together the "**Parties**").

**BACKGROUND:**

- (A) The Beneficiary entered into the Contract with the Consultant for the purpose of the Consultant providing the Services in relation to the NHP and the Contract has been novated to the New Client under the Novation Agreement.
- (B) [Each of the parties comprising the Consultant is jointly and severally liable to the New Client for the performance of the Contract and all liabilities, acts and omissions of the Consultant and of each other party comprising the Consultant under or in connection with the Contract.]<sup>1</sup>
- (C) The Beneficiary has an interest in the NHP.
- (D) The Consultant and [each]<sup>1</sup>/[the] Guarantor are obliged under the Novation Agreement to give a warranty in this form in favour of the Beneficiary.

**OPERATIVE PROVISIONS**

**1 DEFINITIONS**

- 1.1 Words and expressions defined in the Particulars have the same meanings throughout this Deed. Any other words and expressions which are defined in the Contract have the same meanings in this Deed. References to the Particulars, background section and clauses are to the Particulars, background section and clauses of this Deed.

**2 CONSIDERATION**

- 2.1 This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Consultant and each Guarantor, receipt of which is hereby acknowledged by the Consultant and each Guarantor.

**3 CONSULTANT'S DUTIES UNDER THE CONTRACT**

- 3.1 The Consultant warrants to the Beneficiary that it has performed and shall continue to perform its obligations under the Contract in accordance with the Contract.
- 3.2 Without prejudice to clause 3.1, the Consultant warrants that that in Providing the Service, it has exercised and will continue to exercise the reasonable skill, care and diligence to be expected of an appropriately qualified professional consultant who is experienced in a programme similar in size, nature, scope, and complexity to the NHP and who is seeking to comply with its contractual obligations and all Applicable Law.

**4 INTELLECTUAL PROPERTY RIGHTS**

- 4.1 The Consultant grants to the Beneficiary a royalty-free, irrevocable, perpetual and nonexclusive licence to copy, reproduce, adapt, modify, use and communicate the Consultant's design and the Documents for any purpose relating to the NHP or the completed NHP, including its design, procurement, construction, commissioning, operation, maintenance, repair, refurbishment, renewal, replacement, decommissioning or demolition. Such licence includes the right to grant sub-licences and is freely assignable by the Beneficiary, including by way of security.

## Programme Delivery Partner Contract

- 4.2 The Consultant waives its rights (including moral rights) against the Beneficiary and the Beneficiary's assignees and sub-licensees to the extent that the exercise of such rights would prevent or impede the licence described above.
- 4.3 The Consultant indemnifies the Beneficiary against any claims, proceedings, compensations and costs the Beneficiary suffers (and the Beneficiary's assignees or sublicensees suffer) or for which the Beneficiary is liable in connection with any existing or future intellectual property right of any third party caused by or arising out of the carrying out of the Services or by the exercise of the licence granted to the Beneficiary by the Consultant or any sub-licence granted pursuant to the Beneficiary's licence (including any licence the Beneficiary gives to a Third Party) or by possession of the Consultant's design or the Documents.
- 4.4 The Consultant shall not be liable to the Beneficiary for any use of the Consultant's designs or the Documents for purposes other than that for which the same was prepared or provided.
- 4.5 The Consultant agrees on reasonable request at any time and following reasonable prior notice to give to the Beneficiary, or those authorised by the Beneficiary, access to the Documents and to provide copies (including electronic copies in a readable form) of the Documents at the Beneficiary's expense.
- 4.6 For the purposes of this clause 4, "Documents" shall mean, the documents comprising the Scope provided by the Consultant and the documents, calculations, computer programs, software, drawings, manuals, models, graphical and non-graphical information and other similar documents and information (including items created and stored on discs, tapes, other electronically readable media and the Common Data Environment) prepared or provided by or on behalf of the Consultant in relation to the Consultant's design or the Contract.

## 5 PROHIBITED MATERIALS

- 5.1 The Consultant warrants to the Beneficiary that in the performance of the Services it has not specified nor approved for use nor will it specify or approve for use any products or materials which at the time of specification or approval (as applicable) are not permitted under the Contract.

## 6 PROFESSIONAL INDEMNITY INSURANCE

- 6.1 The Consultant by this Deed covenants with the Beneficiary that it has taken out Professional Indemnity Insurance and shall maintain such insurance until twelve (12) years after Completion of the whole of the *service*, provided always that:
- 6.1.1 if such insurance ceases to be available to the Consultant, the Beneficiary and the Consultant are to meet, the Consultant shall outline the steps it intends to take to manage such risks and the Beneficiary and the Consultant are to use reasonable endeavours to agree a method of managing such risks; and
- 6.1.2 whenever the Beneficiary reasonably requests, the Consultant shall provide the Beneficiary with reasonable evidence that the policies referred to in this clause 6 are in full force and effect and that the relevant premiums have been paid.

## 7 NO APPROVAL

- 7.1 The Consultant's obligations and liabilities under this Deed are not in any way reduced or extinguished by reason of any inspection or approval of any documents or attendance at meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary's benefit or on its behalf or that the Beneficiary fails to make or procure.

## 8 ASSIGNMENT

- 8.1 Subject to clause 8.2, the Beneficiary may, without the consent of the Consultant, assign the benefit of and its benefits and rights under this Deed to any person on not more than two occasions only. The Consultant shall not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary under this Deed or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss or the same type of loss.

## Programme Delivery Partner Contract

8.2 The Beneficiary may, at any time, without the consent of the Consultant, assign the benefit of this Deed and the rights arising hereunder (whether or not accrued) to a parent, subsidiary or other associated company within the same group of companies as the Beneficiary or to a funder by way of security, and no such assignment (or related re-assignment) shall be included in, or affect, the restriction on assignment in clause 8.1.

### 9 OTHER RIGHTS AND REMEDIES

9.1 The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Consultant including any remedies in negligence.

### 10 LIMITATION

10.1 The Consultant shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Contract (including under [clause 82] of the Contract) and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Beneficiary if, in lieu of this Deed, the Beneficiary had been a party to the Contract as joint Client with the New Client on a joint and several basis.

### 11 THIRD PARTY RIGHTS

11.1 The Parties do not intend that any term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than a Party.

### 12 NOTICES

12.1 Any notice, approval, request or other communication that is to be given by a Party under this Deed is to be in writing and shall be sufficiently served if sent by hand or by post to the registered office or, if there is none, the last known address of the Party to be served. Any notice, approval, request or other communication sent by hand is deemed to be served on the date of delivery provided that if sent by hand after 4.45p.m. on any day it is deemed to be served on the next working day. Any notice, approval, request or other communication sent by post is deemed to be duly served at the expiration of forty-eight (48) hours after the time of posting if the end of that period falls before 4.45p.m. on a working day and otherwise on the next working day.

### 13 GOVERNING LAW AND JURISDICTION

13.1 This Deed and any non-contractual obligations arising out of or in connection with it are governed by the law of England and the exclusive jurisdiction of the English Courts.

### 14 STEP-IN RIGHTS

14.1 Subject to clauses 14.9 and 14.10 the Consultant shall not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Contract or its engagement under it or discontinue or suspend the performance of any duties or obligations under the Contract, without first giving to the Beneficiary not less than twenty-eight days' prior written notice specifying:

14.1.1 the Consultant's grounds for terminating or treating as terminated or repudiated the Contract or its engagement under it or discontinuing or suspending its performance of the Contract; and

14.1.2 the full particulars of the amount (if any) of monies outstanding under the Contract.

14.2 Within twenty-eight (28) days of receipt of the Consultant's notice under clause 14.1, the Beneficiary may give notice to the Consultant expressly confirming its intention to become the employer under the Contract to the exclusion of the New Client and, upon giving such notice, the Contract is to remain in full force and effect notwithstanding any of the grounds in the Consultant's notice under clause 14.1.1.

14.3 If the Beneficiary has given notice under clause 14.2:

14.3.1 the Beneficiary shall as soon as practicable remedy any outstanding breach by the New Client; and

14.3.2 the Consultant shall forthwith enter into an agreement for the novation of the Contract, such agreement to be in terms reasonably required by the Beneficiary (subject always to clause 14.4).

## Programme Delivery Partner Contract

- 14.4 It shall be a condition of the novation agreement that the Beneficiary shall be liable under the Contract (as novated) for all sums due to the Consultant after the date of service of the notice referred to in clause 14.2 but shall have no other liability in respect of the Contract except that the Beneficiary shall pay to the Consultant:
- 14.4.1 the amount of any sums as specified in the notice given under clause 14.1.2; and
- 14.4.2 sums accrued due to the Consultant and not paid in respect of the period from service of the notice referred to in clause 14.1 until the date of service of the notice referred to in clause 14.2,
- subject to set-offs and deductions, including those as would have applied to the New Client under the Contract.
- 14.5 The Consultant shall pending completion of the novation agreement accept and act in accordance with the instructions of the Beneficiary in relation to the Contract and the Beneficiary shall pay any and all sums accrued due for work carried out by the Consultant pursuant to those instructions (subject to set-offs and deductions, including as would have applied to the New Client under the Contract).
- 14.6 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Consultant the Beneficiary is not under any obligation to the Consultant nor does the Consultant have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given notice to the Consultant under clause 14.2.
- 14.7 The New Client acknowledges that the Consultant shall be entitled to rely on a notice given to the Consultant by the Beneficiary under clause 14.2 as conclusive evidence that the Beneficiary is entitled to serve such notice.
- 14.8 The Beneficiary may by notice to the Consultant appoint another person to exercise its rights under this clause 14 and/or 15 subject to the Beneficiary remaining liable to the Consultant as guarantor for its appointee in respect of its obligations under this Deed.
- 14.9 Where the Consultant is seeking to exercise a right to suspend the performance of any duties or obligations under the Contract as a result of non-payment or in accordance with Section 112 of the Housing Grants, Construction and Regeneration Act 1996 (as amended), the Consultant shall give to the Beneficiary notice of its intention so to do at the same time as it serves notice on the New Client.
- 14.10 Notwithstanding the other provisions of this clause 14 or clause 15, if the Contract has for any reason been terminated prior to receipt by the Consultant of a notice from the Beneficiary served under clause 14.2 or 15.1, the Consultant shall on receipt of any such notice from the Beneficiary enter into a new contract with the Beneficiary on the same terms as the Contract to continue the Services in all respects as if the Contract had been transferred to the Beneficiary so as to have the same effect as the provisions of this clause 14.

**15 BENEFICIARY'S RIGHT TO STEP-IN**

- 15.1 The Beneficiary may at any time serve notice upon the Consultant and the New Client notifying the Consultant and the New Client of its intention to become the employer under the Contract to the exclusion of the New Client in which event the provisions of clause 14.5 to 14.7 shall apply mutatis mutandis save that references to "clause 14.2" shall be read as references to "clause 15.1".
- 15.2 If the Beneficiary serves notice under clause 15.1 the Contactor shall forthwith:
- 15.2.1 provide details of the full particulars of the amount (if any) of monies outstanding under the Contract; and
- 15.2.2 enter into an agreement for the novation of the Contract, such agreement to be in terms reasonably required by the Beneficiary (subject always to clause 15.3).
- 15.3 It shall be a condition of the novation agreement that the Beneficiary shall be liable under the Contract (as novated) for the amount of any sums due to the Consultant as specified in the notice given under clause 15.2.1 and all sums accrued after the date of service of the Beneficiary's notice referred to in clause 15.1 but shall have no other liability in respect of the

## Programme Delivery Partner Contract

Contract. The Beneficiary shall be entitled to the same rights of set-off and deduction as would have applied to the New Client under the Contract.

## 16 GUARANTEE

16.1 [Each]<sup>1</sup>[The] Guarantor has agreed to guarantee to the Beneficiary as a continuing obligation to the Beneficiary the full, proper and punctual performance and observance by the Guarantor's subsidiary that [with others]<sup>1</sup> comprises the Consultant of its obligations under this Deed and liabilities (actual or contingent) under this Deed, including the proper and punctual payment by the subsidiary of any amounts required to be paid as damages for any breach of this Deed. Accordingly:

16.1.1 the Guarantor agrees that if there shall occur in any respect any failure fully and properly to perform and execute this Deed or any breach of obligations hereunder (including without limitation the occurrence of any of the events of insolvency referred to in clause 90.1 of the Contract) for which the subsidiary is liable under the Contract, then the Guarantor shall without prejudice to clause 16.1 forthwith upon the Beneficiary's written demand make good or procure the making good of such failure or breach and shall pay to the Beneficiary all losses, damages, costs, charges and expenses (including without limitation interest and enforcement costs) which are or may be incurred by the Beneficiary by reason of such failure or breach;

16.1.2 the Guarantor acknowledges and agrees that:

- (a) no variation or alteration to the terms of the Contract or this Deed or in the extent, nature or method of performance of the Services or the design thereof,
- (b) no allowance of time, waiver, forbearance, forgiveness, compromise or other dealing under or with the Contract or this Deed,
- (c) no invalidity, illegality, unenforceability or irregularity of the Contract or this Deed or of any provision therein,
- (d) no assurance, security or payment which may be avoided under any enactment relating to bankruptcy or liquidation, and no release, settlement or discharge which may have been given or made on the face of any such assurance, security or payment and
- (e) no other act or omission which (but for this provision) might have operated to release, exonerate or discharge the Guarantor or otherwise reduce, extinguish or adversely affect any liability of the Guarantor under the terms of this clause 16,

shall release, exonerate or discharge the Guarantor or reduce, extinguish or otherwise adversely affect any such liability, and the Guarantor hereby waives notice to it of any such event, and for all purposes of the liability of the Guarantor to the Beneficiary under this clause 16, all sums from time to time owing to the Beneficiary by the Consultant (or which would have become so owing were it not for the liquidation or winding up of the Consultant) shall, notwithstanding the liquidation or winding up of the Consultant, be deemed to continue to be owing to the Beneficiary by the Consultant until actually paid;

16.1.3 subject to clause 16.1.2 and save in respect of any costs incurred by the Beneficiary in enforcing this clause 16:

- (a) the costs of damages, costs, expenses and other sums recoverable under this clause 16 shall not exceed the damages, costs, expenses and any other sums for which the Consultant is liable to the Beneficiary under this Deed and the Guarantor shall have no greater liability or obligations to the Beneficiary by virtue of this clause 16 than it would have had if the Guarantor had been a party to both the Contract and this Deed in place of its subsidiary that [with others]<sup>1</sup> comprises the Consultant and
- (b) the Guarantor shall be able to raise the same defences in response to the enforcement of this clause 16 as the Consultant is entitled to raise under this Deed (including under clause 82 of the Contract); and

Programme Delivery Partner Contract

16.1.4 the Guarantor confirms that it has full power and capacity to give the guarantee set out in clause 16.1. The Guarantor's said obligations are additional to and not in substitution for any security, right of action, bond or other guarantee or indemnity at any time existing in favour of the Beneficiary, whether from the Guarantor or otherwise.

16.2 The Beneficiary shall not be obliged, before enforcing any of its rights or remedies under this Deed, to enforce any other security, bond or other guarantee or indemnity from time to time existing in favour of the Beneficiary in respect of the obligations and liabilities under the Contract of the Guarantor's subsidiary that [with others]<sup>1</sup> comprises the Consultant.

**THIS DOCUMENT** is executed as a deed and delivered on the date stated at the beginning of this Deed.

[ALL PARTIES TO EXECUTE]

Programme Delivery Partner Contract

**Dated**

**20[ ]**

- (1) [SUBCONTRACTOR]**
- (2) [GUARANTOR]<sup>6</sup>**
- (3) [CONSULTANT]**
- (4) [REPLACEMENT CONSULTANT]**

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**NOVATION AGREEMENT  
RELATING TO THE  
PROGRAMME DELIVERY PARTNER CONTRACT**

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<sup>6</sup> Amend as appropriate. If a parent company guarantee has not been procured by the Subcontractor pursuant to the terms of the Subcontract references to the 'Guarantor' and the 'Guarantee' should be deleted throughout.



## Programme Delivery Partner Contract

**THIS AGREEMENT** is made the [ ] day of [ ] 20[ ]

**BETWEEN:**

- (1) [ ] (Company Number [ ]) whose registered office is at [ ] ("**the Subcontractor**", which expression shall include successors in title and permitted assigns);
- (2) [ ] (Company Number [ ]) whose registered office is at [ ] (including successors in title) [*insert company name and details of each party comprising the Consultant under the Subcontract*]<sup>1</sup> ([jointly and severally] the "**Consultant**") [;and][.];
- (3) [ ] (Company Number [ ]) whose registered office is at [ ] (including successors in title) [*Insert company name and details of each party comprising the Replacement Consultant*]<sup>7</sup> ([jointly and severally]<sup>4</sup> the "**Replacement Consultant**") [;and][.];
- (4) [ ] (Company Number [ ]) whose registered office is at [ ] (including successors in title) (the "**Guarantor**" which expression shall include successors in title).]

**WHEREAS:**

- (A) The Consultant has appointed the Subcontractor to provide [INSERT DESCRIPTION OF THE SERVICES] (the "**Subcontract Services**") by a Subcontract dated [DATE] (the "**Subcontract**", which expression shall include any variations to the terms and conditions of contract and any new contract created by the novation of the contract) in relation to the New Hospital Programme for the delivery of 40 new hospitals and establishment of the capability and capacity to deliver a longer-term pipeline of hospitals beyond 2030/31 (the "**NHP**"). [The Guarantor has guaranteed the obligations of the Subcontractor under the Subcontract by a guarantee dated [DATE] (the "**Guarantee**", which expression shall include any variations to the terms and conditions of guarantee and any new guarantee created by the novation of the guarantee)].
- (B) [CLIENT NAME] (the "**Client**") has entered into a contract (the "**Main Contract**") for the purposes of the Consultant providing services in relation to the NHP.
- (C) The Client has entered into a contract (the "**Replacement Main Contract**") dated [INSERT] with the Replacement Consultant.
- (D) The Consultant, Subcontractor [,the Guarantor] and the Replacement Consultant have agreed that from the date of this Agreement the Replacement Consultant shall assume the obligations, liabilities and rights of the Consultant under the Subcontract [and the Guarantee], and that the Subcontractor [and the Guarantor] shall perform [its] [their] obligations and discharge [its] [their] liabilities under the Contract [and the Guarantee] in favour of the Replacement Consultant, and that the Consultant on the one part and the Subcontractor [and the Guarantor] on the other part shall each release the other from any and all obligations and liabilities owed by the other to them under the Subcontract [and the Guarantee].

**NOW** in consideration of the payment of one pound (£1.00) by the Replacement Consultant to the Subcontractor [and each Guarantor], receipt of which is hereby acknowledged by the Subcontractor [and each Guarantor] **IT IS HEREBY AGREED** as follows:

**1 NOVATION**

- 1.1 The Consultant releases the Subcontractor [and the Guarantor] from any and all obligations and liabilities owed to the Consultant under the Subcontract (including obligations and liabilities which were incurred, or relate to events which occurred, before the date of this Agreement).

<sup>7</sup> Applies if the Replacement Consultant is a Joint Venture.

## Programme Delivery Partner Contract

- 1.2 The Subcontractor releases the Consultant from any and all obligations and liabilities owed to the Subcontractor under the Subcontract (including obligations and liabilities which were incurred, or relate to events which occurred, before the date of this Agreement).
- 1.3 The Subcontractor [and the Guarantor] undertake[s] to perform and to continue to perform the Subcontract [and discharge the Guarantee] and to be bound by [its/their] terms in every way as if the Replacement Consultant were, and had been from the date of the Subcontract [and of the Guarantee], a party to the Subcontract in lieu of the Consultant. For clarity, the rights to enforce the terms of the Subcontract pursuant to the Contracts (Rights of Third Parties) Act 1999 which are provided by the Subcontract will apply as if the Replacement Consultant were, and had been from the date of the Subcontract, a party to the Subcontract in lieu of the Consultant.
- 1.4 Without prejudice to Clause 1.2, the Subcontractor warrants to the Replacement Consultant that it shall be liable for any loss or damage suffered or incurred by the Replacement Consultant arising out of any negligent act, default or breach by the Subcontractor in the performance of its obligations under the Subcontract prior to the date of this Agreement provided that the Subcontractor shall be entitled in any action or proceedings brought by the Replacement Consultant under this Clause 1.4 to rely on any limitation in the Subcontract and to raise equivalent rights in defence of liability and counterclaims as it would have against the Replacement Consultant if, in lieu of this Agreement, the Replacement Consultant had been a party to the Subcontract as joint employer with the Consultant on a joint and several basis. The Subcontractor shall not contend that the Replacement Subcontractor is precluded from recovering any loss or damage resulting from a breach of the Subcontract by reason that such loss or damage would not have been suffered or incurred by the Consultant (or suffered or incurred to the same extent by the Consultant).
- 1.5 The Replacement Consultant undertakes to perform the Subcontract and to be bound by its terms in every way as if the Replacement Consultant were, and had been from the date of the Subcontract, a party to the Subcontract in lieu of the Consultant.
- 1.6 The Subcontractor acknowledges that all sums due and payable by the Consultant to the Subcontractor under the Subcontract up to and including the date of this Agreement have been paid to the Subcontractor.
- 1.7 [The Consultant releases the Guarantor from any and all obligations and liabilities owed to
- 1.8 the Consultant under its Guarantee (including obligations and liabilities which were incurred, or relate to events which occurred, before the date of this Agreement).]
- 1.9 [Each Guarantor undertakes to discharge and to continue to discharge its Guarantee and to be bound by its terms of its Guarantee in every way as if the Replacement Consultant were, and had been from the date of the Guarantee, a party to the Guarantee in lieu of the Consultant.]
- 1.10 [Each Guarantor agrees that the obligations and liabilities it is guaranteeing under its Guarantee shall be construed having regard to clause 1.4.]
- 1.11 [The Consultant [and the Guarantor] undertake[s], contemporaneously with the execution of this Agreement, to execute a deed of assignment in favour of the Replacement Consultant assigning the benefit of any guarantee or bond provided to the Consultant as security for the performance by the Subcontractor of its obligations under the Subcontract.]<sup>8</sup>

## **2 PROPER LAW AND JURISDICTION**

- 2.1 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by the law of England and the non-exclusive jurisdiction of the English Courts.

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

- 3.1 Unless otherwise expressly stated, nothing in this Agreement is intended to confer on any person any right to enforce any provisions of this Agreement which such person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

<sup>8</sup> Amend as appropriate. If a guarantee or bond has not been procured by the Subcontractor pursuant to the terms of the Subcontract this clause should be deleted. If the relevant Guarantor is also a party to this agreement, include the reference to Guarantor.

Programme Delivery Partner Contract

**THIS AGREEMENT** is executed as a deed and delivered on the date stated at the beginning of this Deed.

[ALL PARTIES TO EXECUTE]

Programme Delivery Partner Contract

**APPENDIX 3: FORMS OF CONSULTANT AND SUBCONTRACTOR COLLATERAL WARRANTY**

Part 1: Consultant Collateral Warranty

Part 2: Subcontractor Collateral Warranty

Programme Delivery Partner Contract

**Dated**

**20[ ]**

**(1) [CONSULTANT]**

**(2) [BENEFICIARY]**

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**CONSULTANT COLLATERAL WARRANTY  
RELATING TO THE PROGRAMME DELIVERY PARTNER CONTRACT**

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## Programme Delivery Partner Contract

**THE PARTICULARS**

<b>The Consultant</b>	: [An unincorporated joint venture comprising:] <sup>9</sup> [NAME] [(registered number [number])] [whose registered office is at] [of] [Address], including successors in title, ("[insert name]") and <b><i>[insert company names and details of each party that comprises the Consultant under the Contract]</i></b> <sup>1</sup> .
<b>The Beneficiary</b>	: [NAME] [(registered number [number])] [whose registered office is at] [of] [Address], including successors in title and permitted assigns.
<b>The Client</b>	: <b>NHS ENGLAND</b> of Quarry House, Leeds LS2 7UE, including successors in title and permitted assigns.
<b>The Contract</b>	: the contract dated [DATE] made between the Consultant and the Client, which expression shall include any variation to the terms and conditions of contract and any new or replacement contract created by the novation of the contract.
<b>The service</b>	: the service provided and to be provided by the Consultant in accordance with the provisions of the Contract as more particularly set out in the Contract.
<b>The NHP</b>	: the New Hospital Programme for the delivery of 40 new hospitals and establishment of the capability and capacity to deliver a longer-term pipeline of hospitals beyond 2030/31.
<b>Professional Indemnity Insurance</b>	: professional indemnity insurance in accordance with the Contract.

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<sup>9</sup> Applies if the Consultant is a Joint Venture.

## Programme Delivery Partner Contract

**THIS DEED** is made on the [ ] day of [ ] 20[ ]

**BETWEEN:**

- (1) the Consultant; and
  - (2) the Beneficiary
- (each a "**Party**" and together the "**Parties**").

**BACKGROUND:**

- (A) The Client entered into the Contract with the Consultant for the purpose of the Consultant providing the service in relation to the NHP.
- (B) [Each of the parties comprising the Consultant is jointly and severally liable to the Client for the performance of the Contract and all liabilities, acts and omissions of the Consultant and of each other party comprising the Consultant under or in connection with the Contract.]<sup>10</sup>
- (C) [The Beneficiary has an interest in the NHP or part thereof as he is [RECITE BENEFICIARY'S INTEREST IN THE NHP]]<sup>11</sup>.
- (D) The Consultant is obliged under the Contract to give a warranty in this form in favour of the Beneficiary.

**OPERATIVE PROVISIONS****1 DEFINITIONS**

- 1.1 Words and expressions defined in the Particulars have the same meanings throughout this Deed. Any other words and expressions which are defined in the Contract have the same meanings in this Deed. References to the Particulars, background section and clauses are to the Particulars, background section and clauses of this Deed.

**2 CONSIDERATION**

- 2.1 This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Consultant, receipt of which is hereby acknowledged by the Consultant.

**3 CONSULTANT'S DUTIES UNDER THE CONTRACT**

- 3.1 The Consultant warrants to the Beneficiary that he has performed and shall continue to perform his obligations under the Contract in accordance with the Contract.
- 3.2 Without prejudice to clause 3.1, the Consultant warrants that that in Providing the Service, it has exercised and will continue to exercise the reasonable skill, care and diligence to be expected of an appropriately qualified professional consultant who is experienced in a programme similar in size, nature, scope, and complexity to the Programme and who is seeking to comply with its contractual obligations and all Applicable Law.

**4 INTELLECTUAL PROPERTY RIGHTS**

- 4.1 The Consultant grants to the Beneficiary a royalty-free, irrevocable, perpetual and nonexclusive licence to copy, reproduce, adapt, modify, use and communicate the Consultant's design and the Documents for any purpose relating to the Programme or the completed Programme, including its design, procurement, construction, commissioning, operation, maintenance, repair, refurbishment, renewal, replacement, decommissioning or demolition. Such licence includes the right to grant sub-licences and is freely assignable by the Beneficiary, including by way of security.

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<sup>10</sup> Applies if the Consultant is a Joint Venture.

<sup>11</sup> This is the recital for a collateral warranty given in favour of a Third Party who has an interest in the Programme.

## Programme Delivery Partner Contract

- 4.2 The Consultant waives his rights (including moral rights) against the Beneficiary and the Beneficiary's assignees and sub-licensees to the extent that the exercise of such rights would prevent or impede the licence described above.
- 4.3 The Consultant indemnifies the Beneficiary against any claims, proceedings, compensations and costs the Beneficiary suffers (and the Beneficiary's assignees or sub-licensees suffer) or for which the Beneficiary is liable in connection with any existing or future intellectual property right of any third party caused by or arising out of the carrying out of the services or by the exercise of the licence granted to the Beneficiary by the Consultant or any sub-licence granted pursuant to the Beneficiary's licence (including any licence the Beneficiary gives to a Third Party) or by possession of the Consultant's design or the Documents.
- 4.4 The Consultant shall not be liable to the Beneficiary for any use of the Consultant's designs or the Documents for purposes other than that for which the same was prepared or provided.
- 4.5 The Consultant agrees on reasonable request at any time and following reasonable prior notice to give to the Beneficiary, or those authorised by the Beneficiary, access to the Documents and to provide copies (including electronic copies in a readable form) of the Documents at the Beneficiary's expense.
- 4.6 For the purposes of this clause 4, "Documents" shall mean the documents comprising the Scope provided by the Consultant and the documents, calculations, computer programs, software, drawings, manuals, models, graphical and non-graphical information and other similar documents and information (including items created and stored on discs, tapes, other electronically readable media and the Common Data Environment) prepared or provided by or on behalf of the Consultant in relation to the Consultant's design or the Contract.

## 5 PROHIBITED MATERIALS

- 5.1 The Consultant warrants to the Beneficiary that in the performance of the services he has not specified nor approved for use nor will he specify or approve for use any products or materials which at the time of specification or approval (as applicable) are not permitted under the Contract.

## 6 PROFESSIONAL INDEMNITY INSURANCE

- 6.1 The Consultant by this Deed covenants with the Beneficiary that he has taken out Professional Indemnity Insurance and shall maintain such insurance until 12 years after Completion of the whole of the services, provided always that:
- 6.1.1 if such insurance ceases to be available to the Consultant, the Beneficiary and the Consultant are to meet, the Consultant shall outline the steps he intends to take to manage such risks and the Beneficiary and the Consultant are to use reasonable endeavours to agree a method of managing such risks; and
- 6.1.2 whenever the Beneficiary reasonably requests the Consultant shall provide the Beneficiary with reasonable evidence that the policies referred to in this clause 6 are in full force and effect and that the relevant premiums have been paid.

## 7 NO APPROVAL

- 7.1 The Consultant's obligations and liabilities under this Deed are not in any way reduced or extinguished by reason of any inspection or approval of any documents or attendance at meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary's benefit or on his behalf or that the Beneficiary fails to make or procure.

## 8 ASSIGNMENT

- 8.1 Subject to clause 8.2, the Beneficiary may, without the consent of the Consultant, assign the benefit of and his benefits and rights under this Deed to any person on not more than two



## Programme Delivery Partner Contract

occasions only. The Consultant shall not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary under this Deed or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss or the same type of loss.

- 8.2 The Beneficiary may, at any time, without the consent of the Consultant, assign the benefit of this Deed and the rights arising hereunder (whether or not accrued) to a parent, subsidiary or other associated company within the same group of companies as the Beneficiary or to a funder by way of security, and no such assignment (or related re-assignment) shall be included in, or affect, the restriction on assignment in clause 8.1.

## **9 OTHER RIGHTS AND REMEDIES**

- 9.1 The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies he may have against the Consultant including any remedies in negligence.

## **10 LIMITATION**

- 10.1 The Consultant shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Contract (including under clause 82 of the Contract) and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as he would have against the Beneficiary if, in lieu of this Deed, the Beneficiary had been a party to the Contract as joint employer with the Client on a joint and several basis.

## **11 THIRD PARTY RIGHTS**

- 11.1 The Parties do not intend that any term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than a Party.

## **12 NOTICES**

- 12.1 Any notice, approval, request or other communication that is to be given by a Party under this Deed is to be in writing and shall be sufficiently served if sent by hand or by post to the registered office or, if there is none, the last known address of the Party to be served. Any notice, approval, request or other communication sent by hand is deemed to be served on the date of delivery provided that if sent by hand after 4.45p.m. on any day it is deemed to be served on the next working day. Any notice, approval, request or other communication sent by post is deemed to be duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45p.m. on a working day and otherwise on the next working day.

## **13 GOVERNING LAW AND JURISDICTION**

- 13.1 This Deed and any non-contractual obligations arising out of or in connection with it are governed by the law of England and the exclusive jurisdiction of the English Courts.

**THIS DOCUMENT** is executed as a deed and delivered on the date stated at the beginning of this Deed.

[ALL PARTIES TO EXECUTE]

Programme Delivery Partner Contract

Dated

20[ ]

- (1) [SUBCONTRACTOR]
- (2) [SUBCONTRACTOR'S GUARANTOR]
- (3) [NHS ENGLAND]
- (4) [CONSULTANT]

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**SUBCONTRACTOR COLLATERAL WARRANTY  
RELATING TO THE PROGRAMME DELIVERY PARTNER CONTRACT**

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**THE PARTICULARS**

- The Subcontractor** : [NAME] [(registered number [number])] [whose registered office is at] [of] [Address], including successors in title
- [The Guarantor** : [NAME] [(registered number [number])] [whose registered office is at] [of] [Address], including successors in title]
- The Beneficiary** : [NAME] [(registered number [number])] [whose registered office is at] [of] [Address], including successors in title and permitted assigns
- The Consultant** : [An unincorporated joint venture comprising:]<sup>12</sup>  
[NAME] [(registered number [number])] [whose registered office is at] [of] [Address], including successors in title, (“[insert name]”) and  
***[insert company names and details of each party that comprises the Consultant under the Contract]***<sup>7</sup>
- The Client** : **NHS ENGLAND** of Quarry House, Leeds LS2 7UE, including successors in title and permitted assigns
- The Subcontract** : the contract dated [DATE] made between the Subcontractor [the Guarantor] and the Consultant, which expression shall include any variation to the terms and conditions of contract and any new or replacement contract created by the novation of the contract
- The Subcontract Services** : the services provided and to be provided by the Subcontractor in accordance with the provisions of the Subcontract as more particularly set out in the Subcontract
- The Main Contract** : the contract dated [DATE] made between the Consultant and the [Beneficiary] [Client]<sup>13</sup>, which expression shall include any variation to the terms and conditions of contract and any new or replacement contract created by the novation of the contract
- The services** : the services provided and to be provided by the Consultant in accordance with the provisions of the Main Contract as more particularly set out in the Main Contract

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<sup>12</sup> Applies if the Consultant is a Joint Venture.

<sup>13</sup> Amend as appropriate if the Client is the Beneficiary.

Programme Delivery Partner Contract

**The NHP**

: The New Hospital Programme for the delivery of 40 new hospitals and establishment of the capability and capacity to deliver a longer-term pipeline of hospitals beyond 2030/31

**Professional Indemnity Insurance**

: [professional indemnity insurance with a minimum limit of indemnity of not less than £[INSERT] ([INSERT] pounds sterling) for each and every claim and in the annual aggregate with one reinstatement of limit annually in respect of work carried out for the Consultant, £[INSERT] ([INSERT] pounds sterling) in the annual aggregate for claims arising out of pollution/contamination]<sup>14</sup>

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<sup>14</sup> Amend as applicable.

## Programme Delivery Partner Contract

**THIS DEED** is made on the [ ] day of [ ] 20[ ]

**BETWEEN:**

- (1) the Subcontractor;
  - (2) [the Guarantor;]
  - (3) the [Client]/[Beneficiary]; and
  - (4) the Consultant,
- (each a "**Party**" and together the "**Parties**").

**BACKGROUND**

- (A) The Consultant entered into the Subcontract with the Subcontractor for the purpose of the Subcontractor providing the Subcontract Services in relation to the NHP.
- (B) The [Beneficiary] [Client]<sup>15</sup> has entered into the Main Contract with the Consultant for the purpose of the Consultant providing the services in relation to the NHP.
- (C) The Beneficiary has an interest in the NHP.
- (D) The Subcontractor [has] [and the Guarantor have] agreed to enter into this Deed.

**OPERATIVE PROVISIONS****1. DEFINITIONS**

Words and expressions defined in the Particulars have the same meanings throughout this Deed. References to the Particulars, background section and clauses are to the Particulars, background section and clauses of this Deed.

**2. CONSIDERATION**

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Subcontractor [and the Guarantor] (receipt of which is hereby acknowledged by the Subcontractor [and the Guarantor]).

**3. WARRANTIES**

- 3.1. The Subcontractor warrants to the Beneficiary that he has performed and shall continue to perform its obligations under the Subcontract in accordance with the Subcontract.
- 3.2. Without prejudice to and without limiting clause 3.1, the Subcontractor warrants that:
  - 3.2.1. insofar as the Subcontract Services have been or will be designed by or on behalf of the Subcontractor, it has exercised and shall continue to exercise the reasonable skill, care and diligence to be expected of an appropriately qualified professional consultant who is experienced in a programme similar in size, nature, scope, and complexity to the Programme and who is seeking to comply with its contractual obligations and all Applicable Law;
  - 3.2.2. the design of the Subcontract Services, insofar as the Subcontract Services have been or will be designed by or on behalf of the Subcontractor, shall comply with the Subcontract and all relevant statutory requirements;
  - 3.2.3. all materials and goods supplied and to be supplied for incorporation into the Subcontract Services are and will be and will remain of satisfactory quality; and

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<sup>15</sup> Amend as appropriate to reflect whether the Client is the Beneficiary.

## Programme Delivery Partner Contract

- 3.2.4. it has not specified nor approved for use nor will it specify or approve for use any products or materials which are generally known at the time of specification or approval (as applicable) to be deleterious to health and safety or durability in the particular circumstances in which they are used.

**4. INTELLECTUAL PROPERTY RIGHTS**

- 4.1. The Subcontractor grants to the Beneficiary a royalty-free, irrevocable, perpetual and nonexclusive license to copy, reproduce, adapt, modify, use and communicate the Subcontractor's design and the Documents for any purpose relating to the Programme or the completed Programme, including its design, procurement, construction, commissioning, operation, maintenance, repair, refurbishment, renewal, replacement, decommissioning or demolition. Such licence includes the right to grant sub-licences and is freely assignable by the Beneficiary, including by way of security.
- 4.2. The Subcontractor waives its rights (including moral rights) against the Beneficiary and the Beneficiary's assignees and sub-licensees to the extent that the exercise of such rights would prevent or impede the licence described above.
- 4.3. The Subcontractor indemnifies the Beneficiary against any claims, proceedings, compensations and costs the Beneficiary suffers (and the Beneficiary's assignees or sublicensees suffer) or for which the Beneficiary is liable in connection with any existing or future intellectual property right of any third party caused by or arising out of the carrying out of the Subcontract Services or by the exercise of the licence granted to the Beneficiary by the Consultant or any sub-licence granted pursuant to the Beneficiary's licence (including any licence the Beneficiary gives to a third party) or by possession of the Subcontractor's design or the Documents.
- 4.4. The Subcontractor agrees on reasonable request at any time and following reasonable prior notice to give to the Beneficiary, or those authorised by the Beneficiary, access to the Documents and to provide copies (including electronic copies in a readable form) of the Documents at the Beneficiary's expense.
- 4.5. The Subcontractor shall not be liable to the Beneficiary for any use of the Documents for purposes other than that for which the same were prepared.
- 4.6. For the purposes of this clause 4, "Documents" shall mean the documents, calculations, computer programs, software, drawings, manuals, models, graphical and non-graphical information and other similar documents and information (including items created and stored on discs, tapes, other electronically readable media and the Common Data Environment (as defined in the Main Contract)) prepared or provided by or on behalf of the Subcontractor in relation to the Subcontractor's design or the Subcontract.

**5. [PROFESSIONAL INDEMNITY INSURANCE**

- 5.1. The Subcontractor by this Deed covenants with the Beneficiary that it has taken out Professional Indemnity Insurance and shall maintain such insurance until 12 years after Completion of the whole of the services under the Main Contract, provided always that:
- 5.1.1. if such insurance ceases to be available to the Subcontractor, the Beneficiary and the Subcontractor are to meet, the Subcontractor shall outline the steps it intends to take to manage such risks and the Beneficiary and the Subcontractor are to use reasonable endeavours to agree a method of managing such risks; and
- 5.1.2. whenever the Beneficiary reasonably requests, the Subcontractor shall provide the Beneficiary with reasonable evidence that the policies referred to in this clause 5 are in full force and effect and that the relevant premiums have been paid.]

## Programme Delivery Partner Contract

**6. NO APPROVAL**

- 6.1. The Subcontractor's obligations and liabilities under this Deed are not in any way reduced or extinguished by reason of any inspection or approval of any documents or attendance at meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary's benefit or on its behalf or that the Beneficiary fails to make or procure.

**7. ASSIGNMENT**

- 7.1. Subject to clause 7.2, the Beneficiary may, without the consent of the Subcontractor, assign the benefit of and its benefits and rights under this Deed to any person, on not more than two occasions only. The Subcontractor shall not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary under this Deed or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss or the same type of loss.
- 7.2. The Beneficiary may, at any time, without the consent of the Subcontractor, assign the benefit of this Deed and the rights arising hereunder (whether or not accrued) to a parent, subsidiary or other associated company within the same group of companies as the Beneficiary or to a funder by way of security, and no such assignment (or related re-assignment) shall be included in, or affect, the restriction on assignment in clause 7.1.

**8. OTHER RIGHTS AND REMEDIES**

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies he may have against the Subcontractor including any remedies in negligence.

**9. LIMITATION**

The Subcontractor shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Subcontract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Beneficiary if, in lieu of this Deed, the Beneficiary had been a party to the Subcontract as joint employer with the Consultant on a joint and several basis.

**10. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 10.1. [Subject to clause 10.2, t]<sup>16</sup> [T]he Parties do not intend that any term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than a Party.
- 10.2. [The Client and its successors shall be entitled to enforce the terms of this Deed.]<sup>17</sup>

**11. INSTRUCTIONS**

The Beneficiary has no authority to issue any direction or instruction to the Subcontractor in relation to the performance of its obligations under the Subcontract [unless and until the Beneficiary has given notice under clauses 12.1 or 13.1].<sup>18</sup>

**12. [OPTION FOR BENEFICIARY TO STEP IN]<sup>19</sup>**

- 12.1. Subject to clauses 12.6 and 12.7, the Subcontractor shall not exercise or seek to exercise any right which may be or become available to him to terminate or treat as terminated or repudiated

<sup>16</sup> Include only if the Client is the beneficiary.

<sup>17</sup> Include only if the Client is the beneficiary.

<sup>18</sup> Include only if the Client is the beneficiary.

<sup>19</sup> The step-in clauses 12 and 13 only to be included if the Client is the Beneficiary.

## Programme Delivery Partner Contract

the Subcontract or his engagement under it or discontinue or suspend the performance of any duties or obligations under the Subcontract, without first giving to the Beneficiary not less than twenty-eight (28) days' prior notice specifying the Subcontractor's grounds for terminating or treating as terminated or repudiated the Subcontract or his engagement under it or discontinuing or suspending his performance of the Subcontract and stating the amount (if any) of monies outstanding under the Subcontract. Within such period of notice the Beneficiary may give notice to the Subcontractor expressly confirming his intention to comply with clause 12.2 and become the employer under the Subcontract. Upon giving such notice, the Subcontract is to remain in full force and effect notwithstanding any of the grounds in the Subcontractor's notice under this clause 12.1.

- 12.2. If the Beneficiary has given notice under clause 12.1, then:
- 12.2.1. the Beneficiary shall become the employer under the Subcontract to the exclusion of the Consultant and shall as soon as practicable remedy any outstanding breach by the Consultant;
  - 12.2.2. the Subcontractor shall, if so required, enter into a novation agreement in order to substitute the Beneficiary for the Consultant under the Subcontract, such agreement to be in terms reasonably required by the Beneficiary; and
  - 12.2.3. the Beneficiary shall become responsible for all sums properly payable to the Subcontractor as specified in the Subcontractor's notice under clause 12.1, subject to set-offs and deductions, including as would have applied to the Consultant under the Subcontract.
- 12.3. Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Subcontractor, the Beneficiary is not under any obligation to the Subcontractor nor does the Subcontractor have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given notice to the Subcontractor under clause 12.1.
- 12.4. The Consultant acknowledges that the Subcontractor shall be entitled to rely on a notice given to the Subcontractor by the Beneficiary under clause 12.1 as conclusive evidence that the Beneficiary is entitled to serve such notice.
- 12.5. The Beneficiary may by notice to the Subcontractor appoint another person to exercise his rights under this clause 12 and/or clause 13 subject to the Beneficiary remaining liable to the Subcontractor as guarantor for his appointee in respect of his obligations under this Deed.
- 12.6. Where the Subcontractor is seeking to exercise a right to suspend the performance of any duties or obligations under the Subcontract as a result of non-payment or in accordance with s112 of the Housing Grants, Construction and Regeneration Act 1996 (as amended), the Subcontractor shall give to the Beneficiary notice of his intention to do so at the same time as he serves notice on the Consultant.
- 12.7. Notwithstanding the other provisions of this clause 12 or clause 13, if the Subcontract has for any reason been terminated prior to receipt by the Subcontractor of a notice from the Beneficiary served under clause 12.1 or clause 13.1, the Subcontractor shall on receipt of any such notice from the Beneficiary enter into a new contract with the Beneficiary on the same terms as the Subcontract to continue the Subcontract Services in all respects as if the Subcontract had been transferred to the Beneficiary so as to have the same effect as the provisions of this clause 12.

**13. BENEFICIARY'S RIGHT OF STEP-IN**

- 13.1. The Subcontractor further covenants with the Beneficiary that in the event of the termination of the Main Contract by the Beneficiary the Subcontractor will, if so required by written notice given by the Beneficiary, accept the instructions of the Beneficiary or his appointee to the exclusion of the Consultant in respect of the Programme upon the terms and conditions of the Subcontract.



## Programme Delivery Partner Contract

- 13.2. If the Beneficiary serves a notice under clause 13.1, then:
- 13.2.1. the Subcontractor shall forthwith provide details of the full particulars of the amount (if any) of monies outstanding under the Subcontract;
  - 13.2.2. from the date of the Beneficiary's notice, the Beneficiary shall become responsible for all sums properly payable to the Subcontractor as specified in the Subcontractor's notice under clause 13.2.1, subject to set-offs and deductions, including as would have applied to the Consultant under the Subcontract; and
  - 13.2.3. clauses 12.3 and 12.4 shall apply mutatis mutandis save that references to "clause 12.1" shall be read and construed as references to "clause 13.1".]

**14. NOTICES**

Any notice, approval, request or other communication that is to be given by a Party under this Deed is to be in writing and shall be sufficiently served if sent by hand or by post to the registered office or, if there is none, the last known address of the Party to be served. Any notice, approval, request or other communication sent by hand is deemed to be served on the date of delivery, provided that if sent by hand after 4.45p.m. on any day it is deemed to be served on the next working day. Any notice, approval, request or other communication sent by post is deemed to be duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45p.m. on a working day and otherwise on the next working day.

**15. GOVERNING LAW AND JURISDICTION**

This Deed and any non-contractual obligations arising out of or in connection with it are governed by the law of England and the non-exclusive jurisdiction of the English Courts.

**16. <sup>20</sup>[GUARANTEE**

- 16.1. The Guarantor has agreed to guarantee to the Beneficiary as a continuing obligation to the Beneficiary the full, proper and punctual performance and observance by the Subcontractor of his obligations under this Deed, including the proper and punctual payment by the Subcontractor of any amounts required to be paid as damages for any breach of this Deed. Accordingly, the Guarantor:
- 16.1.1. agrees that if the Subcontractor shall in any respect fail fully and properly to perform and execute this Deed or shall commit any breach of his obligations hereunder (including without limitation the occurrence of any of the events of insolvency referred to in clause 91.1 of the Main Contract), then the Guarantor shall without prejudice to clause 16.1 forthwith upon the Beneficiary's written demand make good or procure the making good of such failure or breach and shall pay to the Beneficiary all losses, damages, costs, charges and expenses (including without limitation interest and enforcement costs) which are or may be incurred by the Beneficiary by reason of any such failure or breach on the part of the Subcontractor;
  - 16.1.2. acknowledges and agrees that no variation or alteration to the terms of the Subcontract or this Deed or in the extent, nature or method of performance of the Subcontract Services or the design thereof, and no allowance of time, waiver, forbearance, forgiveness, compromise or other dealing under or with the Subcontract or this Deed and no invalidity, illegality, unenforceability or irregularity of the Subcontract or this Deed or of any provision therein and no other act or omission which (but for this provision) might have operated to release, exonerate or discharge the Guarantor or otherwise reduce, extinguish or adversely affect any liability of the Guarantor under the terms of this clause 16 shall release, exonerate or discharge the Guarantor or reduce, extinguish or

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<sup>20</sup> Delete references to the Guarantor throughout this form including clause 16 in its entirety if the collateral warranty is not to be from the Subcontractor's guarantor, as well as from the Subcontractor.

Programme Delivery Partner Contract

otherwise adversely affect any such liability, and the Guarantor hereby waives notice to him of any such event; and

- 16.1.3. confirms that he has full power and capacity to give the guarantee set out in clause 16.1. The Guarantor's said obligations are additional to and not in substitution for any security, right of action, bond or other guarantee or indemnity at any time existing in favour of the Beneficiary, whether from the Guarantor or otherwise.
- 16.2. The Beneficiary shall not be obliged, before enforcing any of his rights or remedies under this clause 16, to enforce any other security, bond or other guarantee or indemnity from time to time existing in favour of the Beneficiary in respect of the obligations and liabilities of the Subcontractor under this Deed.
  - 16.2.1. Subject to clause 16.1.2 and save in respect of any costs incurred by the Beneficiary in enforcing this Deed, the costs of damages, costs, expenses and other sums recoverable under this clause 16 shall not exceed the damages, costs, expenses and any other sums for which the Subcontractor is liable to the Beneficiary under this Deed and the Guarantor shall have no greater liability or obligations to the Beneficiary by virtue of this Deed than he would have had if the Guarantor had been a party to this Deed and the Subcontract in place of the Subcontractor; and
  - 16.2.2. the Guarantor shall be able to raise the same defences in response to the enforcement of this Deed as the Subcontractor is entitled to raise under this Deed.]

**THIS DOCUMENT** is executed as a deed and delivered on the date stated at the beginning of this Deed.

[ALL PARTIES TO EXECUTE]

Programme Delivery Partner Contract

**APPENDIX 4: INCENTIVE SCHEDULE**

**1. DEFINITIONS**

- 1.1. Where defined terms (being those defined in the Contract Data, clause 11.2 of the *conditions of contract*, and the Scope) are used in this Incentive Schedule, such terms have the same meaning as provided in the *conditions of contract*, the Contract Data, or the Scope (as applicable).
- 1.2. In addition, in this Incentive Schedule the following words and expressions shall have the following meanings:

Term	Meaning
<b>Mobilisation Period</b>	means the first 6-month period from the <i>starting date</i> .
<b>Profit</b>	<p>means:</p> <ul style="list-style-type: none"> <li>• the profit component of the Fee calculated by multiplying the Fee by [REDACTED]%; PLUS</li> <li>• the [REDACTED]; PLUS</li> <li>• the <i>profit percentage</i> applied to: [REDACTED]</li> </ul> <p>Where:</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<b>Scheme</b>	means a hospital scheme forming part of the NHP as listed in Annex 1 to this Incentive Schedule.

- 1.3. Unless otherwise stated, where used in this Incentive Schedule the term paragraph refers to a paragraph of this Incentive Schedule.

## PART 1 – LEVEL 1 INCENTIVES

### 2. TRANSACTIONAL KEY PERFORMANCE INDICATORS

2.1. Where used in this paragraph 2, the following words and expressions shall have the following meanings:

<b>Term</b>	<b>Meaning</b>
<b>Active Transactional KPIs</b>	means: <ul style="list-style-type: none"> <li>• the Fixed Transactional KPIs; and</li> <li>• the Flexible Transactional KPIs that are active in the applicable Contract Year as confirmed by the <i>Service Manager</i> in accordance with paragraph 2.4.</li> </ul>
<b>Assessment Weighting</b>	has the meaning provided in paragraph 2.5.
<b>Fixed Transactional KPIs</b>	means the fixed Transactional KPIs as set out in Annex 2 to this Incentive Schedule.
<b>Flexible Transactional KPIs</b>	means the flexible Transactional KPIs as set out in the table at Annex 2.
<b>Measurement Criteria</b>	means the measurement criteria for the Transactional KPIs set out in Annex 2 to this Incentive Schedule.
<b>Measurement Frequency</b>	means the measurement frequency for the Transactional KPIs set out in Annex 2 to this Incentive Schedule, each of which will run sequentially from the <i>starting date</i> until the end of the Service Period.
<b>Score</b>	has the meaning provided in paragraph 2.6.
<b>Transactional KPIs</b>	has the meaning provided in paragraph 2.2.
<b>Weighting</b>	means the “Weighting” for a Transactional KPI as set out in the table at paragraph 2.2.

2.2. The Key Performance Indicators relating to the *Consultant’s* transactional performance (**Transactional KPIs**) are split into Fixed Transactional KPIs and Flexible Transactional KPIs as set out in Annex 2 to this Incentive Schedule.

2.3. The Fixed Transactional KPIs will apply at all times throughout the Service Period. In the first Contract Year, all Flexible Transactional KPIs set out in Annex 2 to this Incentive Schedule will apply.

2.4. At each Annual Incentivisation Performance Meeting, the *Service Manager* will confirm the Flexible Transactional KPIs (if any) that will be active in the applicable Contract year.

#### **Profit Deduction Calculation**

2.5. The assessment weighting for each Active Transactional KPI will be calculated by dividing the Weighting for the applicable Active Transactional KPI by the number of assessments of the applicable Active Transactional KPI to be carried out in the Contract Year based on the Measurement Frequency for the applicable Active Transactional KPI (**Assessment Weighting**).

#### **Example**

A KPI with a Weighting of **10** and a **quarterly** Measurement Frequency would have an **Assessment Weighting** of **2.5**.

- 2.6. At each KPI Assessment Date each Active Transactional KPI that is to be assessed at the KPI Assessment Date is given a score (**Score**) of either:
- 2.6.1. **0**, where the *Consultant* did not achieve or improve upon the Measurement Criteria for the relevant Active Transactional KPI; or
  - 2.6.2. the **Assessment Weighting** for the Active Transactional KPI, where the *Consultant* achieved or improved upon the Measurement Criteria for the relevant Active Transactional KPI.
- 2.7. The deduction from the next occurring amount due following each KPI Assessment Date in respect of performance against the Transactional KPIs is calculated as follows:

[REDACTED]

Where:

[REDACTED]

- 2.8. During the Mobilisation Period, the *Consultant's* performance against the Transactional KPIs will be assessed in accordance with clause X20 and this Incentive Schedule but no deductions will be applied to the amount due for any failure by the *Consultant* to improve upon or achieve the Measurement Criteria stated for an applicable Transactional KPI.

**Annual Reconciliation**

- 2.9. Within two (2) weeks of finalisation of Defined Cost for the previous Contract Year in accordance with clause 50.8, the *Service Manager* reconciles and finalises the total Profit deduction for the preceding Contract Year in respect of the *Consultant's* performance against the Transactional KPIs as follows:

[REDACTED]

Where:

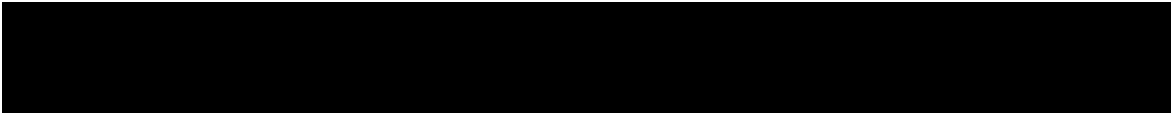
[REDACTED]



- 2.10. The *Service Manager* then carries out the calculation below. If the resulting amount:
- 2.10.1. is positive, this amount is added to the next occurring amount due; or
  - 2.10.2. is negative, this amount is deducted from the next occurring amount due.



Where:



- 2.11. In respect of the annual reconciliation and finalisation of the total Profit deduction for the first Contract Year only, the calculation of £AP<sub>1</sub>, AX and AY in accordance with paragraph 2.9 above does not include:
- 2.11.1. any Profit paid in respect of the *Consultant* Providing the Service; or
  - 2.11.2. assessments of the Transactional KPIs carried out, during the Mobilisation Period.

**3. PROGRAMME BENEFIT KEY PERFORMANCE INDICATORS**

- 3.1. Where used in this paragraph 3, the following words and expressions shall have the following meanings:

Term	Meaning
<p><b>Active Programme Benefit KPIs</b></p>	<p>means:</p> <ul style="list-style-type: none"> <li>• in the first Contract Year, the draft Programme Benefit KPIs outlined in Annex 3 to this Incentive Schedule the detail of which will be agreed between the <i>Service Manager</i> and the <i>Consultant</i> in accordance with paragraph 3.6; and</li> <li>• in each subsequent Contract Year, the Programme Benefit KPIs agreed between the <i>Service Manager</i> and the <i>Consultant</i> in accordance with paragraph 3.2 for the applicable Contract Year.</li> </ul>
<p><b>Aggregate Percentage Score</b></p>	<p>has the meaning provided in paragraph 3.10.</p>
<p><b>Base Level</b></p>	<p>Means the baseline level for a Programme Benefit KPI as set out in Annex 3 to this Incentive Schedule (which will be agreed between the <i>Service Manager</i> and the <i>Consultant</i> in accordance with paragraph 3.6) or as agreed between the <i>Service Manager</i> and the <i>Consultant</i> in accordance with paragraph 3.2.</p>
<p><b>Measurement Criteria</b></p>	<p>means the measurement criteria for a Programme Benefit KPI as set out in Annex 3 to this Incentive Schedule (which will be agreed between the <i>Service Manager</i> and the <i>Consultant</i> in accordance with paragraph 3.6) or as agreed between the <i>Service Manager</i> and the <i>Consultant</i> in accordance with paragraph 3.2.</p>

<b>Measurement Frequency</b>	means the measurement frequency for the Programme Benefit KPIs set out in Annex 3 to this Incentive Schedule (which will be agreed between the <i>Service Manager</i> and the <i>Consultant</i> in accordance with paragraph 3.6) or as agreed between the <i>Service Manager</i> and the <i>Consultant</i> in accordance with 3.2, each of which will run sequentially from the <i>starting date</i> until the end of the Service Period.
<b>Outperformance Target</b>	has the meaning provided in paragraph 3.15.
<b>PDP Focus Area</b>	means the PDP “Focus Areas” set out in Annex 3 to this Incentive Schedule of this Incentive Schedule.
<b>Percentage Score</b>	has the meaning provided in paragraph 3.9.
<b>Profit Recovery Amount</b>	has the meaning provided in paragraph 3.15.
<b>Programme Benefit KPIs</b>	has the meaning provided in paragraph 3.2.
<b>Score</b>	has the meaning provided in paragraph 3.8.
<b>Target</b>	means the Base Level or the Underperformance Level.
<b>Underperformance Level</b>	means the underperformance level in relation to a Programme Benefit KPI set out in Annex 3 to this Incentive Schedule (which will be agreed between the <i>Service Manager</i> and the <i>Consultant</i> in accordance with paragraph 3.6) or as agreed between the <i>Service Manager</i> and the <i>Consultant</i> in accordance with 3.2, each of which will run sequentially from the <i>starting date</i> until the end of the Service Period.

- 3.2. At each Annual Incentivisation Performance Meeting, the *Service Manager* and the *Consultant* agree the Key Performance Indicators relating to programme benefit (**Programme Benefit KPIs**) that will apply in the applicable Contract Year including the applicable Base Level and Underperformance Level, and the Measurement Frequency. Each Programme Benefit KPI will be derived from the PDP Focus Areas with not more than two (2) Programme Benefit KPIs being derived from a single PDP Focus Area in each Contract Year.
- 3.3. Subject to paragraph 3.4 but notwithstanding the remainder of this paragraph 3, where the *Service Manager* and the *Consultant* fail to agree the Programme Benefit KPIs in accordance with paragraph 3.2, until the Programme Benefit KPIs are agreed:
- 3.3.1. in the first three (3) ensuing Profit deduction calculations in the Contract Year in respect of performance against the Programme Benefit KPIs in accordance with paragraph 3.11 below, [REDACTED]%; and
- 3.3.2. in all later Profit deduction calculations in the Contract Year in respect of performance against the Programme Benefit KPIs in accordance with paragraph 3.11 below, [REDACTED]%.
- 3.4. Where the *Service Manager* and the *Consultant* reach agreement on the Programme Benefit KPIs for a Contract Year in accordance with paragraph 3.2 within three (3) months of the applicable Annual Incentivisation Performance Meeting, the aggregate Profit deducted in accordance with paragraph 3.3 is added to the next occurring amount due. For the remainder of the Contract Year, the Active Programme Benefit KPIs are assessed as per the remainder of this paragraph 3.



- 3.5. Except in accordance with clause 3.4 above and notwithstanding any other provision of this Incentive Schedule, any amounts deducted from the amount due as a result of the application of paragraph 3.3 above are permanently deducted.
- 3.6. The Measurement Criteria, Measurement Frequency, Underperformance Level, and Base Level of the Active Programme Benefit KPIs for the first Contract Year will be agreed between the *Service Manager* and the *Consultant* during the Mobilisation Period. Where the *Service Manager* and the *Consultant* fail to agree the Programme Benefit KPIs within the Mobilisation Period, until the Programme Benefit KPIs are agreed, in all later Profit deduction calculations in the first Contract Year in respect of performance against the Programme Benefit KPIs in [REDACTED]
- 3.7. Notwithstanding any other provision of this Incentive Schedule, any amounts deducted from the amount due as a result of the application of paragraph 3.6 above are permanently deducted.

**Profit Deduction Calculation**

- 3.8. At each KPI Assessment Date each Active Programme Benefit KPI that is to be assessed is given a score based on the applicable Measurement Criteria (**Score**). Any Active Programme Benefit KPI that, due to its Measurement Frequency, is not to be assessed at the applicable KPI Assessment Date is given a Score equal to the Score at the previous assessment of the Active Programme Benefit KPI.
- 3.9. The following calculation is then applied to provide a percentage Score (**Percentage Score**) using the Score, the Base Level, and the Underperformance Level:  
[REDACTED]

Where:

[REDACTED]

- 3.10. The aggregate Percentage Score for the Active Performance Benefit KPIs that have been assessed at the applicable KPI Assessment Date (**Aggregate Percentage Score**) is calculated as follows:  
[REDACTED]

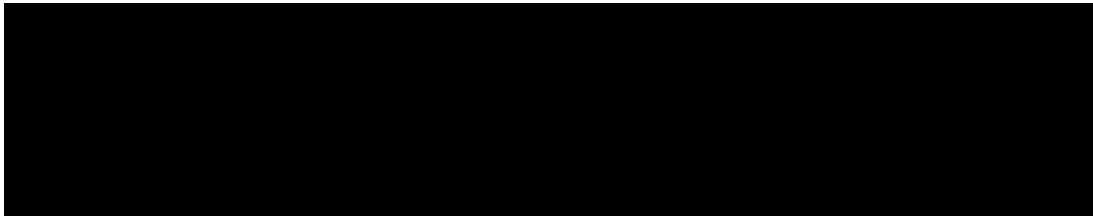
Where:

[REDACTED]

- 3.11. The deduction from the next occurring amount due following each KPI Assessment Date in respect of performance against the Performance Benefit KPIs is calculated as follows:  
[REDACTED]

Where:

[REDACTED]



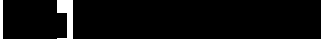
At the first KPI Assessment Date in a Contract Year, the deduction from the next occurring amount due in respect of performance against the Programme Benefit KPIs is [REDACTED] as at the applicable KPI Assessment Date. At each subsequent KPI Assessment Date in the Contract Year, the deduction from the next occurring amount due is:

- [REDACTED]
- [REDACTED]

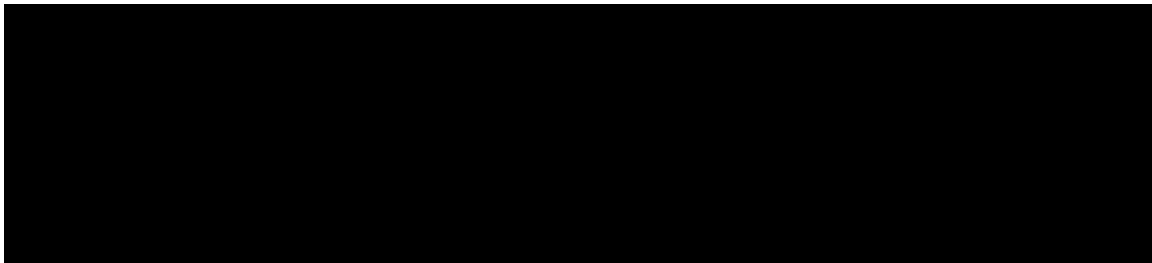
3.12. During the Mobilisation Period only, the *Consultant's* performance against the Programme Benefit KPIs will be assessed in accordance with clause X20 and this Incentive Schedule from the beginning of the month following agreement of the Active Programme Benefit KPIs for the first Contract Year in accordance with paragraph 3.6 but no deductions will be applied to the amount due in accordance with this paragraph 3.

**Annual Reconciliation**

3.13. Within two (2) weeks of finalisation of Defined Cost for the previous Contract Year in accordance with clause 50.8, the *Service Manager* reviews and confirms the total Profit deduction for the preceding Contract Year in respect of the *Consultant's* performance against the Programme Benefit KPIs as follows:



Where:

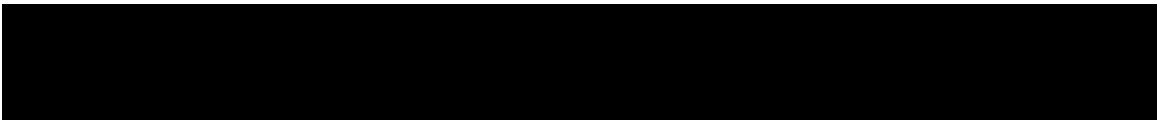


3.14. The *Service Manager* then carries out the calculation below. Without prejudice to paragraphs 3.5 and 3.7 above, if the resulting amount:

- 3.14.1. is positive, this amount is added to the next occurring amount due, or
- 3.14.2. is negative, this amount is deducted from the next occurring amount due.



Where:



**Outperformance Profit Recovery**

3.15. To enable the *Consultant* to recover previously deducted Profit, from the end of the Mobilisation Period, the *Service Manager* may (at its absolute discretion) introduce an outperformance target (**Outperformance Target**) for one or more Programme Benefit KPIs, with an associated Profit recovery amount equal to the amount of Profit previously deducted (**Profit Recovery Amount**). An Outperformance Target may only be introduced for a Programme Benefit KPI against which Profit has previously been deducted in accordance with paragraph 3.11. The Profit Recovery Amount associated with an Outperformance Target is only payable where the

Outperformance Target is achieved or exceeded within twelve (12) months of the relevant Profit deduction being made in accordance with paragraph 3.11.

#### 4. PROGRAMME INCENTIVES (TIME)

4.1. Where used in this paragraph 4 and (except where otherwise defined in paragraph 5) paragraph 5, the following words and expressions shall have the following meanings:

<b>Term</b>	<b>Meaning</b>
<b>Achieved Score</b>	<ul style="list-style-type: none"> <li>in respect of a Scheme Phase has the meaning provided in paragraph 4.4; and</li> <li>in respect of a Strategic Deliverable has the meaning provided in paragraph 4.9.</li> </ul>
<b>Achieved Score Calculation</b>	<ul style="list-style-type: none"> <li>in respect of a Scheme Phase means the score calculation methodology as provided in the table at paragraph 4.4; and</li> <li>in respect of a Strategic Deliverable means the score calculation methodology as provided in the table at paragraph 4.9.</li> </ul>
<b>Actual Approval Period</b>	means the actual period in months (rounded to one decimal place) between the date on the applicable Business Case submission is submitted for approval and the date on which the applicable Business Case is approved or rejected.
<b>Baseline Scheme Milestone Period</b>	means, in respect of: <ul style="list-style-type: none"> <li>a SOC Phase, ten (10) months,</li> <li>an OBC Phase, sixteen (16) months and</li> <li>an FBC Phase, fifteen (15) months.</li> </ul>
<b>Baseline Score</b>	means, either the baseline score in relation to a: <ul style="list-style-type: none"> <li>Scheme Phase as provided in in the table at paragraph 4.4, or</li> <li>a Strategic Deliverable as confirmed by the <i>Service Manager</i> in accordance with paragraph 4.8.1.</li> </ul>
<b>Business Case</b>	means (as applicable) an Outline Business Case or a Final Business Case.
<b>Critical Deliverable</b>	means a Strategic Deliverable that the <i>Service Manager</i> considers to be of a critical nature as a failure by the <i>Consultant</i> to provide such deliverable on time is likely to have significant impact on the overall NHP's schedule, cost, and/or quality.
<b>FBC Approval</b>	means receipt by the applicable Trust of formal written confirmation of approval by NHS England and the Department of Health and Social Care granting permission to proceed with case for the Scheme set out in the Full Business Case.
<b>FBC Phase</b>	means in respect of a Scheme the period between OBC Approval and FBC Approval.
<b>FBC Phase Duration</b>	means for each Scheme the period in months (rounded to the nearest whole month) between:

	<ul style="list-style-type: none"> <li>the Scheme Milestone Date for OBC Approval; and</li> <li>the Scheme Milestone Date for FBC Approval.</li> </ul>
<b>Hospital Opening</b>	means the date on which all works forming part of the Scheme are complete and all services in scope of the Scheme (including non-clinical services) are open to patients and are fully operational.
<b>Hospital Opening Phase</b>	means in respect of a Scheme the period between FBC Approval and Hospital Opening.
<b>Hospital Opening Phase Duration</b>	means for each Scheme the period in months (rounded to the nearest whole month) between: <ul style="list-style-type: none"> <li>the later of: (i) the Scheme Milestone Date for FBC Approval, or (ii) the date FBC Approval occurs; and</li> <li>the Scheme Milestone Date for Hospital Opening.</li> </ul>
<b>Joint Investment Committee</b>	means the Department for Health and Social Care and NHS England Joint Investment Committee.
<b>OBC Approval</b>	means receipt by the applicable Trust of formal written confirmation of approval by NHS England and the Department for Health and Social Care granting permission to proceed with the development of the Full Business Case for the Scheme as set out in the approved Outline Business Case.
<b>OBC Phase</b>	means in respect of a Scheme the period between SOC Approval and OBC Approval.
<b>OBC Phase Duration</b>	means for each Scheme the period in months (rounded to the nearest whole month) between: <ul style="list-style-type: none"> <li>the date SOC Approval occurs; and</li> <li>the Scheme Milestone Date for OBC Approval.</li> </ul>
<b>Operative Scheme Phase</b>	means a Scheme Phase in respect of which: <ul style="list-style-type: none"> <li>Scheme Phase Completion has occurred; and/or</li> <li>the Scheme Phase Completion Date has occurred.</li> </ul>
<b>Operative Strategic Deliverable</b>	means a Strategic Deliverable in respect of which: <ul style="list-style-type: none"> <li>Strategic Deliverable Completion has occurred; and/or</li> <li>the Strategic Deliverable Completion Date has occurred.</li> </ul>
<b>Permitted Approval Period</b>	means the period of time between the date on which a Business Case is submitted to the Joint Investment Committee for approval and the target date by which NHS England and the Department for Health and Social Care are to have either issued its approval or rejection of the Business Case which, in respect of an Outline Business Case and a Final Business Case is 100 Working Days.
<b>Programmatic Deliverable</b>	means a Strategic Deliverable that the <i>Service Manager</i> considers to be of a programmatic nature as a failure by the <i>Consultant</i> to provide such deliverable on time is likely to have an impact on the overall NHP's schedule, cost, and/or quality.

<b>Scheme Milestone</b>	means (as applicable) SOC Approval, OBC Approval, FBC Approval, or Hospital Opening for a Scheme.
<b>Scheme Milestone Date</b>	means the date agreed in writing between the Parties (acting reasonably) for each Scheme Milestone such date being substantially based on the applicable Baseline Scheme Milestone Period for that Scheme Milestone.
<b>Scheme Phase</b>	means (as applicable) the OBC Phase, the FBC Phase, or the Hospital Opening Phase.
<b>Scheme Phase Completion</b>	means, in respect of: <ul style="list-style-type: none"> <li>• the OBC Phase, OBC Approval occurs;</li> <li>• the FBC Phase, FBC Approval occurs; and</li> <li>• the Hospital Opening Phase, Hospital Opening occurs.</li> </ul>
<b>Scheme Phase Completion Date</b>	means, in respect of: <ul style="list-style-type: none"> <li>• the OBC Phase, the Scheme Milestone Date for OBC Approval;</li> <li>• the FBC Phase, the Scheme Milestone Date for FBC Approval; and</li> <li>• the Hospital Opening Phase, the Scheme Milestone Date for Hospital Opening.</li> </ul>
<b>SOC Approval</b>	means receipt by the applicable Trust of formal written confirmation of approval by NHS England and DHSC granting permission to proceed with the development of the Outline Business Case for the Scheme as set out in the approved Strategic Outline Case.
<b>SOC Phase</b>	means in respect of a Scheme the period between the commencement of development of the applicable SOC and SOC Approval.
<b>Strategic Change Event</b>	means: <ul style="list-style-type: none"> <li>• the sequencing schedule of one or more Schemes is changed by the <i>Client</i> or Government,</li> <li>• a Trust client instructed change to the scope or specification of a Scheme which leads to an increase of not less than [REDACTED] (£ [REDACTED]) to the contract value of the Scheme(s); and/or</li> <li>• any of the following occurs: <ul style="list-style-type: none"> <li>○ change of government,</li> <li>○ unforeseen national impact events, and/or</li> <li>○ an unforeseen change in the <i>law of the programme</i> but not a change in Consents.</li> </ul> </li> </ul>
<b>Strategic Deliverables</b>	has the meaning provided in paragraph 4.8.
<b>Strategic Deliverable Duration</b>	has the meaning provided in paragraph 4.8.4.

<b>Strategic Deliverable Completion</b>	has the meaning provided in paragraph 4.8.2.
<b>Strategic Deliverable Completion Date</b>	has the meaning provided in paragraph 4.8.3.
<b>Standard Deliverable</b>	means a Strategic Deliverable that the <i>Service Manager</i> considers to be of importance to a project or the NHP and failure by the <i>Consultant</i> to provide such deliverable on time is likely to have an impact to the schedule, cost, and/or quality of a scheme, another deliverable and/or a third party.
<b>Time Programme Incentives</b>	has the meaning provided in paragraph 4.2.

4.2. This paragraph 4 details the process for calculating the *Consultant's* performance against the time programme incentives which measure the timeliness of the *Consultant's* performance against:

- 4.2.1. Scheme Milestones; and
  - 4.2.2. Strategic Deliverables,
- together, the (**Time Programme Incentives**).

**Scheme Phases**

4.3. The Scheme Milestone Dates will be updated by the *Service Manager* from time to time to:

- 4.3.1. update Scheme Milestone Dates as they are confirmed in Strategic Outline Cases approved by His Majesty's Treasury; and
- 4.3.2. update Scheme Milestone Dates as necessary on the following basis:
  - i. the Scheme Milestone Date for Hospital Opening may be updated to reflect the date for Hospital Opening as set out in an approved Final Business Case for a Scheme; and
  - ii. one or more Scheme Milestone Dates may be updated where a Strategic Change Event occurs which delays the Scheme Milestone Date(s). The delay to a Scheme Milestone is assessed by the *Service Manager* (acting reasonably) and is the length of time that, due to the Strategic Change Event, the applicable Scheme Phase Completion will be delayed.

4.4. At each KPI Assessment Date each Operative Scheme Phase as at the applicable KPI Assessment Date is given a score (**Achieved Score**) using the applicable Achieved Score Calculation below:

<b>Scheme Phase</b>	<b>Baseline Score (BS)</b>	<b>Achieved Score Calculation</b>
<b>OBC Phase</b>	1	Calculated as follows: <div style="text-align: center;">[REDACTED]</div> Where: <div style="background-color: black; width: 100%; height: 100%; min-height: 100px;">[REDACTED]</div>

		[REDACTED]
<b>FBC Phase</b>	2	Calculated as follows: [REDACTED] Where: [REDACTED]
<b>Hospital Opening Phase</b>	4	Calculated as follows: [REDACTED] Where: [REDACTED]

		[REDACTED]
--	--	------------

4.5. Where Scheme Phase Completion has not occurred in respect of an Operative Scheme Phase, for the purposes of the calculation under paragraph 4.4 only, the Achieved Score is calculated as though Scheme Phase Completion occurred on the applicable KPI Assessment Date.

4.6. If during any Scheme Phase:

[REDACTED]

Where:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

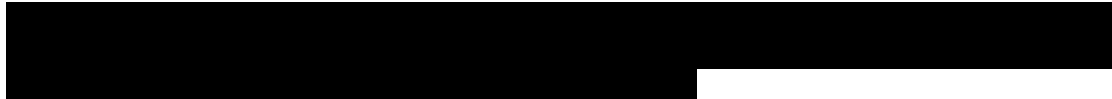
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]





- 4.7. If:
- 4.7.1. Hospital Opening occurs on or before the date for Hospital Opening as detailed in a Strategic Outline Case for a Scheme; and
  - 4.7.2. the total Achieved Score for each Scheme Phase for the Scheme is less than the total Baseline Score for each Scheme Phase,

then in each future Profit deduction calculation in respect of performance against the Time Programme Incentives in accordance with paragraph 4.11, the Achieved Score for each Scheme Phase for the applicable Scheme is deemed to be the Baseline Score for the applicable Scheme Phase.

**Strategic Deliverables**

- 4.8. At each Annual Incentivisation Performance Meeting, the *Service Manager* may add one or more strategic time deliverables (**Strategic Deliverables**) to the Time Programme Incentives. When adding a Strategic Deliverable(s), the *Service Manager* confirms to the *Consultant*:
- 4.8.1. the applicable Baseline Score for each Strategic Deliverable being:
    - i. 1 or 2 for a Standard Deliverable;
    - ii. 3 or 4 for a Programmatic Deliverable; or
    - iii. 5 or 6 for a Critical Deliverable,
  - 4.8.2. the conditions which must have been met for completion of each applicable Strategic Deliverable to have occurred (**Strategic Deliverable Completion**),
  - 4.8.3. the target date for each Strategic Deliverable Completion to occur (**Strategic Deliverable Completion Date**),
  - 4.8.4. the duration in months between the commencement of each Strategic Deliverable, being the date of the Annual Incentivisation Performance Meeting at which the Strategic Deliverable was added, and the Strategic Deliverable Completion Date (**Strategic Deliverable Duration**), and
  - 4.8.5. the maximum and minimum cap on the Achieved Score for each Strategic Deliverable (if any).
- 4.9. At each KPI Assessment Date each Operative Strategic Deliverable is given a score (**Achieved Score**) using the Achieved Score Calculation below:

Strategic Deliverable	Baseline Score (BS)	Achieved Score Calculation
[TBC in accordance with paragraph 4.8 above]	[TBC in accordance with paragraph 4.8.1 above]	Calculated as follows: [REDACTED] Where: [REDACTED] [REDACTED] [REDACTED] [REDACTED]



	<ul style="list-style-type: none"> <li>• Scheme Phase as provided in in the table at paragraph 5.3; or</li> <li>• a Strategic Cost Efficiency Target as confirmed by the <i>Service Manager</i> in accordance with paragraph 5.5.1.</li> </ul>
<b>Cost Programme Incentives</b>	has the meaning provided in paragraph 5.2.
<b>Critical Cost Efficiency Target</b>	means a Strategic Cost Efficiency Target measured in the <i>currency of the Contract</i> that the <i>Service Manager</i> considers (acting reasonably) to be of a critical nature and failure by the <i>Consultant</i> to meet the target is likely to significantly impact the overall NHP's outturn cost.
<b>FBC Forecast Cost</b>	means the total estimated expenditure across all capital cost categories as defined in the NHP Cost Breakdown Structure (CBS) for a Scheme as set out in the Final Business Case for a Scheme as approved by His Majesty's Treasury.
<b>OBC Forecast Cost</b>	means the total estimated expenditure across all capital cost categories as defined in the NHP Cost Breakdown Structure (CBS) for a Scheme as set out in the Outline Business Case for a Scheme as approved by His Majesty's Treasury.
<b>Operative Scheme Cost Figure</b>	means for each Scheme: <ul style="list-style-type: none"> <li>• if there is a FBC Forecast Cost and there is no Outturn Cost, the FBC Forecast Cost; or</li> <li>• if there is an Outturn Cost, the FBC Forecast Cost and the Outturn Cost.</li> </ul>
<b>Operative Strategic Cost Efficiency Target</b>	means a Strategic Cost Efficiency Target in respect of which the Target Cost Saving Date has occurred.
<b>Outturn Cost</b>	means the outturn cost of a Scheme being the total expenditure across all capital cost categories as defined in the NHP Cost Breakdown Structure (CBS) once all contracts and expenditure related to the Scheme across all cost categories have been final accounted and closed on the Scheme.
<b>Programmatic Cost Efficiency Target</b>	means a Strategic Cost Efficiency Target measured in the <i>currency of the Contract</i> that the <i>Service Manager</i> considers (acting reasonably) to be of a programmatic nature and failure by the <i>Consultant</i> to meet the target is likely to impact the overall NHP's outturn cost.
<b>Strategic Cost Efficiency Target</b>	means a Critical Cost Efficiency Target, a Programmatic Cost Efficiency Targets, or a Task Order Cost Efficiency Target.
<b>Target Cost Saving</b>	has the meaning provided in paragraph 5.5.2.
<b>Target Cost Saving Date</b>	has the meaning provided in paragraph 5.5.4.
<b>Task Order Cost Efficiency Target</b>	means a Strategic Cost Efficiency Target measured in the <i>currency of the Contract</i> that the <i>Service Manager</i> considers (acting reasonably) to be of importance to a Scheme and failure by the <i>Consultant</i> to meet the target is likely to have an impact on a Scheme's outturn cost.



		[REDACTED]
		[REDACTED]
		[REDACTED]
		[REDACTED]
		[REDACTED]
		[REDACTED]
		[REDACTED]
		[REDACTED]

5.4. Where a Strategic Change Event occurs, the OBC Forecast Cost and/or the FBC Forecast Cost for one of more Schemes may be increased for the purposes of the calculation of the Achieved Score. The increase to the OBC Forecast Cost and/or the FBC Forecast Cost for a Scheme is assessed by the *Service Manager* (acting reasonably) and is equal to the forecast aggregate increase to the Outturn Cost of the applicable Scheme as a result of the Strategic Change Event.

**Strategic Cost Efficiency Targets**

5.5. At each Annual Incentivisation Performance Meeting, the *Service Manager* may add one or more Strategic Cost Efficiency Targets to the Cost Programme Incentives. When adding a Strategic Cost Efficiency Target(s), the *Service Manager* confirms to the *Consultant*:

5.5.1. the applicable Baseline Score for each Strategic Cost Efficiency Target being:

- i. 1 or 2 for a Task Order Cost Efficiency Target;
- ii. 3 or 4 for a Programmatic Cost Efficiency Target; or
- iii. 5 or 6 for a Critical Cost Efficiency Target;

5.5.2. the target cost saving which must have been achieved for each Strategic Cost Efficiency Target to have been met (**Target Cost Saving**);

5.5.3. the methodology for calculating the actual cost saving, parameters, and acceptance criteria for each Strategic Cost Efficiency Target;

5.5.4. the date by which each Target Cost Saving must have been achieved (**Target Cost Saving Date**); and

5.5.5. the maximum and minimum cap on the Achieved Score for each Strategic Cost Efficiency Target (if any).

5.6. At each KPI Assessment Date each Operative Strategic Cost Efficiency Target is given a score (**Achieved Score**) using the Achieved Score Calculation below:

Strategic Cost Efficiency Target	Baseline Score (BS)	Achieved Score Calculation
[TBC in accordance with paragraph 5.5 above]	[TBC in accordance with paragraph 5.5.1 above]	Calculated as follows: [REDACTED] [REDACTED] [REDACTED] [REDACTED]

		[REDACTED]
		[REDACTED]

**Profit Deduction Calculation**

5.7. The deduction from the next occurring amount due at each KPI Assessment Date in respect of performance against the Cost Programme Incentives is calculated as follows:

[REDACTED]

Where:

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]

## PART 2 – LEVEL 2 INCENTIVES

The Level 2 incentive will provide the *Consultant* with the opportunity to be paid a percentage of the cost saving to the NHP created by the *services*.

The detailed calculation of the Level 2 incentive will be agreed between the Parties during the term of the Contract. Subject to development and agreement, the calculation is expected to be based on the following inputs:

**A** = the outturn cost of the NHP in nominal (cash) terms

**B** = the NHP Business Case funding envelope

Level 2 incentives are also expected to include a requirement that the NHP's schedule is successfully delivered.

Key principles which will apply in the development of the Level 2 incentives are as follows:

- **Clawback/Interim Payment:** to the extent that any interim payment of Level 2 incentives is agreed, the *Client* will be able to recover any amounts paid on an interim basis should the final outturn cost position fail to deliver the savings anticipated at the point of the interim payment(s) being made.
- **Benefit Erosion:** the Level 2 incentives cannot be paid at the expense of eroding wider NHP benefits or individual Schemes.
- **Change control:** a mechanic will be required to change control the NHP Business Case funding envelope and the NHP's schedule to facilitate any strategic changes to the scope of the NHP. This mechanic will only facilitate changes in relation to macro alterations to the scope of the NHP.

## ANNEX 1 – SCHEME LIST

Wave 1

No.	Scheme	Trust	NHP Review Implementation Plan Cost Estimate*	Expected Construction Start Date
1	<b>Milton Keynes Hospital</b>	Milton Keynes University Hospital NHS Foundation Trust	£500 million or less	2027 - 2028
2	<b>Women and Children's Hospital, Cornwall</b>	The Royal Cornwall Hospital Trust	£500 million or less	2027 - 2028
3	<b>Hillingdon Hospital</b>	Hillingdon Hospitals NHS Foundation Trust	£1 billion to £1.5 billion	2027 - 2028
4	<b>North Manchester General Hospital</b>	Manchester Teaching Hospitals NHS Trust	£1 billion to £1.5 billion	2027 - 2028
5	<b>West Suffolk Hospital, Bury St Edmunds (RAAC)</b>	West Suffolk NHS Foundation Trust	£1 billion to £1.5 billion	2027 - 2028
6	<b>Hinchingbrooke Hospital (RAAC)</b>	North West Anglia NHS Foundation Trust	£501 million to £1 billion	2027 - 2028
7	<b>James Paget Hospital (RAAC)</b>	James Paget University Hospitals NHS Foundation Trust	£1 billion to £1.5 billion	2027 - 2028
8	<b>The Queen Elizabeth Hospital (RAAC)</b>	The Queen Elizabeth Hospital King's Lynn NHS Foundation Trust	£1 billion to £1.5 billion	2027 - 2028
9	<b>Leighton Hospital (RAAC)</b>	Mid Cheshire NHS Foundation Trust	£1 billion to £1.5 billion	2027 - 2028
10	<b>Airedale General Hospital (RAAC)</b>	Airedale NHS Foundation Trust	£1 billion to £1.5 billion	2027 - 2028
11	<b>Frimley Park Hospital (RAAC)</b>	Frimley Health NHS Foundation Trust	£1.5 billion to £2 billion	2028-2029

Wave 2

No.	Scheme	Trust	NHP Review Implementation Plan Cost Estimate*	Expected Construction Start Date
1	<b>Leeds General Infirmary</b>	Leeds Teaching Hospitals NHS Trust	£1.5 billion to £2 billion	2032 - 2034
2	<b>Specialist Emergency Care Hospital, Sutton</b>	Epsom and St Helier University Hospitals NHS Trust	£1.5 billion to £2 billion	2032 - 2034



3	<b>Whipps Cross University Hospital</b>	Barts Health NHS Trust	£1 billion to £1.5 billion	2032 - 2034
4	<b>Princess Alexandra Hospital</b>	The Princess Alexandra Hospital NHS Trust	£1.5 billion to £2 billion	2032 - 2034
5	<b>Watford General</b>	West Hertfordshire Teaching Hospitals NHS Trust	£1.5 billion to £2 billion	2032 - 2034
6	<b>Leicester Royal Infirmary, Leicester General Hospital and Glenfield Hospital</b>	University Hospitals of Leicester NHS Trust	£1 billion to £1.5 billion	2032 - 2034
7	<b>Kettering General Hospital</b>	Kettering General Hospital NHS Foundation Trust	£1 billion to £1.5 billion	2032 - 2034
8	<b>Musgrove Park Hospital</b>	Somerset NHS Foundation Trust	£501 million - £1 billion	2032 - 2034
9	<b>Torbay Hospital</b>	Torbay and South Devon NHS Foundation Trust	£501 million - £1 billion	2032 - 2034

**Wave 3**

No.	Scheme	Trust	Indicative Net Cost (£m)**	Expected Construction Start Date
1	<b>Charing Cross &amp; Hammersmith Hospital</b>	Imperial College Healthcare NHS Trust	£1.5 billion - £2 billion	2035 - 2038
2	<b>North Devon District Hospital</b>	North Devon District Hospital, Barnstaple	£1 billion to £1.5 billion	2035 - 2038
3	<b>Royal Lancaster Hospital</b>	University Hospitals of Morecambe Bay NHS Foundation Trust	£1 billion to £1.5 billion	2035 - 2038
4	<b>St Marys Hospital, Imperial</b>	Imperial College Healthcare NHS Trust	£2 billion or more	2035 - 2038
5	<b>Royal Preston Hospital</b>	Lancashire Teaching Hospitals NHS Foundation Trust	£2 billion or more	2037 - 2039
6	<b>QMC and Nottingham City Hospital</b>	Nottingham University Hospital NHS Trust	£2 billion or more	2037 - 2039
7	<b>Royal Berkshire Hospital</b>	Royal Berkshire NHS Foundation Trust	£2 billion or more	2037 - 2039
8	<b>Hampshire Hospitals</b>	Hampshire Hospitals NHS Foundation Trust	£2 billion or more	2037 - 2039
9	<b>Eastbourne District General</b>	East Sussex Healthcare NHS Trust	£1.5 billion - £2 billion	2037 - 2039













**APPENDIX 5: INSURANCES**

<b>INSURANCE TABLE</b>	
<b>TYPE OF INSURANCE: Professional Indemnity Insurance</b>	
<b>Limit of Indemnity</b>	Not less than [REDACTED] (£ [REDACTED]) in the annual aggregate.
<b>Period of Insurance</b>	From the Contract Date until [REDACTED] after the expiry of termination of this Contract.
<b>TYPE OF INSURANCE: Third Party Public Liability Insurance</b>	
<b>Limit of Indemnity</b>	Not less than [REDACTED] (£ [REDACTED]) in respect of any one occurrence, the number of occurrences being unlimited.
<b>Period of Insurance</b>	From the Contract Date for [REDACTED]
<b>TYPE OF INSURANCE: Cyber Liability Insurance</b>	
<b>Limit of Indemnity</b>	Not less than [REDACTED] (£ [REDACTED]) in the aggregate.
<b>Period of Insurance</b>	From the Contract Date for [REDACTED]
<b>TYPE OF INSURANCE: UK Compulsory Insurances</b>	
All insurances required to comply with all statutory requirements including, but not limited to, Employer's Liability Insurance.	



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**APPENDIX 6: FINANCIAL DISTRESS****1. Definitions**

1.1 In this Appendix, the following definitions shall apply:

<b>“Accounting Reference Date”</b>	means in each year the date to which the <i>Consultant</i> prepares its annual audited financial statements;
<b>“Board”</b>	means the <i>Consultant’s</i> board of directors;
<b>“Board Confirmation”</b>	means written confirmation from the Board in accordance with Paragraph 8 of this Appendix;
<b>“FDE Group”</b>	means the <i>Consultant</i> , Key Subcontractors, and the Guarantors;
<b>“Financial Distress Event”</b>	the occurrence of one or more of the events listed in Paragraph 3.1 of this Appendix (Financial Distress);
<b>“Financial Distress Remediation Plan”</b>	a plan setting out how the <i>Consultant</i> will ensure the continued performance and delivery of the <i>service</i> in accordance with this Contract in the event that a Financial Distress Event occurs. This plan should include what the <i>Client</i> would need to put in place to ensure performance and delivery of the <i>service</i> in accordance with this Contract up to and including any Insolvency Event in respect of the relevant FDE Group entity;
<b>“Financial Indicators”</b>	in respect of the <i>Consultant</i> , Key Subcontractors and the Guarantors, means each of the financial indicators set out at Paragraph 5.1 of this Appendix;
<b>“Financial Target Thresholds”</b>	means the target thresholds for each of the Financial Indicators set out at Paragraph 5.1 of this Appendix;
<b>“Guarantor”</b>	means Mace Limited and / or Turner & Townsend Holdings Limited (as the context requires);
<b>“Strategic Supplier”</b>	means those suppliers to government listed at <a href="https://www.gov.uk/government/publications/strategic-suppliers">https://www.gov.uk/government/publications/strategic-suppliers</a> .

**2. Warranties and Duty to Notify**

- 2.1 The *Consultant* warrants and represents to the *Client* for the benefit of the *Client* that as at the Contract Date the financial position or, as appropriate, the financial performance of each of the *Consultant*, each Guarantor and Key Subcontractors satisfies the Financial Target Thresholds.
- 2.2 Not used.
- 2.3 The *Consultant* shall:
- 2.3.1 regularly monitor the credit ratings of each entity in the FDE Group;
  - 2.3.2 monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds at least at the frequency set out for each at Paragraph 5.1; and
  - 2.3.3 promptly notify (or shall procure that its auditors promptly notify) the *Client* in writing

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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 10 Working Days of the date on which the *Consultant* 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 *Consultant* pursuant to Paragraph 2.3.2 shall:

- 2.5.1 be a single report with separate sections for each of the FDE Group entities;
- 2.5.2 contain a sufficient level of information to enable the *Client* to verify the calculations that have been made in respect of the Financial Indicators;
- 2.5.3 include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
- 2.5.4 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
- 2.5.5 include a history of the Financial Indicators reported by the *Consultant* in graph form to enable the *Client* to easily analyse and assess the trends in financial performance.

### 3. Financial Distress Events

3.1 The following shall be Financial Distress Events:

- 3.1.1 Not used;
- 3.1.2 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;
- 3.1.3 there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;
- 3.1.4 an FDE Group entity committing a material breach of covenant to its lenders;
- 3.1.5 a Key Subcontractor notifying the *Client* that the *Consultant* has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
- 3.1.6 any FDE Group entity extends the filing period for filing its accounts with the Registrar of Companies so that the filing period ends more than 9 months after its accounting reference date without an explanation to the *Client* which the *Client* (acting reasonably) considers to be adequate;
- 3.1.7 any FDE Group entity is late to file its annual accounts without a public notification or an explanation to the *Client* which the *Client*, acting reasonably, considers to be adequate;
- 3.1.8 the directors and/or external auditors of any FDE Group entity conclude that a material uncertainty exists in relation to that FDE Group entity's going concern in the annual report including in a reasonable but plausible downside scenario. This includes, but is not limited to, commentary about liquidity and trading prospects in the reports from directors or external auditors;
- 3.1.9 any of the following:

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- (a) any FDE Group entity makes a public announcement which contains adverse commentary with regards to that FDE Group entity's liquidity and trading and trading prospects, such as but not limited to, a profit warning or ability to trade as a going concern;
- (b) commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;
- (c) non-payment by an FDE Group entity of any financial indebtedness;
- (d) any financial indebtedness of an FDE Group entity becoming due as a result of an event of default;
- (e) the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; or
- (f) 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;

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

- 3.1.10 any one of the Financial Indicators set out at Paragraph 5 for any of the FDE Group entities failing to meet the required Financial Target Threshold.

#### 4. Consequences of Financial Distress Events

- 4.1 Immediately upon notification by the *Consultant* of a Financial Distress Event (or if the *Client* becomes aware of a Financial Distress Event without notification and brings the event to the attention of the *Consultant*), the *Consultant* shall have the obligations and the *Client* shall have the rights and remedies as set out in Paragraphs 4.3 to 4.5.
- 4.2 In the event of a late or non-payment of a Key Subcontractor pursuant to Paragraph 3.1.5, the *Client* shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the *Consultant* 10 Working Days to:
  - 4.2.1 rectify such late or non-payment; or
  - 4.2.2 demonstrate to the *Client's* reasonable satisfaction that there is a valid reason for late or non-payment.
- 4.3 The *Consultant* shall (and shall procure that each Guarantor and/or any relevant Key Subcontractor shall):
  - 4.3.1 at the request of the *Client*, meet the *Client* as soon as reasonably practicable (and in any event within 3 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the *Client* may permit and notify to the *Consultant* in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the *service* in accordance with this Contract; and
  - 4.3.2 where the *Client* reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3.1) that the Financial Distress Event could impact on the continued performance and delivery of the *service* in accordance with this Contract:
    - (a) submit to the *Client* for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial

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Distress Event or such other period as the *Client* may permit and notify to the *Consultant* in writing); and

- (b) to the extent that it is legally permitted to do so and subject to Paragraph 4.7, provide such information relating to the *Consultant*, any Monitored Contractor, Key Subcontractors and/or each Guarantor as the *Client* 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 *Client* shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the *Client* does not approve the draft Financial Distress Remediation Plan, it shall inform the *Consultant* of its reasons and the *Consultant* shall take those reasons into account in the preparation of a further draft Financial Distress Remediation Plan, which shall be resubmitted to the *Client* within 5 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is either:
  - 4.4.1 approved by the *Client*;
  - 4.4.2 referred, by notice sent by either Party to the other Party explaining why it thinks the Financial Distress Remediation Plan has not been approved, to commercial negotiation led by senior representatives who have *Client* to agree the Financial Distress Remediation Plan to be held within 28 days of the date of the notice; or
  - 4.4.3 finally rejected by the *Client*.
- 4.5 Following approval of the Financial Distress Remediation Plan by the *Client*, the *Consultant* shall:
  - 4.5.1 on a regular basis (which shall not be less than fortnightly):
    - (a) review and make any updates to the Financial Distress Remediation Plan as the *Consultant* may deem reasonably necessary and/or as may be reasonably requested by the *Client*, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Services in accordance with this Contract; and
    - (b) provide a written report to the *Client* setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the *Consultant* and/or the reasons why the *Consultant* may have decided not to make any changes;
  - 4.5.2 where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 4.5.1, submit an updated Financial Distress Remediation Plan to the *Client* for its approval, and the provisions of Paragraphs 4.4 and 4.5.1 shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and
  - 4.5.3 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.
- 4.6 Where the *Consultant* 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, it shall notify the *Client* and the Parties may agree that the *Consultant* shall be relieved of its obligations under Paragraph 4.5.
- 4.7 The *Consultant* shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at Paragraph 4.3.2(b) is available when required and on request from the *Client* and within reasonable timescales. Such measures may include:

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- 4.7.1 obtaining in advance written authority from Key Subcontractors, and/or each Guarantor authorising the disclosure of the information to the *Client* and/or entering into confidentiality agreements which permit disclosure;
- 4.7.2 agreeing in advance with the *Client*, Key Subcontractors, and/or each Guarantor a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the *Client*;
- 4.7.3 putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the *Client* (which may include making price sensitive information available to *Client* nominated personnel through confidential arrangements, subject to their consent); and
- 4.7.4 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 1 of this Appendix, 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 <sup>1</sup>	Financial Target Threshold:	Monitoring and Reporting Frequency
<b>Metric 1 – Turnover Ratio</b>	[REDACTED]	[REDACTED]	[REDACTED]
<b>Metric 2 – Operating Margin</b>	[REDACTED]	[REDACTED]	[REDACTED]
<b>Metric 3 – Net Debt to EBITDA Ratio</b>	[REDACTED]	[REDACTED]	[REDACTED] debt at, the relevant half year end
<b>Metric 4 – Net Debt + Net Pension Deficit to EBITDA ratio</b>	[REDACTED]	[REDACTED]	[REDACTED]
<b>Metric 5 – Net Interest Paid Cover</b>	[REDACTED]	[REDACTED]	[REDACTED]
<b>Metric 6 – Acid Ratio</b>	[REDACTED]	[REDACTED]	[REDACTED]

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Financial Indicator	Calculation <sup>1</sup>	Financial Target Threshold:	Monitoring and Reporting Frequency
	[REDACTED]		[REDACTED]
<b>Metric 7 – Net Asset value</b>	[REDACTED]		[REDACTED]
<b>Metric 8 – Group Exposure Ratio</b>	[REDACTED]	[REDACTED]	[REDACTED]

Key:<sup>1</sup> – See Annex 1 of this Appendix which sets out the calculation methodology to be used in the calculation of each Financial Indicator.

**6. Termination Rights**

6.1 The *Client* shall be entitled to terminate this Contract if:

- 6.1.1 the *Consultant* fails to notify the *Client* of a Financial Distress Event in accordance with Paragraph 2.3.3;
- 6.1.2 the *Consultant* fails to comply with any part of Paragraph 4.3;
- 6.1.3 the *Client* finally rejects a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraphs 4.4 to 4.5.1; and/or
- 6.1.4 the *Consultant* fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 4.5.3.

6.2 The termination right at Paragraph 6.1 above shall be deemed R11 for the purposes of clause 9 (Termination).

**7. Not used**

**8. Board Confirmation**

8.1 Subject to Paragraph 8.4 of this Appendix, the *Consultant* shall within 120 days after each Accounting Reference Date or within 15 months of the previous Board Confirmation (whichever is the earlier) provide a Board Confirmation to the *Client* in the form set out at Annex 2 of this Appendix, confirming that to the best of the Board’s knowledge and belief, it is not aware of and has no knowledge:

- 8.1.1 that a Financial Distress Event has occurred since the later of the Contract Date or the previous Board Confirmation or is subsisting; or
- 8.1.2 of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.

8.2 The *Consultant* shall ensure that in its preparation of the Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant *Consultant* 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 Contract, the *Consultant* shall provide the Board Confirmation within 15 months of the Contract Date if earlier than the timescale for submission set out in Paragraph 8.1 of this Appendix.

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- 8.4 Where the *Consultant* is unable to provide a Board Confirmation in accordance with Paragraphs 8.1 to 8.3 of this Appendix 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 *Consultant* to submit in place of the Board Confirmation, a statement from the Board of Directors to the *Client* (and where the *Consultant* is a Strategic Supplier, the *Consultant* 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.

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**Annex 1: Calculation Methodology for Financial Indicators**

The *Consultant* 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 1 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
<p><b>Metric 1 – Turnover Ratio</b> [REDACTED]</p>	<p>[REDACTED]</p>
<p><b>Metric 2 – Operating Margin</b> [REDACTED]</p>	<p>[REDACTED]</p>
<p><b>Metric 3(B) – Net Debt to EBITDA Ratio</b></p>	<p>[REDACTED]</p>



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Financial Indicator	Specific Methodology
[REDACTED]	[REDACTED]
<b>Metric 4 Net Debt + Net Pension Deficit to EBITDA Ratio</b> [REDACTED]	[REDACTED]



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Financial Indicator	Specific Methodology
	[REDACTED]
<p><b>Metric 6 - Acid Ratio</b></p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p><b>Metric 7 – Net Asset Value</b></p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] the entity is less sustainable in the event of any deterioration in performance.</p>
<p><b>Metric 8 -Group Exposure Ratio</b></p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

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Financial Indicator	Specific Methodology
	[REDACTED]

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**Annex 2: Board Confirmation**

**Consultant Name:**

**Contract Reference Number:**

The Board of Directors acknowledge the requirements set out at paragraph 8 of Appendix 6 (Financial Distress) and confirm that the *Consultant* has exercised due care and diligence and made reasonable enquiry of all relevant *Consultant* 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 Contract 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 .....

## APPENDIX 7: DATA PROTECTION

The following definitions shall apply to this Appendix 7.

**“Controller” “Personal Data Breach” “Data Protection Impact Assessment” “Data Subject” “Data Subject Request” “Joint Controller” “Personal Data” “Processor”** have the meanings given in the UK GDPR;

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

**“Data Protection Legislation”** (a) the UK GDPR; (b) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (c) all applicable Law about the processing of personal data and privacy; and (d) (to the extent that it applies) the EU GDPR;

**“DPA 2018”** the Data Protection Act 2018;

**“EEA”** European Economic Area;

**“EU GDPR”** Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;

**“EU”** European Union;

**“Independent Controller”** as defined in paragraph 1.1.4 of this Appendix;

**“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 Contract;

**“Protective Measures”** appropriate technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it, including those outlined in Appendix 8 (Security Provisions);

**“Sub-processor”** any third party appointed to process Personal Data on behalf of the Processor related to this Contract;

**“UK”** the United Kingdom;

**“UK GDPR”** has the meaning as set out in section 3(10) of the DPA 2018, supplemented by section 205(4) of the DPA 2018.

### 1 STATUS OF THE CONTROLLER

1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Contract will determine the status of each Party under the Data Protection Legislation. A Party may act as:

1.1.1 “Controller” (where the other Party acts as the “Processor”);

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- 1.1.2 “Processor” (where the other Party acts as the “Controller”);
- 1.1.3 “Joint Controller” (where both Parties are considered to jointly control the same Personal Data);
- 1.1.4 “Independent Controller” of the Personal Data where the other Party is also “Controller” of the same Personal Data in its own right (but there is no element of joint control),  
and the Parties shall set out in Annex 1 (Processing Personal Data) of this Appendix 7 which scenario or scenarios are intended to apply under this Contract.

## 2 WHERE ONE PARTY IS CONTROLLER AND THE OTHER PARTY ITS PROCESSOR

- 2.1 Where a Party is a Processor, the only processing that it is authorised to do is listed in Annex 1 (Processing Personal Data) of this Appendix 7 by the Controller and may not be determined by the Processor. The term “processing” and any associated terms are to be read in accordance with Article 4 of the UK GDPR and EU GDPR (as applicable).
- 2.2 The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
- 2.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
  - 2.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 2.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the *service*;
  - 2.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 2.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 2.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
  - 2.4.1 process that Personal Data only in accordance with Annex 1 (Processing Personal Data) of this Appendix 7, unless the Processor is required to do otherwise by Applicable Law. If it is so required the Processor shall promptly notify the *Client* before processing the Personal Data unless prohibited by Applicable Law;
  - 2.4.2 ensure that it has in place Protective Measures, including in the case of the *Consultant* the measures set out in Appendix 8 (Security Provisions), which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
    - (a) nature of the data to be protected;
    - (b) harm that might result from a Data Loss Event;
    - (c) state of technological development; and
    - (d) cost of implementing any measures;
  - 2.4.3 ensure that:
    - (a) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Annex 1 (Processing Personal Data) of this Appendix 7);
    - (b) 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:
      - (i) are aware of and comply with the Processor’s duties under this Appendix 7 and clauses Z10 (Confidential Information) and Z20 (Security Requirements) of the *conditions of contract*;

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- (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
  - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
  - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 2.4.4 not transfer such Personal Data outside of the UK and/or the EEA unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- (a) the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR (or section 74A of DPA 2018) and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or
  - (b) the Controller and/or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable)) as determined by the Controller which could include relevant parties entering into:
    - (i) where the transfer is subject to UK GDPR:
      - the UK International Data Transfer Agreement as published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 from time to time; or
      - the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time ("EU SCCs"), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "Addendum") as published by the Information Commissioner's Office from time to and/or
    - (ii) where the transfer is subject to EU GDPR, the EU SCCs, as well as any additional measures determined by the Controller being implemented by the importing party;
  - (c) the Data Subject has enforceable rights and effective legal remedies;
  - (d) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (e) 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
  - (f) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Applicable Law to retain the Personal Data.
- 2.4.5 Subject to paragraph 2.4.6, 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;



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- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
  - (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 Applicable Law; or
  - (f) becomes aware of a Data Loss Event.
- 2.4.6 The Processor's obligation to notify under paragraph 2.4.5 shall include the provision of further information to the Controller in phases, as details become available.
- 2.4.7 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 paragraph 2.4.5 (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 it 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; and/or
  - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office or any other regulatory authority, or any consultation by the Controller with the Information Commissioner's Office or any other regulatory authority.
- 2.4.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Appendix 7. This requirement does not apply where the Processor employs fewer than 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.
- 2.4.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 2.4.10 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 2.4.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, 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 gives effect to the terms set out in this Appendix 7 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.
- 2.4.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

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2.4.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office or any other regulatory authority. The *Client* may on not less than 30 Working Days' notice to the *Consultant* amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office or any other regulatory authority.

**3 WHERE THE PARTIES ARE JOINT CONTROLLERS OF PERSONAL DATA**

3.1 In the event that the Parties are Joint Controllers in respect of Personal Data under this Contract, the Parties shall implement parts that are necessary to comply with Article 26 of the UK GDPR based on the terms set out in Annex 2 (Joint Controller Agreement) of this Appendix 7.

**4 WHERE THE PARTIES ARE INDEPENDENT CONTROLLERS OF PERSONAL DATA**

4.1 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.

4.2 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.

4.3 Where a Party has provided Personal Data to the other Party in accordance with paragraph 4.1, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.

4.4 The Parties shall be responsible for their own compliance with Articles 13 and 14 of the UK GDPR in respect of the processing of Personal Data for the purposes of this Agreement.

4.5 The Parties shall only provide Personal Data to each other:

4.5.1 to the extent necessary to perform the respective obligations under this Contract;

4.5.2 in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects);

4.5.3 where the provision of Personal Data from one Party to another involves transfer of such data to outside the UK and/or the EEA, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:

(a) the destination country has been recognised as adequate by the UK government is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 74A and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or

(b) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable)) as determined by the non-transferring Party which could include the relevant parties entering into:

(i) where the transfer is subject to UK GDPR:

- the UK International Data Transfer Agreement (the "IDTA") as published by the Information Commissioner's Office or such updated version of such IDTA as is published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 from time to time; or

- the European Commission's Standard Contractual Clauses per decisions 2021/914/EU [or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time (the "EU SCCs"), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "Addendum") as published by the Information Commissioner's Office from time to time and/or

(ii) where the transfer is subject to EU GDPR, the EU SCCs,

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as well as any additional measures determined by the Controller being implemented by the importing party;

- (c) the Data Subject has enforceable rights and effective legal remedies;
  - (d) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations);
  - (e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and
  - (f) where it has recorded it in Annex 1 (Processing Personal Data) of this Appendix 7.
- 4.6 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the 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.
- 4.7 A Party processing Personal Data for the purposes of this Contract shall maintain a record of its processing activities in accordance with Article 30 of the UK GDPR and shall make the record available to the other Party upon reasonable request.
- 4.8 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Contract ("the Request Recipient"):
- 4.8.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
  - 4.8.2 where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
    - (a) 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
    - (b) provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 4.9 Each party shall promptly notify the other Party upon it becoming aware of any Data Loss Event relating to Personal Data provided by the other party pursuant to this Agreement and shall:
- 4.9.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
  - 4.9.2 implement any measures necessary to restore the security of any compromised Personal Data;
  - 4.9.3 work with the other Party to make any required notifications to the Information Commissioner's Office or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - 4.9.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Applicable Law.

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- 4.10 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Contract as specified in Annex 1 (Processing Personal Data) of this Appendix 7.
- 4.11 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Contract which is specified in Annex 1 (Processing Personal Data) of this Appendix 7.
- 4.12 Notwithstanding the general application of paragraphs 1 to 3 to Personal Data, where the Consultant is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with this paragraph 4.

**5 STANDARD CONTRACTUAL CLAUSES**

- 5.1 It is noted that on 28 June 2021 the European Commission made an implementing decision pursuant to Article 45 of the EU GDPR on the adequate protection of personal data by the United Kingdom which contains carve-outs for certain transfers outside of the EU to the UK of certain types of Personal Data (the "UK Adequacy Decision"). If any transfer of Personal Data which is subject to EU GDPR pursuant to this Contract is not covered by the UK Adequacy Decision or at any time during the term of the Contract the UK Adequacy Decision is:
- 5.1.1 withdrawn, invalidated, overruled or otherwise ceases to have effect, or
  - 5.1.2 amended in such a way as to affect the transfers of Personal Data outside of the EU which are contemplated under this Contract, paragraphs 5.2 and 5.3 below shall apply.
- 5.2 The Parties agree:
- 5.2.1 that without any further action being required they have entered into the Standard Contractual Clauses in the European Commission's decision 2021/914/EU in respect of data transfers by the *Consultant* outside of the EU to the UK;
  - 5.2.2 that, where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Contract (and to which Chapter V of the EU GDPR applies) will be transferred in accordance with those Standard Contractual Clauses as of the date the Parties entered into those Standard Contractual Clauses;
  - 5.2.3 to use best endeavours to complete the annexes to the Standard Contractual Clauses promptly and at their own cost for the purpose of giving full effect to them; and
  - 5.2.4 that if there is any conflict between this Contract and the Standard Contractual Clauses the terms of the Standard Contractual Clauses shall apply.
- 5.3 In the event that the European Commission updates, amends, substitutes, adopts or publishes new Standard Contractual Clauses from time to time, the Parties agree:
- 5.3.1 that the most up to date Standard Contractual Clauses from time to time shall be automatically incorporated in place of those in use at the time of such update, amendment, substitution, adoption or publication and that such incorporation is not a compensation event;
  - 5.3.2 that where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Contract (and to which Chapter V of the EU GDPR applies) will be transferred in accordance with the relevant form of the most up to date Standard Contractual Clauses as of the date the European Commission decision regarding such new Standard Contractual Clauses becomes effective;
  - 5.3.3 to use best endeavours to complete any part of the most up to date Standard Contractual Clauses that a Party must complete promptly and at their own cost for the purpose of giving full effect to them; and
  - 5.3.4 that if there is any conflict between this Contract and the most up to date Standard Contractual Clauses the terms of the most up to date Standard Contractual Clauses shall apply.

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**Annex 1: Processing Personal Data****1. Data Processing**

- 1.1 This Annex shall be completed by the *Client*, who may take account of the view of the other Parties, however the final decision as to the content of this Annex shall be with the *Client* at its absolute discretion.
- 1.2 The contact details of the *Client's* Data Protection Officer are: [REDACTED]@nhs.net.
- 1.3 The contact details of the *Consultant's* Data Protection Officer are: [REDACTED]@macegroup.com.
- 1.4 The *Consultant* shall comply with any further written instructions with respect to processing by the *Client*.
- 1.5 Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of Controller for each Category of Personal Data	The <i>Consultant</i> is a Controller and the <i>Client</i> is a Controller unless a Task Order provides otherwise.
Subject matter of the processing	The processing is needed for the <i>Consultant</i> to Provide the Service to the <i>Client</i> .
Duration of the processing	Duration of the Contract.  However, the Parties acknowledge that if the <i>Consultant</i> processes Personal Data in its role as a Controller then it may continue to process Personal Data beyond the expiry or earlier termination of the Contract and will determine its own retention policies.
Nature and purposes of the processing	The nature of the processing means 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 data (whether or not by automated means) etc.  The purpose include: employment processing, statutory obligation, recruitment assessments, DBS checks, security clearance checks, ID badge issuing, contract management purposes, provision of secure emails.
Type of Personal Data being processed	Name, email address, date of birth, NI number, telephone number, pay, images, Disclosure and Baring Service results.
Categories of Data Subject	Prospective, temporary and permanent staff, employees and contractors (including volunteers, agents, and temporary workers) of both Parties.
Plan for return and destruction of the data once the processing is complete	In accordance with paragraph 2.4.4(f), the Processor (when the <i>Consultant</i> is processing Personal Data as a Processor) shall delete or return Personal Data (and any copies of it) to the <i>Client</i> on termination of the Contract

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Description	Details
UNLESS requirement under law to preserve that type of data	unless the Processor is required by Applicable Law to retain the Personal Data.
Locations at which the <i>Consultant</i> and/or its Subcontractors process Personal Data under this Agreement and international transfers and legal gateway	UK or EEA unless the <i>Client</i> agrees to a transfer of personal data and the personal data is adequately protected in accordance with the UK GDPR and this Contract.
Protective Measures that the <i>Consultant</i> and, where applicable, its Subcontractors have implemented to protect Personal Data processed under this Agreement against a breach of security (insofar as that breach of security relates to data) or a Data Loss Event	<ul style="list-style-type: none"> <li>• The requirements set out in Appendix 8 (Security Requirements)</li> <li>• Measures of pseudonymisation and encryption of personal data</li> <li>• Measures for ensuring ongoing confidentiality, integrity, availability and resilience of processing systems and services</li> <li>• Measures for ensuring the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident</li> <li>• Processes for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures in order to ensure the security of the processing</li> <li>• Measures for user identification and authorisation</li> <li>• Measures for the protection of data during transmission</li> <li>• Measures for the protection of data during storage</li> <li>• Measures for ensuring physical security of locations at which personal data are processed</li> <li>• Measures for ensuring events logging</li> <li>• Measures for ensuring system configuration, including default configuration</li> <li>• Measures for internal IT and IT security governance and management</li> <li>• Measures for certification/assurance of processes and products</li> <li>• Measures for ensuring data minimisation</li> <li>• Measures for ensuring data quality</li> <li>• Measures for ensuring limited data retention</li> <li>• Measures for ensuring accountability</li> <li>• Measures for allowing data portability and ensuring erasure</li> </ul>

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**Annex 2: Joint Controller Agreement****1 Joint Controller Status and Allocation of Responsibilities**

- 1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (*Joint Controller Agreement*). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.
- 1.2 The Parties agree that the *Client*:
- 1.2.1 is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;
  - 1.2.2 shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
  - 1.2.3 is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;
  - 1.2.4 is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
  - 1.2.5 shall make available to Data Subjects the essence of this Joint Controller Agreement (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the *Client's* privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).
- 1.3 Notwithstanding the terms of paragraph 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Data Controller.

**2 Undertakings of Both Parties**

- 2.1 The *Consultant* and the *Client* each undertake that they shall:
- 2.1.1 report to the other Party every 6 months on:
    - (a) the volume of Data Subject Access Requests (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
    - (b) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
    - (c) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
    - (d) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and

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- (e) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Applicable Law;

that it has received in relation to the subject matter of the Contract during that period;

- 2.1.2 notify each other immediately if it receives any request, complaint or communication made as referred to in Paragraphs 2.1.1(a) to (e);
- 2.1.3 provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Paragraphs 1.1 and 2.1.1(c) to (e) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
- 2.1.4 not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under this Contract or is required by Applicable Law) that disclosure or transfer of Personal Data is otherwise considered to be lawful processing of that Personal Data in accordance with Article 6 of the UK GDPR or EU GDPR (as the context requires). For the avoidance of doubt to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;
- 2.1.5 request from the Data Subject only the minimum information necessary to Provide the Service and treat such extracted information as Confidential Information;
- 2.1.6 ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;
- 2.1.7 take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
  - (a) are aware of and comply with their duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information;
  - (b) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where that Party would not be permitted to do so; and
  - (c) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
- 2.1.8 ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
  - (a) nature of the data to be protected;
  - (b) harm that might result from a Data Loss Event;
  - (c) state of technological development; and



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- (d) cost of implementing any measures;
- 2.1.9 ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the *Consultant* holds;
- 2.1.10 ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event;
- 2.1.11 not transfer such Personal Data outside of the UK and/or the EEA unless the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
- (a) the destination country has been recognised as adequate by the UK government is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 74A and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or
  - (b) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable) as agreed with the non-transferring Party 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 and as set out in as well as any additional measures;
    - (A) where the transfer is subject to UK GDPR:
      - (i) the UK International Data Transfer Agreement (the "**IDTA**") as published by the Information Commissioner's Office or such updated version of such IDTA as is published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 from time to time or
      - (ii) the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time (the "**EU SCCs**"), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "**Addendum**") or such updated version of such Addendum as is published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 from time to time and/or
    - (B) where the transfer is subject to EU GDPR, the EU SCCs,
  - (c) the Data Subject has enforceable rights and effective legal remedies;
  - (d) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and

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- (e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and

2.2 Each Joint Controller shall use its best endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its' obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations

### 3 Data Protection Breach

3.1 Without prejudice to Paragraph 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Data Loss Event or circumstances that are likely to give rise to a Data Loss Event, providing the other Party and its advisors with:

3.1.1 sufficient information and in a timescale which allows the other Party to meet any obligations to report a Data Loss Event under the Data Protection Legislation;

3.1.2 all reasonable assistance, including:

- (a) co-operation with the other Party and the Information Commissioner investigating the Data Loss Event and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
- (b) co-operation with the other Party including taking such reasonable steps as are directed by the *Client* to assist in the investigation, mitigation and remediation of a Data Loss Event;
- (c) co-ordination with the other Party regarding the management of public relations and public statements relating to the Data Loss Event;
- (d) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Data Loss Event, with complete information relating to the Data Loss Event, including, without limitation, the information set out in Paragraph 3.2.

3.2 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Data Loss Event which is the fault of that Party, as if it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Data Loss Event, including providing the other Party, as soon as possible and within 48 hours of the Data Loss Event relating to the Data Loss Event, in particular:

3.2.1 the nature of the Data Loss Event;

3.2.2 the nature of Personal Data affected;

3.2.3 the categories and number of Data Subjects concerned;

3.2.4 the name and contact details of the *Consultant's* Data Protection Officer or other relevant contact from whom more information may be obtained;

3.2.5 measures taken or proposed to be taken to address the Data Loss Event; and

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3.2.6 describe the likely consequences of the Data Loss Event.

#### 4 Audit

4.1 The *Consultant* shall permit:

4.1.1 the *Client*, or a third-party auditor acting under the *Client's* direction, to conduct, at the *Client's* cost, data privacy and security audits, assessments and inspections concerning the *Consultant's* data security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Legislation;

4.1.2 the *Client*, or a third-party auditor acting under the *Client's* direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 of the UK GDPR by the *Consultant* so far as relevant to the Contract, and procedures, including premises under the control of any third party appointed by the *Consultant* to assist in the provision of the *service*.

4.2 The *Client* may, in its sole discretion, require the *Consultant* to provide evidence of the *Consultant's* compliance with Paragraph 4.1 in lieu of conducting such an audit, assessment or inspection.

#### 5 Impact Assessments

5.1 The Parties shall:

5.1.1 provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to processing operations, risks and measures);

5.1.2 maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with this Contract, in accordance with the terms of Article 30 of the UK GDPR.

#### 6 ICO Guidance

The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner and/or any relevant Central Government Body and/or any other regulatory authority. The *Client* may on not less than thirty (30) Working Days' notice to the *Consultant* amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner or any other regulatory authority.

#### 7 Liabilities for Data Protection Breach

7.1 If financial penalties are imposed by the Information Commissioner on either the *Client* or the *Consultant* for a Data Loss Event ("**Financial Penalties**") then the following shall occur:

7.1.1 if in the view of the Information Commissioner, the *Client* is responsible for the Data Loss Event, in that it is caused as a result of the actions or inaction of the *Client*, its employees, agents, contractors, consultants (other than the *Consultant*) or systems and procedures controlled by the *Client*, then the *Client* shall be responsible for the payment of such Financial Penalties. In this case, the *Client* will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such data incident. The *Consultant* shall provide to the *Client* and its third party investigators and auditors,

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- on request and at the *Consultant's* reasonable cost, full cooperation and access to conduct a thorough audit of such data incident;
- 7.1.2 if in the view of the Information Commissioner, the *Consultant* is responsible for the Data Loss Event, in that it is not a breach that the *Client* is responsible for, then the *Consultant* shall be responsible for the payment of these Financial Penalties. The *Consultant* will provide to the *Client* and its auditors, on request and at the *Consultant's* sole cost, full cooperation and access to conduct a thorough audit of such data incident; or
- 7.1.3 if no view as to responsibility is expressed by the Information Commissioner, then the *Client* and the *Consultant* shall work together to investigate the relevant data incident and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any Financial Penalties equally if no responsibility for the Data Loss Event can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in clause W2 (Resolving and Avoiding Disputes).
- 7.2 If either the *Client* or the *Consultant* is the defendant in a legal claim brought before a court of competent jurisdiction ("**Court**") by a third party in respect of a Data Loss Event, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Data Loss Event shall be liable for the losses arising from such breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.
- 7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Data Loss Event (the "**Claim Losses**"):
  - 7.3.1 if the *Client* is responsible for the relevant breach, then the *Client* shall be responsible for the Claim Losses;
  - 7.3.2 if the *Consultant* is responsible for the relevant breach, then the *Consultant* shall be responsible for the Claim Losses; and
  - 7.3.3 if responsibility is unclear, then the *Client* and the *Consultant* shall be responsible for the Claim Losses equally.
- 7.4 Nothing in Paragraphs 7.2-7.3 shall preclude the *Client* and the *Consultant* reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Data Loss Event, having regard to all the circumstances of the breach and the legal and financial obligations of the *Client*.
- 8 Termination**
- 8.1 If the *Consultant* is in material default under any of its obligations under this Annex 2 (*Joint Controller Agreement*), the *Client* shall be entitled to terminate this Contract in accordance with clause 9 of the Contract (Termination), such termination being deemed R11 for the purposes of clause 9 (Termination).
- 9 Sub-Processing**
- 9.1 In respect of any Processing of Personal performed by a third party on behalf of a Party, that Party shall:

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- 9.1.1 carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by this Agreement, and provide evidence of such due diligence to the other Party where reasonably requested; and
- 9.1.2 ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

### **10 Data Retention**

- 10.1 The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by a Party for statutory compliance purposes or as otherwise required by this Agreement), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.

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**APPENDIX 8: SECURITY PROVISIONS****1 Definitions**

For the purposes of this appendix the following terms shall have the meanings given below:

<b>"Affiliates"</b>	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;
<b>"Breach of Security"</b>	in accordance with the Security Requirements and the Security Policy, the occurrence of: <ol style="list-style-type: none"> <li>a) any unauthorised access to or use of the service the Client's Premises, the Consultant System and/or any ICT, information or data (including the Confidential Information) used by the <i>Client</i> and/or the <i>Consultant</i> in connection with this Contract; and/or</li> <li>b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information), including any copies of such information or data, used by the <i>Client</i> and/or the <i>Consultant</i> in connection with this Contract.</li> </ol>
<b>"Clearance"</b>	means national security clearance and employment checks undertaken by and/or obtained from the Defence Vetting Agency;
<b>"Client Premises"</b>	means premises owned, controlled or occupied by the <i>Client</i> or its Affiliates which are made available for use by the <i>Consultant</i> or its Subcontractors for carrying out of the <i>service</i> (or any of them) on the terms set out in this contract or any separate agreement or licence;
<b>"Client System"</b>	the <i>Client's</i> computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the <i>Client</i> or the <i>Consultant</i> in connection with this contract which is owned by or licensed to the <i>Client</i> by a third party and which interfaces with the Consultant System or which is necessary for the <i>Client</i> to receive the <i>service</i> ;
<b>"Consultant Equipment"</b>	the hardware, computer and telecoms devices and equipment supplied by the <i>Consultant</i> or its Subcontractors (but not hired, leased or loaned from the <i>Client</i> ) for the carrying out of the <i>service</i> ;
<b>"Consultant Software"</b>	software which is proprietary to the <i>Consultant</i> , including software which is or will be used by the <i>Consultant</i> for the purposes of carrying out of the <i>service</i> ;
<b>"Consultant System"</b>	the information and communications technology system used by the <i>Consultant</i> in carrying out of the <i>service</i> including the Software, the ICT Equipment and related cabling (but excluding the Client System);
<b>"Control"</b>	means that a person possesses, directly or indirectly, 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;
<b>"Default"</b>	any breach of the obligations of the relevant party (including but not limited to fundamental breach or breach of a fundamental term) or

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	any other default, act, omission, negligence or statement of the relevant party, its employees, servants, agents or Subcontractors in connection with or in relation to the subject-matter of this Contract and in respect of which such party is liable to the other;
<b>"Dispute Resolution Procedure"</b>	the dispute resolution procedure set out in clause W2 of the Contract;
<b>"Environmental Information Regulations"</b>	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant Government Department in relation to such regulations;
<b>"FOIA"</b>	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;
<b>"Good Industry Practice"</b>	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;
<b>"ICT Environment"</b>	the Client System and the Consultant System;
<b>"ICT"</b>	information and communications technology;
<b>"Impact Assessment"</b>	an assessment of a compensation event;
<b>"Information Assets Register"</b>	the register of information assets to be created and maintained by the <i>Consultant</i> throughout the carrying out of the <i>service</i> as described in the contract (if any) or as otherwise agreed between the parties;
<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000;
<b>"ISMS"</b>	the Information Security Management System as defined by ISO/IEC 27001. The scope of the ISMS will be as agreed by the parties and will directly reflect the scope of the <i>service</i> ;
<b>"Know-How"</b>	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the <i>service</i> but excluding know how already in the <i>Consultant's</i> or the <i>Client's</i> possession before this Contract;
<b>"List x"</b>	means, in relation to a Subcontractor, one who has been placed on List x in accordance with Ministry of Defence guidelines and procedures, due to that Subcontractor undertaking work on its premises marked as CONFIDENTIAL or above;
<b>"Malicious Software"</b>	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;

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<b>"Process"</b>	has the meaning given to it under the Data Protection Legislation but, for the purposes of this contract, it shall include both manual and automatic processing;
<b>"Protectively Marked"</b>	shall have the meaning as set out in the Security Policy Framework;
<b>"Regulatory Bodies"</b>	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this contract or any other affairs of the <i>Client</i> and "Regulatory Body" shall be construed accordingly;
<b>"Request for Information"</b>	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
<b>"Security Management Plan"</b>	the <i>Consultant's</i> security plan prepared pursuant to paragraph 4 of this Appendix 8;
<b>"Security Policy Framework"</b>	means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division);
<b>"Security Requirements"</b>	means the requirements in the Contract relating to security of the carrying out of the <i>service</i> (if any) or such other requirements as the <i>Client</i> may notify to the <i>Consultant</i> from time to time.
<b>"Security Tests"</b>	shall have the meaning set out in the Security Management Plan;
<b>"Software"</b>	Specially Written Software, Consultant Software and Third Party Software;
<b>"Specially Written Software"</b>	any software created by the <i>Consultant</i> (or by a third party on behalf of the <i>Consultant</i> ) specifically for the purposes of this contract;
<b>"Staff Vetting Procedures"</b>	the <i>Client's</i> procedures and departmental policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989;
<b>"Standards"</b>	the British or international standards, the <i>Client's</i> internal policies and procedures, Government codes of practice and guidance together with any other specified policies or procedures referred to in this contract (if any) or as otherwise agreed by the parties;
<b>"Statement of Applicability"</b>	shall have the meaning set out in ISO/IEC 27001 and as agreed by the parties during the procurement phase;
<b>"Third Party Software"</b>	software which is proprietary to any third party other than an Affiliate of the <i>Consultant</i> which is or will be used by the <i>Consultant</i> for the purposes of carrying out of the <i>service</i> .

**2 Introduction**

2.1 This Appendix covers:

2.1.1 principles of protective security to be applied in carrying out of the *service*;



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- 2.1.2 wider aspects of security relating to carrying out of the *service*;
- 2.1.3 the development, implementation, operation, maintenance and continual improvement of an ISMS;
- 2.1.4 the creation and maintenance of the Security Management Plan;
- 2.1.5 audit and testing of ISMS compliance with the Security Requirements;
- 2.1.6 conformance to ISO/IEC 27001 (Information Security Requirements Specification) and ISO/IEC27002 (Information Security Code of Practice); and
- 2.1.7 obligations in the event of actual, potential or attempted breaches of security.

### 3 Principles of Security

- 3.1 The *Consultant* acknowledges that the *Client* places great emphasis on the confidentiality, integrity and availability of information and consequently on the security provided by the ISMS.
- 3.2 The *Consultant* shall be responsible for the effective performance of the ISMS and shall at all times provide a level of security which:
  - 3.2.1 is in accordance with Good Industry Practice, the law of the contract and this Contract;
  - 3.2.2 complies with the Security Policy;
  - 3.2.3 complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) available from the Cabinet Office Security Policy Division (COSPD);
  - 3.2.4 meets any specific security threats to the ISMS;
  - 3.2.5 complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph 3.2 of this Appendix;
  - 3.2.6 complies with the Security Requirements; and
  - 3.2.7 complies with the *Client's* ICT standards.
- 3.3 The references to standards, guidance and policies set out in paragraph 3.2.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.
- 3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the *Consultant* gives an early warning to the *Service Manager* of such inconsistency immediately upon becoming aware of the same, and the *Service Manager* shall, as soon as practicable, advise the *Consultant* which provision the *Consultant* shall be required to comply with.

### 4 ISMS and Security Management Plan

- 4.1 Introduction:
  - 4.1.1 The *Consultant* shall develop, implement, operate, maintain and continuously improve and maintain an ISMS which will, without prejudice to paragraph 3.2, be accepted, by the *Service Manager*, tested in accordance with the provisions relating to testing as set out in the contract (if any) or as otherwise agreed between the Parties, periodically updated and audited in accordance with ISO/IEC 27001.
  - 4.1.2 The *Consultant* shall develop and maintain a Security Management Plan in accordance with this Appendix to apply during the carrying out of the *service*.

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- 4.1.3 The *Consultant* shall comply with its obligations set out in the Security Management Plan.
- 4.1.4 Both the ISMS and the Security Management Plan shall, unless otherwise specified by the *Client*, aim to protect all aspects of the *service* and all processes associated with carrying out of the *service*, including the construction, use, alterations or demolition of the *service*, the *Consultant* System and any ICT, information and data (including the Client Confidential Information and the Client Data) to the extent used by the *Client* or the *Consultant* in connection with this Contract.
- 4.2 Development of the Security Management Plan:
- 4.2.1 Within 20 Working Days after the *starting date* and in accordance with paragraph 4.4 (Amendment and Revision), the *Consultant* will prepare and deliver to the *Service Manager* for acceptance a Security Management Plan.
- 4.2.2 If the Security Management Plan, or any subsequent revision to it in accordance with paragraph 4.4 (Amendment and Revision), is accepted by the *Service Manager* it will be adopted immediately and will replace the previous version of the Security Management Plan. If the Security Management Plan is not accepted by the *Service Manager* the *Consultant* shall amend it within 10 Working Days or such other period as the parties may agree in writing of a notice of non- acceptance from the *Service Manager* and re-submit to the *Service Manager* for accepted. The parties will use all reasonable endeavours to ensure that the acceptance process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the *Service Manager*. If the *Service Manager* does not accept the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure. No acceptance to be given by the *Service Manager* pursuant to this paragraph 4.2.2 of this Appendix may be unreasonably withheld or delayed. However any failure to accept the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 4.3.4 shall be deemed to be reasonable.
- 4.3 Content of the Security Management Plan:
- 4.3.1 The Security Management Plan will set out the security measures to be implemented and maintained by the *Consultant* in relation to all aspects of the *service* and all processes associated with carrying out of the *service* and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the *service* comply with the provisions of this Appendix (including the principles set out in paragraph 3).
- 4.3.2 The Security Management Plan (including the draft version) should also set out the plans for transiting all security arrangements and responsibilities from those in place at the *starting date* to those incorporated in the *Consultant's* ISMS at the date notified by the *Service Manager* to the *Consultant* for the *Consultant* to meet the full obligations of the Security Requirements.
- 4.3.3 The Security Management Plan will be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other appendices to this Contract which cover specific areas included within that standard.
- 4.3.4 The Security Management Plan shall be written in plain English in language which is readily comprehensible to the staff of the *Consultant* and the *Client* engaged in the *service* and shall only reference documents which are in the possession of the *Client* or whose location is otherwise specified in this Appendix.

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## 4.4 Amendment and Revision of the ISMS and Security Management Plan:

- 4.4.1 The ISMS and Security Management Plan will be fully reviewed and updated by the *Consultant* annually or from time to time to reflect:
- (a) emerging changes in Good Industry Practice;
  - (b) any change or proposed change to the Consultant System, the *service* and/or associated processes;
  - (c) any new perceived or changed security threats; and
  - (d) any reasonable request by the *Service Manager*.
- 4.4.2 The *Consultant* will provide the *Service Manager* with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the *Client*. The results of the review should include, without limitation:
- (a) suggested improvements to the effectiveness of the ISMS;
  - (b) updates to the risk assessments;
  - (c) proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and
  - (d) suggested improvements in measuring the effectiveness of controls.
- 4.4.3 On receipt of the results of such reviews, the *Service Manager* will accept any amendments or revisions to the ISMS or Security Management Plan in accordance with the process set out at paragraph 4.2.2.
- 4.4.4 Any change or amendment which the *Consultant* proposes to make to the ISMS or Security Management Plan (as a result of a *Service Manager's* request or change to the *service* or otherwise) shall be subject to the early warning procedure and shall not be implemented until accepted in writing by the *Service Manager*.

## 4.5 Testing

- 4.5.1 The *Consultant* shall conduct Security Tests of the ISMS on an annual basis or as otherwise agreed by the parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the *Service Manager*.
- 4.5.2 The *Service Manager* shall be entitled to witness the conduct of the Security Tests. The *Consultant* shall provide the *Service Manager* with the results of such tests (in a form accepted by the *Client* in advance) as soon as practicable after completion of each Security Test.
- 4.5.3 Without prejudice to any other right of audit or access granted to the *Client* pursuant to this contract, the *Service Manager* and/or its authorised representatives shall be entitled, at any time and without giving notice to the *Consultant*, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the *Consultant's* compliance with the ISMS and the Security Management Plan. The *Service Manager* may notify the *Consultant* of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the carrying out of the *service*. If such tests adversely affect the *Consultant's* ability to carry out the *service* in accordance with the Scope, the *Consultant* shall be granted relief against any resultant under-performance for the period of the tests.
- 4.5.4 Where any Security Test carried out pursuant to paragraphs 4.5.2 or 4.5.3 above reveals any actual or potential Breach of Security, the *Consultant* shall promptly

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notify the *Service Manager* of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the *Consultant* proposes to make in order to correct such failure or weakness. Subject to the *Service Manager's* acceptance, the *Consultant* shall implement such changes to the ISMS and the Security Management Plan in accordance with the timetable agreed with the *Service Manager* or, otherwise, as soon as reasonably possible. Where the change to the ISMS or Security Management Plan is made to address a non-compliance with the Security Policy or Security Requirements, the change to the ISMS or Security Management Plan is Disallowed Cost.

## 5 Compliance with ISO/IEC 27001

5.1



5.2 In the event that paragraph 5.1 above applies, if certain parts of the ISMS do not conform to Good Industry Practice, or controls as described in ISO/IEC 27002, or are not consistent with the Security Policy, and, as a result, the *Consultant* reasonably believes that it is not compliant with ISO/IEC 27001, the *Consultant* shall promptly notify the *Service Manager* of this and the *Client* in its absolute discretion may waive the requirement for certification in respect of the relevant parts.

5.3 The *Service Manager* shall be entitled to carry out such regular security audits as may be required and in accordance with Good Industry Practice, in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001.

5.4 If, on the basis of evidence provided by such audits, it is the *Service Manager's* reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the *Consultant*, then the *Service Manager* shall notify the *Consultant* of the same and give the *Consultant* a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001. If the *Consultant* does not become compliant within the required time then the *Service Manager* has the right to obtain an independent audit against these standards in whole or in part.

5.5 If, as a result of any such independent audit as described in paragraph 5.4 the *Consultant* is found to be non-compliant with the principles and practices of ISO/IEC 27001 then the *Consultant* shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the *Client* in obtaining such audit.

## 6 Breach of Security

6.1 Either party shall give an early warning to the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.

6.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 6.1, the *Consultant* shall:

6.2.1 immediately take all reasonable steps necessary to:

- (a) remedy such breach or protect the integrity of the ISMS against any such potential or attempted breach or threat; and
- (b) prevent an equivalent breach in the future,

such steps shall include any action or changes reasonably required by the *Service Manager*; and

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- 6.2.2 as soon as reasonably practicable provide to the *Service Manager* full details (using such reporting mechanism as defined by the ISMS) of the Breach of Security or the potential or attempted Breach of Security.

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**Annex 1: Security Policy**



# Information Security Policy

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<b>Policy Owner:</b>	[REDACTED], [REDACTED] [REDACTED]
<b>Policy approved by and Date:</b>	[REDACTED] 18 March 2024
<b>Brief summary of changes since previous version:</b>	<i>This policy has been created following the merger of NHS England, NHS Digital and Health Education England and represents a harmonisation of the respective Information Security policies of each organisation.</i>

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## 1. Purpose

- 1.1. The purpose of the Information Security Policy is to define the rules that must be adhered to in order to protect and maintain the security of NHS England's Information Assets and Systems.
- 1.2. This Policy applies to technology, processes and people and is supported by Security Standards, Baselines, Guidelines and Design Patterns.
- 1.3. Ensuring those responsible for managing and developing NHS England's IT systems, networks, and security processes are familiar with the techniques used with security requirements forms a crucial step in protecting NHSE and its data, helping to:
  - Maintain the confidentiality, integrity and availability of NHSE IT Services and Data.
  - Manage and mitigate the impact of security incidents.
  - Provide assurance that security controls are implemented and are operating effectively.
  - Ensure data is only accessible to those who are authorised to access it.
  - Represent the organisations cyber risk appetite
  - Enable NHSE to be compliant with legal regulation
- 1.4. This policy has been created following the merger between the former organisations: NHS England, NHS Digital, and Health Education England. A harmonisation exercise has been undertaken to merge the Information Security Policies of each organisation, removing duplication, and addressing differences in requirements.
- 1.5. NHSE reserves the right to modify, amend, or alter this policy as appropriate and will review it periodically to ensure it is relevant, up-to-date and compliant with current legislation.

## 2. Scope

- 2.1. This Policy applies to all:
  - Information systems owned and managed by NHS England
  - All data and information that is collected, created, processed, stored transmitted or destroyed during the course of NHS England business activity.
  - computing infrastructure and network devices
  - computing equipment our staff use to perform their work function, including their own equipment or devices e.g. mobile phones

While this policy applies to all NHS England staff, is it mostly applicable to those who own or are responsible for maintaining information systems and/or networks, control owners and those responsible for defining or deploying controls.

## 3. Role and Responsibilities

- 3.1. All NHS England directorates and regions fall within the scope of this Policy. This includes staff who are employed on a permanent, fixed term or zero-hours basis, contractors, temporary staff, secondees and volunteers. It also covers non-executive directors and non-executive associate directors. We use the terms "Staff" within this Policy to cover all of these different types of staff.
- 3.2. NHSE's Senior Information Risk Owner (SIRO) is responsible and accountable for the management of information and system security and cyber security risk

for all NHS England data assets and corporate and national IT systems ensuring they are managed within agreed risk appetite.

- 3.3. NHSE's Chief Information Security Officer has been authorised by the SIRO for the management of information and system security and cyber risk and ensuring this policy representative of NHSE's Cyber risk appetite.
- 3.4. Cyber Operations Governance, Risk and Compliance (GRC) function are responsible for maintaining this Policy, providing guidance on its content and monitoring compliance with this Policy.
- 3.5. Information Asset Owners and Information System Owners must ensure the requirements of this policy are implemented for the assets they are responsible for.

## 4. Definitions

- 4.1. **NHSE IT Services, IT Systems and Information Systems** means: information technology services licensed to, owned or leased, or otherwise used by NHSE that stores, processes, and/or transmits data. For example, information technology-based patient services, email, Microsoft Office based products, cloud computing services, services used to administer users, research and analytical tools and services, and publicly available services such as social networking or messaging services.
- 4.2. **Data** means: All data which is collected, generated, stored, shared, or otherwise processed by or on behalf of NHS England, including (but not limited to): patient, employee or third-party personal data; corporate, commercial or financial data; and research and analytical data.
- 4.3. **Computing** and/or **Computer Equipment** means: NHSE owned or leased computing appliances.
- 4.4. **User or users** means: any user of NHSE IT Services, Data and Computing Equipment.
- 4.5. **Malicious Software** means: any software that is specifically designed to disrupt, damage, alter, or gain unauthorised access to NHSE IT Services, Data and Computing Equipment, for example, a computing virus.
- 4.6. **Controls** means: any measure, technical or non-technical, acting as a countermeasure to potential threats.
- 4.7. **Information Assets** means: a body of information, defined and managed as a single unit so it can be understood, shared, protected and exploited effectively. Information assets have recognisable and manageable value, risk, content and life cycles.

## 5. Policy

### 5.1 General Principles

- 5.1.1 NHSE will protect the confidentiality, integrity, and availability of all hardware, software, data, and information, and information systems under its control. This will be achieved through the implementation of a set of technical and non-technical controls.
- 5.1.2 NHSE will provide effective protection that is commensurate with the risks to its assets in a timely and consistent manner.
- 5.1.3 Risks will be managed in accordance with governance requirements and the [NHSE Risk Management Framework](#).

- 5.1.4 NHSE will implement and maintain an Information Security Management System (ISMS) aligned to recognised industry frameworks providing a comprehensive approach to managing and safeguarding information and information systems.
- 5.1.5 Where NHSE does not comply with this policy, there must be appropriate mitigation and remediation plans in place with associated risks logged and managed accordingly.

## **5.2 Risk Management, Audit and Assurance**

- 5.2.1 NHSE will carry out security risk assessments in relation to all business processes that are covered by this policy. These risk assessments will cover all information systems, applications and networks used to support business processes. The risk assessment will identify the appropriate security countermeasures necessary to protect against possible breaches in, confidentiality, availability, and integrity.
- 5.2.2 All Information Systems must be risk assessed. Identified risks will be recorded, managed and escalated in accordance with the [NHSE Risk Management Framework](#).
- 5.2.3 There must be processes in place to provide continual assurance of the effectiveness of information security management arrangements.
- 5.2.4 NHSE will regularly audit compliance with this and other policies. In addition, it reserves the right to monitor activity where it suspects that there has been a breach of policy.

## **5.3 Information Governance (IG) Requirements**

- 5.3.1 Whenever NHSE procure or otherwise introduce new technology, hardware, software, or system which impacts the processing of personal data, information governance and data protection policies, processes, procedures, and guidance must be complied with including carrying out DPIAs. For more information, please see the [Data Protection Policy](#).

## **5.4 Incident Management**

- 5.4.1 All NHS England Security Incidents, being information security control failures, Personal Data Breaches, near misses, suspected security control weaknesses, and security vulnerabilities must be reported in accordance with the requirements to the [NHSE Incident Reporting Policy](#).
- 5.4.2 A record of all IT-related incidents must be maintained with a post-incident review conducted for each incident. The CISO must be made aware of all incidents deemed to have an impact on information security.
- 5.4.3 High Severity Alerts must be responded to within 48 hours of issue and remediating actions implemented within 14 days, remediation beyond this period must be approved by the CISO.

## **5.5 Asset Management**

- 5.5.1 All IT and Information Systems must have a named owner (IAO) responsible for the information security of the asset.

- 5.5.2 All Information Systems, assets, and electronic equipment must be identified, registered, and logged on the relevant asset inventory.
- 5.5.3 IAOs must ensure that information risk assessments are performed at least annually, following guidance from the Senior Information Risk Owner (SIRO). IAOs shall submit the risk assessment results and associated mitigation plans to the SIRO for review. Please see the [Information Risk Procedure](#) for further information.
- 5.5.4 Upon termination of employment, contract, or agreement, all IT equipment provided by NHSE must be returned to NHSE.

## **5.6 Access Control**

- 5.6.1 Access to information and resources must be restricted to users who have an authorised business need.
- 5.6.2 Access to privileged accounts must be restricted strictly to those who require such access rights to perform their role.
- 5.6.3 Access to Information Systems must be managed through an approved access control mechanism.
- 5.6.4 User activity, including access to data, geographic location, and use of privileged accounts, must be controlled, monitored, and auditable, thereby ensuring it remains appropriate to the user's role and responsibilities, with no unauthorised access rights and permissions.
- 5.6.5 Access must be periodically reviewed by the Information Asset Owner (IAO) and where necessary removed/revoked when not required as part of a user's role.
- 5.6.6 The access rights of all employees, contractors and third-party users to information and information processing facilities must be removed on termination of employment, contract or agreement.

## **5.7 Management of Systems**

- 5.7.1 An appropriate process to approve and document connections to external networks must be used.
- 5.7.2 Appropriate controls, technical and non-technical, must be in place to secure connections to external networks.
- 5.7.3 Appropriate controls, technical and non-technical, must be in place to protect data in transit and at rest, this includes the storage and transmission of passwords or other user credentials.
- 5.7.4 Any new technologies and services must be approved for use by the Director of Technology Strategy, Architecture and Standards.
- 5.7.5 Appropriate controls, technical and non-technical, must be in place to establish and provide assurance of the compliance of device and software configurations.
- 5.7.6 There must be measures in place to detect and protect against viruses and other malicious software.
- 5.7.7 There must be measures in place to prevent the leakage of data.
- 5.7.8 Port control systems must be configured to prevent non-encrypted removable media being written to.

## **5.8 Data and Information Handling**

- 5.8.1 NHS England holds and processes a significant amount of data of various types, each with their own retention periods. Such records must be created, stored, reviewed and destroyed in accordance with the [NHSE Records Management Policy](#) to ensure that retention requirements are adhered to.
- 5.8.2 All data and information must be marked in accordance [UK Government Security Classifications](#) and the [NHSE Records Management Policy](#). Unmarked information and records must be treated as OFFICIAL.
- 5.8.3 Any NHSE owned computing equipment which holds, stores or processes data for NHS England must be securely disposed of at the end of its functional life.
- 5.8.4 NHSE owned computing equipment must be disposed of in accordance with the IT asset disposal procedure and a Record of Disposal Certificate must be obtained and auditable.
- 5.8.5 All data stored on NHSE owned computing equipment must be securely erased or overwritten prior to the equipment being released for reuse.
- 5.8.6 All data, including printed materials, must be securely erased/purged or destroyed at the end of functional life or use.

## **5.9 User Equipment**

- 5.9.1 All portable storage media must be approved for use by Corporate IT. The data held on such media must be secured through encryption and the device physically protected to prevent theft.
- 5.9.2 There must be mechanisms in place to securely manage NHSE owned/maintained mobile devices which access NHSE systems and data.
- 5.9.3 There must be mechanisms in place to protect data stored on mobile devices which are owned/managed by NHSE and remove data when it is no longer required or the device is offboarded from NHSE systems.
- 5.9.4 Devices which access NHSE systems and data must be used in conjunction with an NHSE user account.
- 5.9.5 All NHSE owned computing equipment must be returned to Corporate IT Services when it is no longer required.

## **5.10 Patch and Vulnerability Management**

- 5.10.1 The management of all IT assets, network devices, and infrastructure, including those operated by third party vendors, must be controlled through standardised operating procedures which includes vendor recommended secure configuration guidelines.
- 5.10.2 An appropriate process must be in place and adhered to covering the timely deployment of patches.
- 5.10.3 All vulnerabilities and patches classified as Critical/High must be remediated within 14 days of identification, remediation beyond this period must be approved by the CISO.

## **5.11 Physical Security**

- 5.11.1 All computing assets and electronic equipment must have suitable controls to protect against environmental hazards.

5.11.2 Physical access control policies and processes which cover employee identification, verification, and authorisation must be implemented.

5.11.3 The physical security of NHS England's information is the responsibility of all staff. The physical environment must be recognised as providing a layer of protection to data and information. This is achieved by the following means:

- Controlling access to sites, buildings, and offices.
- Ensuring desks and work areas are clear at the end of each day.
- Use of locked cabinets within offices to restrict access to information.
- Checking that visitors to sites are authorised to be there.
- Ensuring that when information is carried off-site, it is done so securely or preferably via a means of encryption for digital data
- Always wearing an ID badge when on site.

## **5.12 Business Continuity**

5.12.1 A business continuity management system must be maintained in line with the [Business Continuity Policy](#).

5.12.2 Business Impact Analyses must be undertaken in all areas of NHS England and Business Continuity Plans must be in place to ensure the continuity of prioritised activities in the event of a significant or major incident.

5.12.3 Each System must have a procedure which is regularly tested defining the method, frequency, and protections of backing-up data.

## **5.13 Change Management**

5.13.1 Changes to information systems, applications or networks must be reviewed and submitted to the relevant change advisory board for approval prior to change.

5.13.2 There must be processes in place for unplanned changes to Information Systems.

5.13.3 Changes to information systems, applications, and networks must be subjected to periodic audit.

5.13.4 Where a change has implications on the handling of personal data, confidential patient data, pseudonymised data, or confidential data, the Privacy, Transparency, and Trust team should be consulted and the DPIA updated.

## **5.14 Third Parties and Contracts**

5.14.1 Access to Information Systems by third parties must only be granted based on risk assessment, as outlined in the [NHSE Risk Management Framework](#), and where there is an authorised business need approved by National Director.

5.14.2 Procurement processes and third-party contracts must incorporate NHSE security requirements.

## **5.15 Training**

5.15.1 All mandatory training must be completed by all NHSE staff, and an accurate record of such training maintained.

5.15.2 Applicable guidance, policy and awareness related documentation must be maintained and made available to users.

## **6. Exemptions**

- 6.1.1 NHSE recognises potential challenges in meeting some Policy requirements. For example, where Users are prohibited from sharing computer log on credentials, this may be impossible to achieve on a third party provided application where NHSE has only been provided with a single logon ID, as long as the licencing model allows, sharing will naturally occur.

Users must contact the IT Service Desk where any dispensation is required.

## **7. Equality and Health Inequalities Assessment**

- 7.1. As part of the development and implementation of this Policy, its impact on equality has been analysed and no detriment has been identified.

## **8. Associated Documentation**

- 8.1. This Policy is developed in support of NHSE's:
1. Acceptable Use of ICT Policy
  2. Data Protection Policy
  3. Security Incident Reporting Procedure
  4. Records Management Policy

## **9. Contact Us**

- 9.1. If you have any questions relating to this Policy and your responsibilities in complying with this Policy, please contact the Cyber Operations GRC function by emailing [cybersecurity@nhs.net](mailto:cybersecurity@nhs.net).



## APPENDIX 9: CYBER ESSENTIALS SCHEME

### 1 DEFINITIONS

1.1 In this Appendix 9, the following words shall have the following meanings:

<b>"Cyber Essentials Scheme"</b>	the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats (as may be amended from time to time). Details of the Cyber Essentials Scheme can be found here:  <a href="https://www.ncsc.gov.uk/cyberessentials/overview">https://www.ncsc.gov.uk/cyberessentials/overview</a> ;
<b>"Cyber Essentials Basic Certificate"</b>	the certificate awarded on the basis of self-assessment, verified by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance;
<b>"Cyber Essentials Certificate"</b>	Cyber Essentials Basic Certificate, the Cyber Essentials Plus Certificate or the Cyber Essential Scheme certificate equivalent to be provided by the <i>Consultant</i> as required by the <i>Client</i> ;
<b>"Cyber Essential Scheme Data"</b>	sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme; and
<b>"Cyber Essentials Plus Certificate"</b>	the certification awarded on the basis of external testing by an independent certification body of the <i>Consultant's</i> cyber security approach under the Cyber Essentials Scheme and is a more advanced level of assurance.

### 2 CYBER ESSENTIALS OBLIGATIONS

- 2.1 The *Consultant* provides to the *Client* the Cyber Essentials Plus Certificate on or prior to the *starting date* of the Contract. Where the *Consultant* fails to comply with this paragraph it shall be prohibited from Providing the Service under the Contract until such time as the *Consultant* has evidenced to the *Client* its compliance with this paragraph 2.1.
- 2.2 The *Consultant* delivers to the *Client* evidence of renewal of the Cyber Essentials Plus Certificate on each anniversary of the first applicable certificate obtained by the *Consultant* under paragraph 2.1.
- 2.3 In the event that the *Consultant* fails to comply with paragraphs 2.1 and 2.2, the *Client* reserves the right to terminate this Contract in accordance with clause 9 (Termination), such termination being deemed R11 for the purposes of clause 9 (Termination).
- 2.4 The *Consultant* ensures that all sub-contracts with Subcontractors who Process Cyber Essentials Data contain provisions no less onerous on the Subcontractors than those imposed on the *Consultant* under this Contract in respect of the Cyber Essentials Scheme under paragraph 2.1 of this Appendix.
- 2.5 This Appendix shall survive termination or expiry of this Contract.

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**APPENDIX 10: INTELLECTUAL PROPERTY RIGHTS****1 Definitions**

1.1 In this Appendix 10, the following words shall take the following meaning:

<b>“Client Background IPRs”</b>	<p>(a) IPRs owned by the <i>Client</i> before the Contract Date, including IPRs contained in any of the <i>Client’s</i> Know-How, documentation, processes and procedures;</p> <p>(b) IPRs created by the <i>Client</i> independently of this Contract; and/or</p> <p>(c) Crown Copyright which is not available to the <i>Consultant</i> otherwise than under this Contract;</p> <p>but excluding IPRs owned by the <i>Client</i> subsisting in the Client Software;</p>
<b>“Client Data”</b>	<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 style="padding-left: 40px;">a. supplied to the <i>Consultant</i> by or on behalf of the <i>Client</i>; and/or</p> <p style="padding-left: 40px;">b. which the <i>Consultant</i> is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(b) any Personal Data for which the <i>Client</i> is the Controller;</p>
<b>“Client Software”</b>	software which is owned by or licensed to the <i>Client</i> (other than under or pursuant to this Contract) and which is or will be used by the <i>Consultant</i> for the purposes of Providing the Services;
<b>“Client System”</b>	the <i>Client’s</i> computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the <i>Client</i> or the <i>Consultant</i> in connection with this Contract which is owned by the <i>Client</i> or licensed to it by a third party and which interfaces with the Consultant System or which is necessary for the <i>Client</i> to receive the <i>service</i> ;
<b>“Consultant Background IPRs”</b>	<p>(a) IPRs owned by the <i>Consultant</i> before the Contract Date, for example those subsisting in the <i>Consultant’s</i> standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the <i>Consultant’s</i> Know-How or generic business methodologies; and/or</p> <p>(b) IPRs created by the <i>Consultant</i> independently of this Contract, which in each case is or will be used before or during the Service Period for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the <i>Consultant</i> subsisting in the Consultant Software;</p>

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<p><b>“Consultant COTS Background IPR”</b></p>	<p>any embodiments of Consultant Background IPRs that:</p> <p>(a) the <i>Consultant</i> makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the <i>Consultant</i> save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p>
<p><b>“Consultant COTS Software”</b></p>	<p>Consultant Software (including open source software) that:</p> <p>(a) the <i>Consultant</i> makes generally available commercially prior to the Contract Date (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the <i>Consultant</i> save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p>
<p><b>“Consultant Equipment”</b></p>	<p>the hardware, computer and telecoms devices and equipment used by the <i>Consultant</i> or its Subcontractors (but not hired, leased or loaned from the <i>Client</i>) for the Provision of the Services;</p>
<p><b>“Consultant Existing IPR Licence”</b></p>	<p>the licence granted by the <i>Consultant</i> to the <i>Client</i> for Consultant Non-COTS Software and Consultant Non-COTS Background IPR in accordance with Paragraph 9 of this Appendix;</p>
<p><b>“Consultant Non-COTS Background IPR”</b></p>	<p>any embodiments of Consultant Background IPRs that have been delivered by the <i>Consultant</i> to the <i>Client</i> and that are not Consultant COTS Background IPRs;</p>
<p><b>“Consultant Non-COTS Software”</b></p>	<p>Consultant Software that is not Consultant COTS Software;</p>
<p><b>“Consultant Software”</b></p>	<p>software which is proprietary to the <i>Consultant</i> (or an Affiliate of the <i>Consultant</i>) and which is or will be used by the <i>Consultant</i> for the purposes of Providing the Services, including the software specified as such in Appendix 11;</p>
<p><b>“Consultant System”</b></p>	<p>the information and communications technology system used by the <i>Consultant</i> in implementing and performing the <i>service</i> including the Software, the Consultant Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Client System);</p>
<p><b>“Crown Copyright”</b></p>	<p>has the meaning given in the Copyright, Designs and Patents Act 1988;</p>
<p><b>“Deliverable”</b></p>	<p>any outputs of the <i>service</i> and any other documents, products and materials provided by the <i>Consultant</i> to the <i>Client</i> at any stage during the performance of this Contract;</p>
<p><b>“Documentation”</b></p>	<p>descriptions of the <i>service</i> and Key Performance Indicators, details of the Consultant 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</p>

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	<p>system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:</p> <p>(a) is required to be supplied by the <i>Consultant</i> to the <i>Client</i> under this Contract;</p> <p>(b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the <i>Client</i> to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the <i>service</i>;</p> <p>(c) is required by the <i>Consultant</i> in order to provide the Services; and/or</p> <p>(d) has been or shall be generated for the purpose of Providing the Services;</p>
<b>“End User”</b>	any person authorised by the <i>Client</i> to use the IT Environment and/or the <i>service</i> ;
<b>“Good Industry Practice”</b>	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;
<b>“Intellectual Property Rights” or “IPRs”</b>	<p>(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, goodwill and the right to sue for passing off, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and rights to use and protect the confidentiality of, Confidential Information, and all other intellectual property rights in each case whether registered or unregistered;</p> <p>(b) applications for registration, and the right to apply for and be granted registration, renewals or extensions of (and the rights to claim priority from) any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>(c) all other rights having equivalent or similar effect or forms of protection which subsist or will subsist now or in the future in any country or jurisdiction;</p>
<b>“IT Environment”</b>	the Client System and the Consultant System;
<b>“Know-How”</b>	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the <i>service</i> but excluding know how already in the other Party’s possession before this Contract;
<b>“Non-trivial Customer Base”</b>	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;
<b>“Object Code”</b>	software and/or data in machine-readable, compiled object code form;

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<b>“Open Source Software”</b>	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;
<b>“Project Specific IPR”</b>	<p>(a) IPRs in items created by the <i>Consultant</i> (or by a third party on behalf of the <i>Consultant</i>) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>(b) IPRs arising as a result of the performance of the <i>Consultant's</i> obligations under this Contract;</p> <p>but shall not include the Consultant Background IPRs or the Specially Written Software;</p>
<b>“Replacement Consultant”</b>	any third party service provider of Replacement Services appointed by the <i>Client</i> from time to time (or where the <i>Client</i> is providing the replacement <i>service</i> for its own account, the <i>Client</i> );
<b>“Replacement Services”</b>	any services which are the same as or substantially similar to any of the <i>service</i> and which the <i>Client</i> receives in substitution for any of the <i>service</i> following the expiry or termination of this Contract, whether those services are provided by the <i>Client</i> internally and/or by any third party;
<b>“Software”</b>	Specially Written Software, Consultant Software and Third Party Software;
<b>“Source Code”</b>	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;
<b>“Specially Written Software”</b>	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the <i>Consultant</i> (or by a Subcontractor or other third party on behalf of the <i>Consultant</i> ) specifically for the purposes of this Contract, including any modifications or enhancements to Consultant Software or Third Party Software created specifically for the purposes of this Contract;
<b>“Third Party Background IPRs”</b>	<p>(a) Intellectual Property Rights owned by the Third Party before the Contract Date, for example those subsisting in the Third Party's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Third Party's Know-How or generic business methodologies; and/or</p> <p>(b) Intellectual Property Rights created by the Third Party independently of this Contract,</p> <p>which in each case is or will be used before or during the Service Period for designing, testing implementing or Providing the Services but excluding Intellectual Property Rights owned by the Third Party subsisting in the Third Party Software;</p>

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<p><b>“Third Party COTS Background IPR”</b></p>	<p>any embodiments of Third Party Background IPRs that:</p> <p>(a) the Third Party makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Third Party save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p>
<p><b>“Third Party COTS Software”</b></p>	<p>Third Party Software (including Open Source Software) that:</p> <p>(a) the supplier makes generally available commercially prior to the date of this Contract (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>
<p><b>“Third Party IPRs”</b></p>	<p>Intellectual Property Rights owned by a third party, but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software, which in any case is, will be or is proposed to be used by the <i>Consultant</i> for the purposes of Providing the Services;</p>
<p><b>“Third Party Non-COTS Background IPR”</b></p>	<p>any embodiments of Third Party Background IPRs that have been delivered to the <i>Client</i> and that are not Third Party COTS Background IPRs;</p>
<p><b>“Third Party Non-COTS Software”</b></p>	<p>Third Party Software that is not Third Party COTS Software;</p>
<p><b>“Third Party Software”</b></p>	<p>software which is proprietary to any third party (other than an Affiliate of the <i>Consultant</i>) or any Open Source Software which in any case is, will be or is proposed to be used by the <i>Consultant</i> for the purposes of Providing the Services, including the software specified as such in Appendix 11.</p>

## 2 Intellectual Property Rights – General Provisions

2.1 Except as expressly provided for in this Contract or otherwise agreed in writing:

2.1.1 the *Client* does not acquire any right, title or interest in or to the Intellectual Property Rights of the *Consultant* or its licensors, namely:

- (a) the Consultant Software;
- (b) the Third Party Software;
- (c) the Third Party Background IPRs;
- (d) the Consultant Background IPRs; and
- (e) any Know-How, trade secrets or Confidential Information of the *Consultant* contained in any Specially Written Software or Project Specific IPR; and

2.1.2 the *Consultant* does not acquire any right, title or interest in or to the Intellectual Property Rights of the *Client* or its licensors, including (but not limited to):

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- (a) the Client Software;
  - (a) the Client Data; and
  - (b) the Client Background IPRs; and
- 2.1.3 neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks.
- 2.2 Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with the requirements of this Appendix 10, it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request (whenever made).
- 2.3 If the *Client* becomes aware at any time, including after the Service Period, that, in respect of any Deliverable, the *Client* has not received the licences to the Consultant Software, the Third Party Software, the Third Party Background IPRs and the Consultant Background IPRs required by Paragraphs 4, 5 and 7, the *Consultant* must, within 10 Working Days notify the *Client*:
  - 2.3.1 the specific Intellectual Property Rights the *Client* has not received licences to; and
  - 2.3.2 the Deliverables affected.
- 2.4 Where a patent owned by the *Consultant* is infringed by the use of the Specially Written Software or Project Specific IPR by the *Client* or any Replacement Consultant, the *Consultant* hereby grants to the *Client* and the Replacement Consultant a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software.
- 2.5 Unless otherwise agreed in writing, the *Consultant* will produce and record in the table at Annex 1 to this Appendix (and share with the *Service Manager*) and keep updated throughout the Service Period:
  - 2.5.1 any Specially Written Software and Project Specific IPR; and
  - 2.5.2 where:
    - (a) the Specially Written Software or Project Specific IPR adapts Consultant Software, Third Party Software, Third Party IPRs, or Consultant Background IPRs; or
    - (b) Consultant Software, Third Party Software, Third Party IPRs, or Consultant Background IPRs is embedded in, or forms an integral part of, the Specially Written Software or Project Specific IPR,

full details of the Consultant Software, Third Party Software, Third Party IPRs, or Consultant Background IPRs.
- 2.6 For the avoidance of doubt:
  - 2.6.1 except as provided for in Paragraph 4.2.3(c)(ii), the expiry or termination of this Contract does not terminate the licences granted to the *Client* under Paragraph 4;
  - 2.6.2 the award of this Contract or the ordering of any Deliverables does not constitute an authorisation by the Crown under:
    - (a) Sections 55 and 56 of the Patents Act 1977;
    - (b) section 12 of the Registered Designs Act 1949; or
    - (c) sections 240 to 243 of the Copyright, Designs and Patents Act 1988.

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**3 Ownership and delivery of IPR created under the Contract**3.1 The *Consultant* agrees to:

3.1.1 transfer and assign with full title guarantee and free from all third party rights to the *Client*, or procure the transfer and assignment to the *Client*, of all Intellectual Property Rights in the Specially Written Software and Project Specific IPRs, including (but not limited to):

(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"); and

(c) any Third Party IPRs in the Specially Written Software and Project Specific IPRs;

3.1.2 obtain waivers of all moral rights in the Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction; and

3.1.3 execute or procure the execution of all assignments required to transfer properly any Intellectual Property Rights in the Specially Written Software and Project Specific IPRs to the *Client*.

3.2 The *Consultant* must deliver to the *Client*:

3.2.1 the Specially Written Software;

3.2.2 any software elements of the Project Specific IPR;

3.2.3 relevant Documentation; and

3.2.4 all related Software Supporting Materials,

within 5 Working Days of:

3.2.5 either:

(a) initial release or deployment; or

(b) if a Key Date has been identified in the applicable Task Order, that Key Date; and

3.2.6 each subsequent release or deployment of the Specially Written Software and any software elements of the Project Specific IPR.

3.3 Where the *Consultant* delivers materials to the *Client* under Paragraph 3.2, it must do so in a format specified by the *Client*. Where the *Client* specifies the material is to be delivered on media, the *Client* becomes the owner of the media containing the material on delivery.

**4 Use of Consultant or Third Party Non-COTS Software or Non-COTS Background IPR**4.1 The *Consultant* must not use any:

4.1.1 Consultant Non-COTS Software; or

4.1.2 Consultant Non-COTS Background IPR;



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in the Provision of the Services or in any Deliverable (including in any Specially Written Software or in the software element of Project Specific IPRs) unless:

4.1.3 in the case of Consultant Non-COTS Software and the software elements of Consultant Non-COTS Background IPR, it is:

- (a) detailed in Appendix 11 (Software); or
- (b) both:
  - (i) submitted to the *Service Manager* for review; and
  - (ii) approved by the *Client*; and

4.1.4 in the case of non-software elements of Consultant Non-COTS Background IPR, it is approved by the *Client* in writing.

4.2 The *Consultant* must not use any:

4.2.1 Third Party Non-COTS Software; or

4.2.2 Third Party Non-COTS Background IPR,

in the Provision of the Services or in any Deliverable (including in any Specially Written Software or in the software element of Project Specific IPRs) unless:

4.2.3 in the case of Third Party Non-COTS Software and the software elements of Third Party Non-COTS Background IPR, it is:

- (a) detailed in Appendix 11 (Software); or
- (b) both:
  - (i) submitted to the *Service Manager* for review; and
  - (ii) approved by the *Client*; and
- (c) one of the following conditions is met:
  - (i) the owner or an authorised licensor of the relevant IPR has granted the *Client* a direct licence on the terms equivalent to those set out in Paragraph 7; or
  - (ii) if the *Consultant* cannot, after commercially reasonable endeavours, meet the condition in Paragraph 4.2.3(c)(i), all the following conditions are met:
    - (A) the *Consultant* has notified the *Client* in writing giving details of:
      - (1) what licence terms can be obtained from the relevant third party; and
      - (2) whether there are providers which the *Consultant* could seek to use and the licence terms obtainable from those third parties;
    - (B) the *Client* approves the licence terms of one of those third parties; and
    - (C) the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to the *Client* on those terms; or

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- (iii) if the *Consultant* cannot meet the conditions in Paragraphs 4.2.3(c)(i) and 4.2.3(c)(ii), the *Client* has provided written approval to use the relevant IPR without a licence, with reference to the acts authorised and the specific IPR involved; or

4.2.4 in the case of non-software elements of Third-Party Non-COTS Background IPR, it is approved by the *Client* in writing.

## 5 Use of Consultant or Third Party COTS Software or COTS Background IPR

5.1 The *Consultant* must not use any:

- 5.1.1 Consultant COTS Software;
- 5.1.2 Consultant COTS Background IPR;
- 5.1.3 Third Party COTS Software; or
- 5.1.4 Third Party COTS Background IPR,

in the Provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) unless:

5.1.5 in the case of Consultant COTS Software, Third Party COTS Software and the software elements of Consultant COTS Background IPR and Third Party COTS Background IPR, it is either:

- (a) detailed in Appendix 11 (Software); or
- (b) both:
  - (i) submitted to the *Service Manager* for review; and
  - (ii) approved by the *Client*; and

5.1.6 all the following conditions are met:

- (a) the *Consultant* has provided the *Client* with the applicable terms for the IPRs (which must be at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available); and
- (b) the *Client* has not (in its absolute discretion) rejected those licence terms within 10 Working Days of the date on which they were provided to the *Client*.

## 6 Licences granted by the *Client*

6.1 Subject to clause 7, the *Client* grants the *Consultant* a licence to the:

- 6.1.1 the Project-Specific IPR;
- 6.1.2 the Specially Written Software;
- 6.1.3 the Client Software;
- 6.1.4 the Client Data; and
- 6.1.5 the Client Background IPRs

that:

6.1.6 is non-exclusive, royalty-free and non-transferable;

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- 6.1.7 is sub-licensable to any Subcontractor, subject to the following:
- (a) the sub-license is only for the purpose of the *Consultant* fulfilling its obligations under this Contract and not for other commercial exploitation;
  - (b) the Subcontractor enters into a confidentiality undertaking with the *Consultant* on the same terms as set out in Appendix 11 (Software); and
  - (c) the sub-license does not purport to provide the sub-licensee with any wider rights than those granted to the *Consultant* under this Paragraph;
- 6.1.8 allows the *Consultant* and/or any Subcontractor granted a sub-license (each as outlined below) to use, copy and adapt any licensed IPRs for the purpose of:
- (a) (in relation to both the *Consultant* and any Subcontractor granted a sub-license) fulfilling its obligations under this Contract; and
  - (b) (in relation to the *Consultant* only) commercially exploiting the Project Specific IPR and Specially Written Software; and
- 6.1.9 continues in effect following the expiry or earlier termination of this Contract.
- 6.2 When the licence granted under Paragraph 6.1:
- 6.2.1 terminates in accordance with Paragraph 7; or
- 6.2.2 no longer has effect at the end of the Service Period,
- the *Consultant* must, and must ensure that each Subcontractor granted a sub-license under Paragraph 6.1.7:
- 6.2.3 immediately cease all use of the licensed IPR;
- 6.2.4 either:
- (a) at the discretion of the *Client*, return or destroy documents and other tangible materials that contain any of the licensed IPR; or
  - (b) if the *Client* has not made an election within six months of the termination of the licence, destroy the documents and other tangible materials that contain any of the licensed IPR; and
- 6.2.5 ensure, so far as reasonably practicable, that any licensed IPR held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the *Consultant*.
- 6.1 The *Client* may terminate any licence it grants under this Paragraph by notice in writing with immediate effect where the *Consultant* or any Subcontractor granted a sub-license breaches any condition in that licence.

## **7 Client approval for Consultant to exploit IPR created under Contract**

- 7.1 Before using, copying or adapting any:
- 7.1.1 Project-Specific IPR;
  - 7.1.2 Specially Written Software;
  - 7.1.3 Client Software;
  - 7.1.4 Client Data; and
  - 7.1.5 Client Background IPRs,

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for any purpose other than fulfilling its obligations under this Contract, the *Consultant* must seek the approval of the *Client* in accordance with the provisions of this Paragraph.

- 7.2 The *Client* may terminate any licence it grants under Paragraph 6 by notice in writing with immediate effect where the *Consultant* breaches any condition in that licence.
- 7.3 The *Consultant* must provide a proposal setting out:
- 7.3.1 the purpose for which it proposes to use the IPR;
  - 7.3.2 the activities the *Consultant* proposes to undertake with or in respect of the IPR;
  - 7.3.3 such further information as the *Client* may reasonably require to properly consider the proposal.
- 7.4 The *Client* may refuse the *Consultant's* proposal where it considers that if the *Consultant* were to implement the proposal it would harm:
- 7.4.1 the *Client's* reputation; or
  - 7.4.2 the *Client's* interests.
- 7.5 Where the *Client* has not:
- 7.5.1 approved or declined the proposal; or
  - 7.5.2 required further information,
- within 20 Working Days of the later of:
- 7.5.3 the date the proposal was first provided to the *Client*; or
  - 7.5.4 the date on which further information was provided to the *Client*,
- then the proposal is, for the purposes of this Contract, approved.

## **8 Provision of information on Project Specific IPR and Specially Written Software**

- 8.1 The *Client* may, at any time, require the *Consultant* to provide information on:
- 8.1.1 the purposes, other than for the purposes of this Contract, for which the *Consultant* and/or any Subcontractor granted a sub-licence uses Project Specific IPR and Specially Written Software; and
  - 8.1.2 the activities the *Consultant* and/or any Subcontractor granted a sub-licence undertakes, other than under this Contract, with or in respect of the Project Specific IPR and Specially Written Software.
- 8.2 The *Consultant* must provide the information required by the *Client*:
- 8.2.1 within 20 Working Days of the date of the requirement; and
  - 8.2.2 in the form and with the content specified by the *Client*.

## **9 Licences in respect of Consultant Non-COTS Software and Consultant Non-COTS Background IPR**

- 9.1 Subject to the *Client* approving the use of Consultant Non-COTS Software and Consultant Non-COTS Background IPR under Paragraph 4, the *Consultant* grants the *Client* a Consultant Existing IPR Licence on the terms set out in Paragraph 9.3 in respect of each Deliverable where:
- 9.1.1 the Consultant Non-COTS Software and Consultant Non-COTS Background IPR

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- is embedded in the Deliverable;
- 9.1.2 the Consultant Non-COTS Software and Consultant Non-COTS Background IPR is necessary for the *Client* to use the Deliverable for any of the purposes set out in Paragraph 9.4; or
- 9.1.3 the Deliverable is a customisation or adaptation of Consultant Non-COTS Software and Consultant Non-COTS Background IPR.
- 9.2 The categories of Consultant Non-COTS Software and Consultant Non-COTS Background IPR set out in Paragraph 9.1 are mutually exclusive.
- 9.3 The Consultant Existing IPR Licence granted by the *Consultant* to the *Client* is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:
- 9.3.1 in the case of Consultant Non-COTS Software and Consultant Non-COTS Background IPR embedded in a Deliverable:
- (a) has no restriction on the identity of any transferee or sub-licensee;
  - (b) is sub-licensable for any of the purposes set out in Paragraph 9.4;
  - (c) allows the *Client* and any transferee or sub-licensee to use, copy and adapt the Consultant Non-COTS Software and Consultant Non-COTS Background IPR for any of the purposes set out in Paragraph 9.4; and
- 9.3.2 in the case of Consultant Non-COTS Software and Consultant Non-COTS Background IPR that is necessary for the *Client* to use the Deliverable for its intended purpose or has been customised or adapted to provide the Deliverable:
- (a) allows the *Client* and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant Consultant Non-COTS Software and Consultant Non-COTS Background IPR for any of the purposes set out in Paragraph 9.4;
  - (b) is transferrable to only:
    - (i) a Crown Body;
    - (ii) any body (including any private sector body) that performs or carries out any of the functions or activities that the *Client* had previously performed or carried out; or
    - (iii) a person or organisation that is not a direct competitor of the *Consultant*, where that transferee:
      - (A) enters into a direct arrangement with the *Consultant* in the form set out in Appendix 11 (Software); or
      - (B) enters into a confidentiality arrangement with the *Client* in terms equivalent to those set out in set out in Clause Z10 (Confidential Information);
  - (c) is sub-licensable to the Replacement Consultant (including where the Replacement Consultant is a competitor of the *Consultant*) where the Replacement Consultant:
    - (i) enters into a direct arrangement with the *Consultant* in the form set out in of Appendix 11 (Software); or
    - (ii) enters into a confidentiality arrangement with the *Client* in terms equivalent to those set out in set out in Clause Z10 (Confidential Information);

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- 9.3.3 includes a perpetual, royalty-free, non-exclusive licence to use, copy and adapt any Know-How, trade secrets or Confidential Information of the *Consultant* contained within any Consultant Non-COTS Software and Consultant Non-COTS Background IPR;
- 9.3.4 continues in effect following the expiry or earlier termination of this Contract; and
- 9.3.5 is subject to the restrictions that:
- (a) no sub-licence granted to the Consultant Non-COTS Software and Consultant Non-COTS Background IPR shall purport to provide the sub- licensee with any wider rights than those granted to the *Client* under this Paragraph; and
  - (b) any transferee or sublicensee of the Consultant Non-COTS Software and Consultant Non-COTS Background IPR must either:
    - (i) enter into a direct arrangement with the *Consultant* in the form set out in of Appendix 11 (Software); or
    - (ii) enter into a confidentiality arrangement with the *Client* in terms equivalent to those set out in set out in Clause Z10 (Confidential Information).
- 9.4 For the purposes of Paragraphs 9.1 and 9.3, the relevant purposes are:
- 9.4.1 to allow the *Client* or any End User to receive and use the Deliverables;
  - 9.4.2 to commercially exploit the Project Specific IPR, Specially Written Software and Software Supporting Materials; and
  - 9.4.3 for any purpose relating to the exercise of the *Client's* (or any other public sector body's) business or function.
- 9.5 Where the legal status of the *Client* changes, such that it ceases to be a Crown Body:
- 9.5.1 the Consultant Existing IPR Licence is unaffected; and
  - 9.5.2 any successor body of the *Client* that is a Crown Body shall have the benefit of the Consultant Existing IPR Licence.
- 9.6 Where the Consultant Existing IPR Licence is transferred under Paragraph 9.3.1(a) or 9.3.2(b) or there is a change in the *Client's* legal status to which Paragraph 9.5 applies, the transferee or successor body do not acquire any wider rights than those granted to the *Client* under this Paragraph.

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**Annex 1: Project Specific IPR and Specially Written Software**

Name of Project Specific IPR	Details

Name of Specially Written Software	Details

Name of adapted or embedded Consultant Software, Third Party Software, Third Party IPRs, or Consultant Background IPRs	Details

***[Guidance note: This will be updated throughout the life of the Contract. The Project Specific IPR and Specially Written Software which must be recorded in this Annex does not include all forms of IPR which may be created by the Consultant and the Consultant’s staff during the completion of their obligations under the Contract. Only Project Specific IPR and Specially Written Software which is part of a Deliverable, or is necessary for the use of a Deliverable by the Client will need to be recorded here. IPR such as email communications or documents which do not form part of the Deliverables need not be recorded in this Annex.]***

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**APPENDIX 11: SOFTWARE**

**1. The Software**

- 1.1 The Software below is licensed to the *Client* in accordance with Appendix 10 (Intellectual Property Rights).
- 1.2 The *Consultant* shall update this Appendix regularly, and in any event no less than every 6 (six) Months from the Contract Date, to record any Consultant Software or Third Party Software subsequently licensed by the *Consultant* or third parties for the purposes of the delivery of the *service*.

**2. Consultant Software**

2.1 The Consultant Software includes the following items:

Software	Supplier (if an Affiliate of the <i>Consultant</i> )	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)	Term/Expiry
[REDACTED]							



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Software	Supplier (if an Affiliate of the <i>Consultant</i> )	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)	Term/Expiry
[REDACTED]							

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Software	Supplier (if an Affiliate of the Consultant)	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)	Term/Expiry

**3. Third Party Software**

3.1 The Third Party Software shall include the following items:

Third Party Software	Supplier	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)	Term/Expiry

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Third Party Software	Supplier	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)	Term/Expiry
[REDACTED]							

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**Annex 1: Form Of Confidentiality Undertaking****CONFIDENTIALITY AGREEMENT**

**THIS AGREEMENT** is made on [date]

**BETWEEN:**

- (1) [insert name] of [insert address] (the “**Sub-licensee**”); and
- (2) [insert name] of [insert address] (the “**Consultant**”),

together the “**Parties**”.

**WHEREAS:**

- (A) [insert name of *Client*] (the “**Client**”) and the Consultant are party to a contract dated [insert date] (the “**Contract**”) for the provision by the Consultant of [insert brief description of services] to the Client.
- (B) The Client wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to the Client pursuant to the Contract (the “**Sub-licence**”).
- (C) It is a requirement of the Contract that, before the Client grants such sub-licence to the Sub-licensee, the Sub-licensee execute a confidentiality agreement in favour of the Consultant in or substantially in the form of this Agreement to protect the Confidential Information of the Consultant.

**IT IS AGREED as follows:****1 Interpretation**

1.1 In this Agreement, unless the context otherwise requires:

“**Confidential Information**” means:

(a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Client to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:

- a. the Consultant; or
- b. the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Consultant;

(b) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Consultant to the Client pursuant to or in connection with the Sub-licence;

(c) other Information provided by the Client pursuant to this Agreement to the Sub-licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub-licensee’s

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attention or into the Sub-licensee's possession in connection with the Sub-licence; and

(d) Information derived from any of the above,

but not including any Information that:

(e) was in the possession of the Sub-licensee without obligation of confidentiality prior to its disclosure by the Client;

(f) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or

(g) was independently developed without access to the Information;

**“Information”**

means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

**“Sub-licence”**

has the meaning given to that expression in Recital B to this Agreement.

1.2 In this Agreement:

1.2.1 a reference to any gender includes a reference to other genders;

1.2.2 the singular includes the plural and vice versa;

1.2.3 the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;

1.2.4 references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;

1.2.5 headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and

1.2.6 references to Clauses are to clauses of this Agreement.

**2 Confidentiality Obligations**

2.1 In consideration of the Client entering into the Sub-licence, the Sub-licensee shall:

2.1.1 treat all Confidential Information as secret and confidential;

2.1.2 have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);

2.1.3 not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Consultant or except as expressly set out in this Agreement;

2.1.4 not transfer any of the Confidential Information outside the United Kingdom;

2.1.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;

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- 2.1.6 immediately notify the Consultant in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- 2.1.7 upon the expiry or termination of the Sub-licence:
  - (a) destroy or return to the Consultant all documents and other tangible materials that contain any of the Confidential Information;
  - (b) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub-licensee) from any computer, word processor, voicemail system or any other device; and
  - (c) make no further use of any Confidential Information.

### **3 Permitted Disclosures**

- 3.1 The Sub-licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
  - 3.1.1 reasonably need to receive the Confidential Information in connection with the Sub-licence; and
  - 3.1.2 have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and
  - 3.1.3 have agreed to terms similar to those in this Agreement.
- 3.2 The Sub-licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub-licensee.
- 3.3 Before making a disclosure pursuant to Clause 3.2, the Sub-licensee shall, if the circumstances permit:
  - 3.3.1 notify the Consultant in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
  - 3.3.2 ask the court or other public body to treat the Confidential Information as confidential.

### **4 General**

- 4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Consultant shall remain with and be vested in the Consultant.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
  - 4.2.1 to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
  - 4.2.2 to require the Consultant to disclose, continue disclosing or update any Confidential Information; or
  - 4.2.3 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive

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of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

- 4.4 Without prejudice to any other rights or remedies that the Consultant may have, the Sub-licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub-licensee of any of the provisions of this Agreement. Accordingly, the Sub-licensee acknowledges that the Consultant shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Sub-licensee to the Consultant for any breach of this Agreement shall be limited to [one million pounds (£1,000,000)].
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

## 5 Notices

- 5.1 Any notice to be given under this Agreement (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.
- 5.2 Any Notice:
- 5.2.1 if to be given to the Consultant shall be sent to:  
[Address]  
Attention: [Contact name and/or position, e.g. “The Finance Director”]
- 5.2.2 if to be given to the Sub-licensee shall be sent to:  
[Name of Organisation]  
[Address]  
Attention: [ ]

## 6 Governing law

- 6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.
- 6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

**IN WITNESS** of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the beginning of this Agreement.

**For and on behalf of [name of Consultant]**

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Signature: \_\_\_\_\_ Date:

Name: \_\_\_\_\_ Position:

**For and on behalf of [name of Sub-licensee]**

Signature: \_\_\_\_\_ Date:

Name: \_\_\_\_\_ Position:



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**APPENDIX 12: STAFF TRANSFER**

**1 DEFINITIONS**

In this Appendix, the following definitions shall apply:

<b>“Admission Agreement”</b>	as defined in Part A;
<b>“Consultant Personnel”</b>	all directors, officers, employees, agents, consultants and contractors of the <i>Consultant</i> and/or of any Subcontractor engaged in the performance of the <i>Consultant’s</i> obligations under this Contract;
<b>“Consultant’s Final Consultant Personnel List”</b>	a list provided by the <i>Consultant</i> of all Consultant Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
<b>“Consultant’s Provisional Consultant Personnel List”</b>	a list prepared and updated by the <i>Consultant</i> of all Consultant Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the <i>service</i> or any relevant part of the <i>service</i> which it is envisaged as at the date of such list will no longer be provided by the <i>Consultant</i> ;

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**“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;

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;

**“Former Consultant”**

a consultant supplying services to the *Client* 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 subcontractor of such consultant (or any subcontractor of any such subcontractor);

**“New Fair Deal”**

the revised Fair Deal position set out in the HM Treasury guidance: *“Fair Deal for staff pensions: staff transfer from central government”* issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date;

**“Notified Subcontractor”**

a Subcontractor identified in the Annex to this Appendix to whom Transferring Client Employees and/or Transferring Former Consultant Employees will transfer on a Relevant Transfer Date;

**“Old Fair Deal”**

HM Treasury Guidance *“Staff Transfers from Central Government: A Fair Deal for Staff Pensions”* issued in June 1999 including the supplementary guidance *“Fair Deal for*

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*Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues*” issued in June 2004;

<b>“Relevant Transfer Date”</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
<b>“Relevant Transfer”</b>	a transfer of employment to which the Employment Regulations applies;
<b>“Replacement Subcontractor”</b>	a subcontractor of the Replacement Consultant to whom Transferring Consultant Employees will transfer on a Service Transfer Date (or any subcontractor of any such subcontractor);
<b>“Service Transfer Date”</b>	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
<b>“Service Transfer”</b>	any transfer of the <i>service</i> (or any part of the <i>service</i> ), for whatever reason, from the <i>Consultant</i> or any Subcontractor to a Replacement Consultant or a Replacement Subcontractor;
<b>“Staffing Information”</b>	in relation to all persons identified on the Consultant's Provisional Consultant Personnel List or Consultant's Final Consultant Personnel List, as the case may be, all information required in Annex E2 in the format specified and with the identities of Data Subjects anonymised where possible. The <i>Client</i> may acting reasonably make changes to the format or information requested in Annex E2 from time to time;
<b>“Statutory Schemes”</b>	means the CSPS, NHSPS or LGPS;
<b>“Transferring Client Employees”</b>	those employees of the <i>Client</i> to whom the Employment Regulations will apply on the Relevant Transfer Date;
<b>“Transferring Consultant Employees”</b>	those employees of the <i>Consultant</i> and/or the <i>Consultant's</i> Subcontractors to whom the Employment Regulations will apply on the Service Transfer Date.
<b>“Transferring Former Consultant Employees”</b>	in relation to a Former Consultant, those employees of the Former Consultant to whom the Employment Regulations will apply on the Relevant Transfer Date; and

## 2 INTERPRETATION

2.1 Where a provision in this Appendix imposes an obligation on the *Consultant* to provide an indemnity, undertaking or warranty, the *Consultant* shall procure that each of its Subcontractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the *Client*, Former Consultant, Replacement Consultant or Replacement Subcontractor, as the case may be.

## 3 APPLICABLE PARTS OF THIS APPENDIX

3.1 Only the following parts of this Appendix shall apply to this Contract:

- (a) Part B (Staff Transfer at Start Date – Transfer from Former Consultant);

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- (b) Part E (Staff Transfer on Exit):
  - (i) Annex E1 (List of Notified Subcontractors); and
  - (ii) Annex E2 (Staffing Information).

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**PART B: TRANSFERRING FORMER CONSULTANT EMPLOYEES AT SERVICE COMMENCEMENT****1 RELEVANT TRANSFERS**

1.1 The *Client* and the *Consultant* agree that:

1.1.1 the commencement of the Provision of the Services or of any relevant part of the *service* will be a Relevant Transfer in relation to the Transferring Former Consultant Employees; and

1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Consultant and the Transferring Former Consultant 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 *Consultant* and/or Notified Subcontractor and each such Transferring Former Consultant Employee.

1.2 The *Client* shall procure that each Former Consultant 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 Consultant 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 *Consultant* shall make, and the *Client* shall procure that each Former Consultant makes, any necessary apportionments in respect of any periodic payments.

**2 FORMER CONSULTANT INDEMNITIES**

2.1 Subject to Paragraph 2.2, the *Client* shall procure that each Former Consultant shall indemnify the *Consultant* and any Notified Subcontractor against any Employee Liabilities arising from or as a result of:

2.1.1 any act or omission by the Former Consultant in respect of any Transferring Former Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Consultant Employee arising before the Relevant Transfer Date;

2.1.2 the breach or non-observance by the Former Consultant arising before the Relevant Transfer Date of:

(a) any collective agreement applicable to the Transferring Former Consultant Employees; and/or

(b) any custom or practice in respect of any Transferring Former Consultant Employees which the Former Consultant is contractually bound to honour;

2.1.3 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:

(a) in relation to any Transferring Former Consultant Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority

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- relates to financial obligations arising before the Relevant Transfer Date;  
and
- (b) in relation to any employee who is not a Transferring Former Consultant 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 Consultant to the *Consultant* and/or any Notified Subcontractor 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;
- 2.1.4 a failure of the Former Consultant 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 Consultant Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Consultant other than a Transferring Former Consultant Employee for whom it is alleged the *Consultant* and/or any Notified Subcontractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations; and
- 2.1.6 any claim made by or in respect of a Transferring Former Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Consultant Employee relating to any act or omission of the Former Consultant 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 *Consultant* or any Subcontractor 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 *Consultant* or any Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Former Consultant Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the *Consultant* or any Subcontractor to occur in the period from (and including) the Relevant Transfer Date; or
- 2.2.2 arising from the failure by the *Consultant* and/or any Subcontractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the *Client* as a Transferring Former Consultant Employee claims, or it is determined in relation to any person who is not identified by the *Client* as a Transferring Former Consultant Employee, that their contract of employment has been transferred from a Former Consultant to the *Consultant* and/or any Notified Subcontractor pursuant to the Employment Regulations then:
- 2.3.1 the *Consultant* shall, or shall procure that the Notified Subcontractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the *Client* and, where required by the *Client*, to the Former Consultant; and
- 2.3.2 the Former Consultant may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the

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*Consultant* and/or the Notified Subcontractor or take such other reasonable steps as the Former Consultant 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 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Consultant and/or the *Client*, the *Consultant* shall, or shall procure that the Notified Subcontractor shall, immediately release the person from their employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
  - 2.5.2 such offer has been made but not accepted; or
  - 2.5.3 the situation has not otherwise been resolved,
- the *Consultant* and/or any Notified Subcontractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the *Consultant* and/or any Notified Subcontractor 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 *Client* shall procure that the Former Consultant indemnifies the *Consultant* and/or any Notified Subcontractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the *Consultant* takes, or shall procure that the Notified Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
    - (a) any claim for:
      - (i) 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
      - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
      - (iii) in any case in relation to any alleged act or omission of the *Consultant* and/or any Subcontractor; or
      - (iv) any claim that the termination of employment was unfair because the *Consultant* and/or Notified Subcontractor neglected to follow a fair dismissal procedure; and
  - 2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the *Consultant* and/or any Notified Subcontractor (as appropriate) to the *Client* and, if applicable, the Former Consultant, within 6 months of the *starting date*.
- 2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Consultant nor dismissed by the *Consultant* and/or any Notified Subcontractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the

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*Consultant* or Notified Subcontractor and the *Consultant* shall, or shall procure that the Notified Subcontractor shall, comply with such obligations as may be imposed upon it under the Law.

2.9

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**3 CONSULTANT INDEMNITIES AND OBLIGATIONS**

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

3.1.1 any act or omission by the *Consultant* or any Subcontractor in respect of any Transferring Former Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Consultant Employee whether occurring before, on or after the Relevant Transfer Date;

3.1.2 the breach or non-observance by the *Consultant* or any Subcontractor on or after the Relevant Transfer Date of:

(a) any collective agreement applicable to the Transferring Former Consultant Employee; and/or

(b) any custom or practice in respect of any Transferring Former Consultant Employees which the *Consultant* or any Subcontractor is contractually bound to honour;

3.1.3 any claim by any trade union or other body or person representing any Transferring Former Consultant Employees arising from or connected with any failure by the *Consultant* or a Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

3.1.4 any proposal by the *Consultant* or a Subcontractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Consultant Employees to their material detriment on or after their transfer to the *Consultant* or a Subcontractor (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 Consultant Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment



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- Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the *Consultant* or a Subcontractor to, or in respect of, any Transferring Former Consultant Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Client* and/or the Former Consultant in writing;
- 3.1.6 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:
- (a) in relation to any Transferring Former Consultant 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
- (b) in relation to any employee who is not a Transferring Former Consultant 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 Consultant to the *Consultant* or a Subcontractor, 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;
- 3.1.7 a failure of the *Consultant* or any Subcontractor 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 Consultant Employees in respect of the period from (and including) the Relevant Transfer Date;
- 3.1.8 any claim made by or in respect of a Transferring Former Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Consultant Employee relating to any act or omission of the *Consultant* or any Subcontractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Consultant's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 3.1.9 a failure by the *Consultant* or any Subcontractor 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 Consultant whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Consultant's failure to comply with its obligations under the Employment Regulations.
- 3.3 The *Consultant* shall comply, and shall procure that each Subcontractor 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 Subcontractor shall perform and discharge, all its obligations in respect of all the Transferring Former Consultant 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

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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 *Consultant* and the Former Consultant.

### **4 INFORMATION**

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

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

5.1 The *Consultant* shall, and shall procure that each Subcontractor shall, comply with any requirement notified to it by the *Client* relating to pensions in respect of any Transferring Former Consultant Employee as set down in:

5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;

5.1.2 Old Fair Deal; and/or

5.1.3 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 clause 12.3 of the Contract.

### **6 PROCUREMENT OBLIGATIONS**

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

### **7 PENSIONS**

7.1 The *Consultant* shall, and shall procure that each Subcontractor shall, comply with 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.

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**PART E: EMPLOYMENT EXIT PROVISIONS****1 PRE-SERVICE TRANSFER OBLIGATIONS**

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

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

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

1.2 At least 20 Working Days prior to the Service Transfer Date, the *Consultant* shall provide to the *Client* or at the direction of the *Client* to any Replacement Consultant and/or any Replacement Subcontractor:

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

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

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

1.5 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the *Consultant* agrees, that it shall not, and agrees to procure that each Subcontractor shall not, assign any person to the provision of the *service* who is not listed on the *Consultant's* Provisional Consultant Personnel List and shall not without the approval of the *Client* (not to be unreasonably withheld or delayed):

- 1.5.1 replace or re-deploy any Consultant Personnel listed on the *Consultant* Provisional Consultant 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 they replaces;
- 1.5.2 make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Consultant Personnel (including pensions and any payments connected with the termination of employment);

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- 1.5.3 increase the proportion of working time spent on the *service* (or the relevant part of the *service*) by any of the Consultant Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4 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 Consultant's Provisional Consultant Personnel List;
- 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the *service* (or the relevant part of the *service*); or
- 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Consultant's Provisional Consultant Personnel List save by due disciplinary process,

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

- 1.6 During the Service Period, the *Consultant* shall provide, and shall procure that each Subcontractor shall provide, to the *Client* any information the *Client* may reasonably require relating to the manner in which the *service* are organised, which shall include:
  - 1.6.1 the numbers of employees engaged in providing the *service*;
  - 1.6.2 the percentage of time spent by each employee engaged in providing the *service*; and
  - 1.6.3 a description of the nature of the work undertaken by each employee by location.
- 1.7 The *Consultant* shall provide, and shall procure that each Subcontractor shall provide, all reasonable cooperation and assistance to the *Client*, any Replacement Consultant and/or any Replacement Subcontractor to ensure the smooth transfer of the Transferring Consultant 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 Consultant Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the *Consultant* shall provide, and shall procure that each Subcontractor shall provide, to the *Client* or, at the direction of the *Client*, to any Replacement Consultant and/or any Replacement Subcontractor (as appropriate), in respect of each person on the Consultant's Final Consultant Personnel List who is a Transferring Consultant Employee:
  - 1.7.1 the most recent month's copy pay slip data;
  - 1.7.2 details of cumulative pay for tax and pension purposes;
  - 1.7.3 details of cumulative tax paid;
  - 1.7.4 tax code;
  - 1.7.5 details of any voluntary deductions from pay; and
  - 1.7.6 bank/building society account details for payroll purposes.

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**2 EMPLOYMENT REGULATIONS EXIT PROVISIONS**

- 2.1 The *Client* and the *Consultant* acknowledge that subsequent to the commencement of the provision of the *service*, the identity of the provider of the *service* (or any part of the *service*) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the *service* being undertaken by a Replacement Consultant and/or a Replacement Subcontractor. Such change in the identity of the *Consultant* of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. The *Client* and the *Consultant* further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the *Consultant* and the Transferring Consultant Employees (except in relation to any contract terms disappplied 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 Consultant and/or a Replacement Subcontractor (as the case may be) and each such Transferring Consultant Employee.
- 2.2 The *Consultant* shall, and shall procure that each Subcontractor shall, comply with all its obligations in respect of the Transferring Consultant 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 Subcontractor shall perform and discharge, all its obligations in respect of all the Transferring Consultant 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 *Consultant* and/or the Subcontractor (as appropriate); and (ii) the Replacement Consultant and/or Replacement Subcontractor.
- 2.3 Subject to Paragraph 2.4, the *Consultant* shall indemnify the *Client* and/or the Replacement Consultant and/or any Replacement Subcontractor against any Employee Liabilities arising from or as a result of:
- 2.3.1 any act or omission of the *Consultant* or any Subcontractor in respect of any Transferring Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Consultant Employee whether occurring before, on or after the Service Transfer Date;
- 2.3.2 the breach or non-observance by the *Consultant* or any Subcontractor occurring on or before the Service Transfer Date of:
- (a) any collective agreement applicable to the Transferring Consultant Employees; and/or
- (b) any other custom or practice with a trade union or staff association in respect of any Transferring Consultant Employees which the *Consultant* or any Subcontractor is contractually bound to honour;
- 2.3.3 any claim by any trade union or other body or person representing any Transferring Consultant Employees arising from or connected with any failure by the *Consultant* or a Subcontractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

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- 2.3.4 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:
- (a) in relation to any Transferring Consultant 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
  - (b) in relation to any employee who is not identified in the Consultant's Final Consultant Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the *Consultant* to the *Client* and/or Replacement Consultant and/or any Replacement Subcontractor, 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;
- 2.3.5 a failure of the *Consultant* or any Subcontractor 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 Consultant Employees in respect of the period up to (and including) the Service Transfer Date);
- 2.3.6 any claim made by or in respect of any person employed or formerly employed by the *Consultant* or any Subcontractor other than a Transferring Consultant Employee identified in the Consultant's Final Consultant Personnel List for whom it is alleged the *Client* and/or the Replacement Consultant and/or any Replacement Subcontractor may be liable by virtue of this Contract and/or the Employment Regulations; and
- 2.3.7 any claim made by or in respect of a Transferring Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Consultant Employee relating to any act or omission of the *Consultant* or any Subcontractor 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 *Client* and/or Replacement Consultant 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 Consultant and/or any Replacement Subcontractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Consultant Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Consultant and/or any Replacement Subcontractor to occur in the period on or after the Service Transfer Date); or
  - 2.4.2 arising from the Replacement Consultant's failure, and/or Replacement Subcontractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Consultant's Final Consultant Personnel list claims, or it is determined in relation to any person who is not identified in the Consultant's Final

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Consultant Personnel list, that their contract of employment has been transferred from the *Consultant* or any Subcontractor to the Replacement Consultant and/or Replacement Subcontractor pursuant to the Employment Regulations, then:

- 2.5.1 the *Client* shall procure that the Replacement Consultant shall, or any Replacement Subcontractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the *Consultant*, and
- 2.5.2 the *Consultant* may offer (or may procure that a Subcontractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Consultant and/or any Replacement Subcontractor 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 *Consultant* or a Subcontractor, the *Client* shall procure that the Replacement Consultant shall, or procure that the Replacement Subcontractor shall, immediately release or procure the release of the person from their employment or alleged employment.
- 2.7 If after the 15 Working Day period specified in Paragraph 2.5.2 has elapsed:
- 2.7.1 no such offer of employment has been made;
- 2.7.2 such offer has been made but not accepted; or
- 2.7.3 the situation has not otherwise been resolved,
- the *Client* shall advise the Replacement Consultant and/or Replacement Subcontractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Consultant and/or Replacement Subcontractor 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 *Consultant* shall indemnify the Replacement Consultant and/or Replacement Subcontractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Consultant takes, or shall procure that the Replacement Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
- 2.9.1 shall not apply to:
- (a) any claim for:
- (i) 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
- (ii) 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 Consultant and/or Replacement Subcontractor; or

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- (b) any claim that the termination of employment was unfair because the Replacement Consultant and/or Replacement Subcontractor neglected to follow a fair dismissal procedure; and
- 2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Consultant and/or Replacement Subcontractor to the *Consultant* within 6 months of the Service Transfer Date.
- 2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the *Consultant* or any Subcontractor nor dismissed by the Replacement Consultant and/or Replacement Subcontractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Consultant Employee.
- 2.11 The *Consultant* shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of any person identified in the Consultant's Final Consultant 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:
- 2.11.1 the *Consultant* and/or any Subcontractor; and
- 2.11.2 the Replacement Consultant and/or the Replacement Subcontractor.
- 2.12 The *Consultant* shall, and shall procure that each Subcontractor shall, promptly provide to the *Client* and any Replacement Consultant and/or Replacement Subcontractor, in writing such information as is necessary to enable the *Client*, the Replacement Consultant and/or Replacement Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations. The *Client* shall procure that the Replacement Consultant and/or Replacement Subcontractor, shall promptly provide to the *Consultant* and each Subcontractor in writing such information as is necessary to enable the *Consultant* and each Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14, the *Client* shall procure that the Replacement Consultant indemnifies the *Consultant* on its own behalf and on behalf of any Replacement Subcontractor and its subcontractors against any Employee Liabilities arising from or as a result of:
- 2.13.1 any act or omission of the Replacement Consultant and/or Replacement Subcontractor in respect of any Transferring Consultant Employee identified in the Consultant's Final Consultant Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Consultant Employee;
- 2.13.2 the breach or non-observance by the Replacement Consultant and/or Replacement Subcontractor on or after the Service Transfer Date of:
- (a) any collective agreement applicable to the Transferring Consultant Employees identified in the Consultant's Final Consultant Personnel List; and/or



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- (b) any custom or practice in respect of any Transferring Consultant Employees identified in the Consultant's Final Consultant Personnel List which the Replacement Consultant and/or Replacement Subcontractor is contractually bound to honour;
- 2.13.3 any claim by any trade union or other body or person representing any Transferring Consultant Employees identified in the Consultant's Final Consultant Personnel List arising from or connected with any failure by the Replacement Consultant and/or Replacement Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- 2.13.4 any proposal by the Replacement Consultant and/or Replacement Subcontractor to change the terms and conditions of employment or working conditions of any Transferring Consultant Employees identified in the Consultant's Final Consultant Personnel List on or after their transfer to the Replacement Consultant or Replacement Subcontractor (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 Consultant's Final Consultant Personnel List who would have been a Transferring Consultant 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;
- 2.13.5 any statement communicated to or action undertaken by the Replacement Consultant or Replacement Subcontractor to, or in respect of, any Transferring Consultant Employee identified in the Consultant's Final Consultant Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Consultant* in writing;
- 2.13.6 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:
- (a) in relation to any Transferring Consultant Employee identified in the Consultant's Final Consultant 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
- (b) in relation to any employee who is not a Transferring Consultant Employee identified in the Consultant's Final Consultant 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 *Consultant* or Subcontractor, to the Replacement Consultant or Replacement Subcontractor 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;
- 2.13.7 a failure of the Replacement Consultant or Replacement Subcontractor 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 Consultant Employees identified in the Consultant's Final Consultant Personnel List in respect of the period from (and including) the Service Transfer Date; and

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- 2.13.8 any claim made by or in respect of a Transferring Consultant Employee identified in the Consultant's Final Consultant Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Consultant Employee relating to any act or omission of the Replacement Consultant or Replacement Subcontractor 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 *Consultant* and/or any Subcontractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the *Consultant* and/or any Subcontractor (as applicable) to comply with its obligations under the Employment Regulations.

**ANNEX E1: LIST OF NOTIFIED SUBCONTRACTORS**

**ANNEX E2: STAFFING INFORMATION**

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**EMPLOYEE INFORMATION (ANONYMISED)**

Name of Transferor:

Number of Employees in-scope to transfer:

Completion notes

- 1. If you have any Key Subcontractors, please complete all the above information for any staff employed by such Key Subcontractor(s) in a separate spreadsheet.*
- 2. This spreadsheet is used to collect information from the current employer (transferor) about employees performing the relevant services to help plan for a potential TUPE transfer. Some or all of this information may be disclosed to bidders as part of a procurement process. The information should not reveal the employees' identities.*
- 3. If the information cannot be included on this form, attach the additional information, such as relevant policies, and cross reference to the item number and employee number where appropriate.*

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<b>EMPLOYEE DETAILS &amp; KEY TERMS</b>							
<b>Details</b>	<b>Job Title</b>	<b>Grade / band</b>	<b>Work Location</b>	<b>Age</b>	<b>Employment status (for example, employee, fixed-term employee, self-employed, agency worker)?</b>	<b>Continuous service date (dd/mm/yy)</b>	<b>Date employment started with existing employer</b>
<b>Emp No 1</b>							
<b>Emp No 2</b>							
<b>Emp No</b>							
<b>Emp No</b>							
<b>Emp No</b>							
<b>Emp No</b>							
<b>Emp No</b>							
<b>Emp No</b>							

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	EMPLOYEE DETAILS & KEY TERMS						
Details	Contract end date (if fixed term contract or temporary contract)	Contractual notice period	Contractual weekly hours	Regular overtime hours per week	Mobility or flexibility clause in contract?	Previously TUPE transferred to organisation? If so, please specify (i) date of transfer, (ii) name of transferor, and (iii) whether ex public sector	Any collective agreements?
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

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	ASSIGNMENT	CONTRACTUAL PAY AND BENEFITS						
Details	% of working time dedicated to the provision of services under the contract	Salary (or hourly rate of pay)	Payment interval (weekly / fortnightly / monthly)	Bonus payment for previous 12 months (please specify whether contractual or discretionary entitlement)	Pay review method	Frequency of pay reviews	Agreed pay increases	Next pay review date
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

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	CONTRACTUAL PAY AND BENEFITS							
Details	Any existing or future commitment to training that has a time-off or financial implication	Car allowance (£ per year)	Lease or company car details	Any other allowances paid (e.g. shift allowance, standby allowance, travel allowance)	Private medical insurance (please specify whether single or family cover)	Life assurance (xSalary)	Long Term Disability / PHI (% of Salary)	Any other benefits in kind
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

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	<b>CONTRACTUAL PAY AND BENEFITS</b>					
<b>Details</b>	<b>Annual leave entitlement (excluding bank holidays)</b>	<b>Bank holiday entitlement</b>	<b>Method of calculating holiday pay (i.e. based on fixed salary only or incl. entitlements to variable remuneration such as bonuses, allowances, commission or overtime pay?)</b>	<b>Maternity or paternity or shared parental leave entitlement and pay</b>	<b>Sick leave entitlement and pay</b>	<b>Redundancy pay entitlement (statutory / enhanced / contractual / discretionary)</b>
<b>Emp No 1</b>						
<b>Emp No 2</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						



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	<b>PENSIONS</b>					
<b>Details</b>	<b>Employee pension contribution rate</b>	<b>Employer pension contribution rate</b>	<b>Please provide the name of the pension scheme and a link to the pension scheme website</b>	<b>Is the scheme an occupational pension scheme as defined in the Pension Schemes Act 1993?</b>	<b>If the scheme is not an occupational pension scheme, what type of scheme is it? E.g. personal pension scheme?</b>	<b>Type of pension provision e.g. defined benefit (CARE or final salary, and whether a public sector scheme e.g. CSPS, NHSPS, LGPS etc. or a broadly comparable scheme) or a defined contribution scheme or an auto enrolment master trust?</b>
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

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	<b>PENSIONS</b>					
<b>Details</b>	<b>If the Employee is in the Local Government Pension Scheme, please supply details of Fund and Administering Authority.</b>	<b>If the Employee is in the Civil Service Pension Scheme, please provide details of the Admission Agreement.</b>	<b>If the Employee is in the NHSPS, please provide details of the Direction Letter.</b>	<b>If the Employee is in a broadly comparable pension scheme, please supply a copy of the GAD certificate of Broad Comparability.</b>	<b>Did Fair Deal or any other similar pension protection for ex-public sector employees apply to the employee when they TUPE transferred into your employment? If so, what was the nature of that protection (e.g. right to participate in a public sector pension scheme, or a broadly comparable scheme, or to bulk transfer past pension service into their current scheme)?</b>	<b>If Fair Deal, Best Value or other pension protection applied, which public sector employer did they originally transfer out of and when?</b>
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

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	OTHER		
Details	Security Check Level	Security Clearance Expiry date	Additional info or comments
Emp No 1			
Emp No 2			
Emp No			
Emp No			
Emp No			
Emp No			
Emp No			

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**APPENDIX 13: EXIT MANAGEMENT****1 DEFINITIONS**

1.1 In this Appendix, the following definitions apply:

- “Client Data”** (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:
- a. supplied to the *Consultant* by or on behalf of the *Client*, and/or
  - b. which the *Consultant* is required to generate, process, store or transmit pursuant to this Contract; or
- (b) any Personal Data for which the *Client* is the Controller;
- “Emergency Exit”** any termination of this Contract which is a:
1. termination of the whole or part of this Contract in accordance with Clause 9 of the Contract (Termination), except where the period of notice given under that Clause is greater than or equal to 6 months;
  2. 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 9 of the Contract (Termination); or
  3. wrongful termination or repudiation of this Contract by either Party;
- “Ethical Wall Agreement”** an ethical wall agreement in a form similar to the draft ethical wall agreement set out at Annex 2 to this Appendix;
- “Exclusive Assets”** those Assets used by the *Consultant* or a Key Subcontractor which are used exclusively in the provision of the *service*;
- “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 Appendix;
- “Net Book Value”** the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the *Consultant* set out in the letter in the agreed form from the *Consultant* to the *Client* of the same date as this Contract;
- “Non-Exclusive Assets”** those Assets (if any) which are used by the *Consultant* or a Key Subcontractor in connection with the *service* but which are also used by the *Consultant* or Key Subcontractor for other purposes of material value;

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<b>“Ordinary Exit”</b>	any termination of the whole or any part of this Contract which occurs: <ol style="list-style-type: none"> <li>1. pursuant to Clause 9 of the Contract (Termination) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or</li> <li>2. as a result of the expiry of the Contract;</li> </ol>
<b>“Termination Assistance Notice”</b>	has the meaning given in paragraph 5 of this Appendix;
<b>“Termination Assistance Period”</b>	in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the <i>Consultant</i> is required to provide the Termination Services as such period may be extended pursuant to Paragraph 5.2 of this Appendix;
<b>“Termination Services”</b>	the services and activities to be performed by the <i>Consultant</i> pursuant to the Exit Plan, including those activities listed in Annex 1 to this Appendix, and any other services required pursuant to the Termination Assistance Notice;
<b>“Transferable Assets”</b>	those of the Exclusive Assets which are capable of legal transfer to the <i>Client</i> ;
<b>“Transferable Contracts”</b>	the Sub-contracts, licences for <i>Consultant's</i> Software, licences for Third Party Software or other agreements which are necessary to enable the <i>Client</i> or any replacement consultant to perform the <i>service</i> or the replacement service, including in relation to licences for all relevant Documentation (each as defined in Appendix 10); and
<b>“Transferring Contracts”</b>	has the meaning given in Paragraph 7.2(b).

## 2 OBLIGATIONS DURING THE SERVICE PERIOD TO FACILITATE EXIT

### 2.1 During the Service Period, the *Consultant*:

- (a) creates and maintains 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 *service*;

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- (b) creates and maintains a configuration database detailing the technical infrastructure and operating procedures through which the *Consultant* provides the *service*, which contains sufficient detail to permit the *Client* and/or replacement consultant to understand how the *Consultant* provides the *service* and to enable the smooth transition of the *service* with minimum disruption;
  - (c) agrees the format of these registers with the *Client* as part of the process of agreeing the Exit Plan; and
  - (d) at all times keeps 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 *service*.
- 2.2 The *Consultant* procures that all Exclusive Assets listed in the registers are clearly marked to identify that they are exclusively used for the provision of the *service* under this Contract.
- 2.3 Each Party appoints a person for the purposes of managing the Parties' respective obligations under this Appendix and provides written notification of such appointment to the other Party within 3 months of the Contract Date. The *Consultant's* Exit Manager is responsible for ensuring that the *Consultant* and its employees, agents and Subcontractors comply with this Appendix. The *Consultant* ensures that its Exit Manager has the requisite authority to arrange and procure any resources of the *Consultant* as are reasonably necessary to enable the *Consultant* to comply with the requirements set out in this Appendix. The Parties' Exit Managers liaise with one another in relation to all issues relevant to the termination of this Contract and all matters connected with this Appendix and each Party's compliance with it.

### 3 OBLIGATIONS TO ASSIST ON RE-TENDERING OF THE SERVICE

- 3.1 On reasonable notice at any point during the Service Period, the *Consultant* provides to the *Client* and/or its potential replacement consultants (subject to the potential replacement consultants entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the *Client* of any invitation to tender and/or to facilitate any potential replacement consultants undertaking due diligence:
- (a) details of the *service*;
  - (b) a copy of the registers, updated by the *Consultant* up to the date of delivery of such registers;
  - (c) an inventory of Client Data in the *Consultant'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 *service*;
  - (f) to the extent permitted by applicable Law, all information relating to Transferring Consultant Employees required to be provided by the *Consultant* under this Contract; and
  - (g) such other material and information as the *Client* shall reasonably require,
- (together, the "**Exit Information**").
- 3.2 The *Consultant* acknowledges that the *Client* may disclose the *Consultant's* Confidential Information to an actual or prospective replacement consultant or any third party whom the *Client* is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the *Client* may not under this Paragraph 3.2 disclose any *Consultant's* Confidential Information which is information relating to the *Consultant's* or its Subcontractors' prices or costs).

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3.3 The *Consultant*:

- (a) notifies the *Client* within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any *service* and shall consult with the *Client* regarding such proposed material changes; and
- (b) provides complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the *Client*.

3.4 The *Consultant* may charge the *Client* for its reasonable additional costs to the extent the *Client* requests more than 4 updates in any 6 month period.

3.5 The Exit Information is accurate and complete in all material respects and the level of detail to be provided by the *Consultant* is such as would be reasonably necessary to enable a third party to:

- (a) prepare an informed offer for that *service*; and
- (b) not be disadvantaged in any subsequent procurement process compared to the *Consultant* (if the *Consultant* is invited to participate).

#### 4 OBLIGATION TO ENTER INTO AN ETHICAL WALL AGREEMENT ON RE-TENDERING OF THE SERVICE

4.1 The *Client* may require the *Consultant* to enter into the Ethical Wall Agreement at any point during a re-tendering or contemplated re-tendering of the *service* or any part of the *service*.

4.2 If required to enter into the Ethical Wall Agreement, the *Consultant* returns a signed copy of the Ethical Wall Agreement within 10 Working Days of receipt. The *Consultant's* costs of entering into the Ethical Wall Agreement will be borne solely by the *Consultant*.

#### 5 EXIT PLAN

5.1 The *Consultant*, within 3 months after the Contract Date, delivers to the *Client* an Exit Plan which:

- (a) sets out the *Consultant's* proposed methodology for achieving an orderly transition of the relevant *service* from the *Consultant* to the *Client* and/or its replacement consultant on the partial termination, expiry or termination of this Contract;
- (b) complies with the requirements set out in Paragraph 5.2; and
- (c) is otherwise reasonably satisfactory to the *Client*.

5.2 The Parties use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such dispute is resolved in accordance with clause W2 of the Contract (Resolving and Avoiding Disputes).

5.3 The Exit Plan sets 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 *Consultant* 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 *Consultant* of all such reasonable assistance as the *Client* requires to enable the *Client* or its subcontractors to provide the *service*;

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- (c) a mechanism for dealing with partial termination on the assumption that the *Consultant* will continue to provide the remaining *service* under this Contract;
- (d) the management structure to be employed during both transfer and cessation of the *service* 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 *service* will transfer to the replacement consultant and/or the *Client*, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the *Client's* technology components from any technology components operated by the *Consultant* or its Subcontractors (where applicable);
- (h) the scope of the Termination Services that may be required for the benefit of the *Client* (including such parts of the *service* set out in Annex 1 as are applicable);
- (i) a timetable and critical issues for providing the Termination Services;
- (j) an estimate of the Defined Cost for the provision of the Termination Services;
- (k) how the termination services would be provided (if required) during the Termination Assistance Period;
- (l) procedures to deal with requests made by the *Client* and/or a replacement consultant for Staffing Information pursuant to Appendix 12 (Staff Transfer); and
- (m) how each of the issues set out in this Appendix will be addressed to facilitate the transition of the *service* from the *Consultant* to the replacement consultant and/or the *Client* with the aim of ensuring that there is no disruption to or degradation of the *service* during the Termination Assistance Period.

5.4 The Parties acknowledge that the migration of the *service* from the *Consultant* to the *Client* and/or its replacement consultant may be phased, such that certain parts of the *service* are handed over before others.

5.5 The *Consultant* reviews and (if appropriate) updates the Exit Plan on a basis consistent with the principles set out in this Appendix in the first month of each year of the Contract (commencing with the second year of the Contract) and if requested by the *Client* following the occurrence of a Financial Distress Event, within 14 days of such request, to reflect any changes in the *service* that have occurred since the Exit Plan was last agreed. Following such update, the *Consultant* submits the revised Exit Plan to the *Client* for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute is resolved in accordance with clause W2 (Resolving and Avoiding Disputes).

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

5.6 Within 20 Working Days after service of a termination notice in accordance with clause 9 of the Contract (Termination) or 6 months prior to the expiry of this Contract, the *Consultant* submits for the *Client's* approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan is prepared on a basis consistent with the principles set out in this Appendix and reflects any changes in the *service* that have occurred since the Exit Plan was last agreed.

5.7 The Parties 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



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20 Working Days following its delivery to the *Client* then such dispute is resolved in accordance with clause W2 (Resolving and Avoiding Disputes). Until the agreement of the final form of the Exit Plan, the *Consultant* provides the Termination Services in accordance with the principles set out in this Appendix and the last approved version of the Exit Plan (insofar as relevant).

## 6 TERMINATION SERVICES

### Notification of Requirements for Termination Services

6.1 The *Client* is entitled to require the provision of Termination Services at any time during the Service Period by giving written notice to the *Consultant* (a "**Termination Assistance Notice**") at least 4 months prior to the date of termination or expiry of this Contract or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice. The Termination Assistance Notice specifies:

- (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 continues no longer than 24 months after the expiry or termination of this Contract;

6.2 The *Client* has:

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

### Termination Assistance Period

6.3 Throughout the Termination Assistance Period, or such shorter period as the *Client* may require, the *Consultant*:

- (a) continues to provide the *service* (as applicable) and, if required by the *Client* pursuant to Paragraph 6.1, provide the Termination Services;
- (b) in addition to providing the *service* and the Termination Services, provides to the *Client* any reasonable assistance requested by the *Client* to allow the *service* to continue without interruption following the partial termination, termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the *service* to the *Client* and/or its replacement consultant;
- (c) uses all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the *Client*;
- (d) provides the *service* and the Termination Services at no detriment to the Key Performance Indicators, save to the extent that the Parties agree otherwise in accordance with Paragraph 6.5; and
- (e) at the *Client's* request and on reasonable notice, delivers up-to-date registers to the *Client*.

6.4 Without prejudice to the *Consultant's* obligations under Paragraph 6.3(c), if it is not possible for the *Consultant* to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the *Client*, any additional costs incurred by the *Consultant* in

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providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan is subject to the agreement of the *Service Manager*.

- 6.5 If the *Consultant* demonstrates to the *Client's* reasonable satisfaction that transition of the *service* and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the *Consultant's* ability to meet one or more particular Key Performance Indicators, the Parties vary the relevant Key Performance Indicator to take account of such adverse effect.

### Termination Obligations

- 6.6 The *Consultant* shall comply with all of its obligations contained in the Exit Plan in respect of any partial termination or termination.

- 6.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the *Consultant's* performance of the *service* and the Termination Services and its compliance with the other provisions of this Appendix) in respect of the *service* that have been terminated, the *Consultant*:

- (a) ceases to use the Client Data;
- (b) provides the *Client* and/or the replacement consultant with a complete and uncorrupted version of the Client Data in electronic form (or such other format as reasonably required by the *Client*);
- (c) erases from any computers, storage devices and storage media that are to be retained by the *Consultant* after the end of the Termination Assistance Period all Client Data and promptly certify to the *Client* that it has completed such deletion;
- (d) returns to the *Client* such of the following as is in the *Consultant's* possession or control:
  - (i) all copies of the *Client's* software and any other software licensed by the *Client* to the *Consultant* under this Contract;
  - (ii) all materials created by the *Consultant* under this Contract in which the IPRs are owned by the *Client*;
  - (iii) any parts of the IT environment and any other equipment which belongs to the *Client*; and
  - (iv) any items that have been on-charged to the *Client*, such as consumables;
- (e) vacates any *Client* Premises unless access is required to continue to deliver the *service*;
- (f) provides access during normal working hours to the *Client* and/or the replacement consultant for up to 12 months after the partial termination, expiry or termination of this Contract to:
  - (i) such information relating to the *service* as remains in the possession or control of the *Consultant*; and
  - (ii) such members of the *Consultant's* personnel as have been involved in the design, development and provision of the *service* and who are still employed by the *Consultant*, provided that the *Client* and/or the replacement consultant pays the reasonable costs of the *Consultant* actually incurred in responding to requests for access under this Paragraph 6.7(f)(ii).

- 6.8 Upon partial termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the *Consultant's*

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performance of the *service* and the Termination Services and its compliance with the other provisions of this Appendix), each Party returns to the other Party (or if requested, destroys or deletes) all Confidential Information of the other Party in respect of the terminated *service* and certifies 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 *service* or Termination Services or for statutory compliance purposes.

- 6.9 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the *Client* to the *Consultant* in relation to the terminated *service* are terminated with effect from the end of the Termination Assistance Period.

## 7 ASSETS, SUB-CONTRACTS AND SOFTWARE

- 7.1 Following notice of termination or partial termination of this Contract and during the Termination Assistance Period, the *Consultant* does not, in respect of the terminated *service*, without the *Client'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 the *service* or the payment amount due;
- (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 *service*.

- 7.2 Within 20 Working Days of receipt of the up-to-date registers provided by the *Consultant* pursuant to Paragraph 6.3(e), the *Client* provides written notice to the *Consultant* setting out:

- (a) which, if any, of the Transferable Assets the *Client* requires to be transferred to the *Client* and/or the replacement consultant in respect of the terminated *service* ("**Transferring Assets**");
  - (i) which, if any, of:
    - (A) the Exclusive Assets that are not Transferable Assets; and
    - (B) the Non-Exclusive Assets,
 the *Client* and/or the replacement consultant requires the continued use of; and
- (b) which, if any, of the Transferable Contracts the *Client* requires to be assigned or novated to the *Client* and/or the replacement consultant (the "**Transferring Contracts**"),

in order for the *Client* and/or its replacement consultant to provide the *service* from the expiry of the Termination Assistance Period. Where requested by the *Client* and/or its replacement consultant, the *Consultant* provides all reasonable assistance to the *Client* and/or its replacement consultant to enable it to determine which Transferable Assets and Transferable Contracts the *Client* and/or its replacement consultant requires to provide the *service* or replacement services. Where requested by the *Consultant*, the *Client* and/or its replacement consultant discusses in good faith with the *Consultant* which Transferable Contracts are used by the *Consultant* in matters unconnected to the *service* or replacement services.

- 7.3 With effect from the expiry of the Termination Assistance Period, the *Consultant* sells the Transferring Assets to the *Client* and/or its nominated replacement consultant if instructed by the *Client* for a consideration equal to their Net Book Value, except where:

- (a) a Termination Payment is payable by the *Client* to the *Consultant*, in which case, payment for such Assets is included within the Termination Payment; or

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- (b) the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Contract, in which case the *Client* pays the *Consultant* the Net Book Value of the Transferring Asset less the amount already paid through the Charges.
- 7.4 Risk in the Transferring Assets passes to the *Client* or the replacement consultant (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets passes to the *Client* or the replacement consultant (as appropriate) on payment for the same.
- 7.5 Where the *Consultant* is notified in accordance with Paragraph 7.2(b) that the *Client* and/or the replacement consultant requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the *Consultant* as soon as reasonably practicable:
- (a) procures a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the *Client*) for the *Client* and/or the replacement consultant to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
- (b) procures a suitable alternative to such assets and the *Client* or the replacement consultant bears the reasonable proven costs of procuring the same.
- 7.6 The *Consultant* as soon as reasonably practicable assigns or procures the novation to the *Client* and/or the replacement consultant of the Transferring Contracts. The *Consultant* executes such documents and provides such other assistance as the *Client* reasonably requires to effect this novation or assignment.
- 7.7 The *Client*:
- (a) accepts assignments from the *Consultant* or joins with the *Consultant* in procuring a novation of each Transferring Contract; and
- (b) once a Transferring Contract is novated or assigned to the *Client* and/or the replacement consultant, carries out, performs and discharges all the obligations and liabilities created by or arising under that Transferring Contract and exercises its rights arising under that Transferring Contract, or as applicable, procures that the replacement consultant does the same.
- 7.8 The *Consultant* holds any Transferring Contracts on trust for the *Client* until such time as the transfer of the relevant Transferring Contract to the *Client* and/or the replacement consultant has been effected.
- 7.9 The *Consultant* indemnifies the *Client* (and/or the replacement consultant, 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 *Client* (and/or replacement consultant) pursuant to Paragraph 7.6 both:
- (a) in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
- (b) in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the *Consultant's* failure to comply with Appendix 10 (Intellectual Property Rights).
- 8 CONSULTANT PERSONNEL**
- 8.1 The *Client* and *Consultant* agree and acknowledge that in the event of the *Consultant* ceasing to provide the *service* or part of it for any reason, Appendix 12 (Staff Transfer) applies.
- 8.2 The *Consultant* does 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

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provision of the *service* from transferring their employment to the *Client* and/or the replacement consultant.

- 8.3 During the Termination Assistance Period, the *Consultant* gives the *Client* and/or the replacement consultant reasonable access to the *Consultant's* personnel to present the case for transferring their employment to the *Client* and/or the replacement consultant.
- 8.4 The *Consultant* immediately notifies the *Client* or, at the direction of the *Client*, the replacement consultant of any period of notice given by the *Consultant* or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 8.5 The *Consultant* does not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, consultants or Subcontractors whose employment or engagement is transferred to the *Client* and/or the replacement consultant, except that this Paragraph does not apply where the employee, consultant or Subcontractor applies in response to a public advertisement of a vacancy.

**9 CHARGES**

- 9.1 During the Termination Assistance Period (or for such shorter period as the *Client* may require the *Consultant* to provide the Termination Services), the *Client* pays the Defined Cost incurred by the *Consultant* in respect of the Termination Services (but is not required to pay Defined Cost 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 amount due for such Termination Services, the estimate may be varied as assessed by the *Service Manager*.
- 9.2 Except as otherwise expressly specified in this Contract, the *Client* is not obliged to pay for costs incurred by the *Consultant* in relation to its compliance with this Appendix 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.

**10 APPORTIONMENTS**

- 10.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts are apportioned between the *Client* and the *Consultant* and/or the replacement consultant and the *Consultant* (as applicable) as follows:
- (a) the amounts are annualised and divided by 365 to reach a daily rate;
  - (b) the *Client* is responsible for (or shall procure that the replacement consultant is 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 *Consultant* is responsible for or entitled to (as the case may be) the rest of the invoice.
- 10.2 Each Party pays (and/or the *Client* procures that the replacement consultant pays) any monies due under Paragraph 10.1 as soon as reasonably practicable.

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**Annex 1: Scope of the Termination Services**

- 1 The Termination Services to be provided by the *Consultant* include such of the following services as the *Client* may specify:
- (a) ceasing all non-critical software changes (except where agreed in writing with the *Client*);
  - (b) notifying the Subcontractors 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 *Client* and/or the replacement consultant after the end of the Termination Assistance Period;
  - (d) delivering to the *Client* the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12 month period immediately prior to the commencement of the Termination Services;
  - (e) providing details of work volumes and staffing requirements over the 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 *Client* with any problem logs which have not previously been provided to the *Client*;
  - (h) providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the *service* and re-writing and implementing these during and for a period of 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 *service* and re-writing and implementing these such that they are appropriate for the continuation of the *service* after the Termination Assistance Period;
  - (j) agreeing with the *Client* an effective communication strategy and joint communications plan which sets out the implications for *Consultant's* personnel, *Client's* staff, customers and key stakeholders;
  - (k) reviewing all software libraries used in connection with the *service* and providing details of these to the *Client* and/or the replacement consultant;
  - (l) providing assistance and expertise as necessary to support the *Client* and/or the replacement consultant develop the migration plan for business operations and Client Data to the replacement consultant, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Client Data;
  - (m) 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 *Client* and/or replacement consultant;
  - (n) making available to the *Client* and/or the replacement consultant expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the *Client* (acting reasonably) at the time of termination or expiry;
  - (o) assisting in establishing naming conventions for any new production site;
  - (p) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
  - (q) generating a computer listing of the Source Code of the Software listed in Appendix 11 (Software) (or other Software instructed by the *Client*) in a form and on media

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- reasonably requested by the *Client*;
- (r) agreeing with the *Client* a handover plan for all of the *Consultant's* responsibilities as set out in the Security Management Plan;
  - (s) delivering copies of the production databases (with content listings) to the *Client's* and/or the replacement consultant's operations staff (on appropriate media) as reasonably requested by the *Client*;
  - (t) assisting with the loading, testing and implementation of the production databases;
  - (u) assisting in the execution of a parallel operation until the effective date of expiry or termination of this Contract;
  - (v) in respect of the maintenance and support of the *Consultant's* system, providing historical performance data for the period from the Contract Date to the commencement of the Termination Services;
  - (w) assisting in the execution of a parallel operation of the maintenance and support of the *Consultant's* system until the end of the Termination Assistance Period or as otherwise specified by the *Client* (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
  - (x) providing an information pack listing and describing the *service* for use by the *Client* in the procurement of the replacement services;
  - (y) answering all reasonable questions from the *Client* and/or the replacement consultant regarding the *service*;
  - (z) agreeing with the *Client* and/or the replacement consultant a plan for the migration of the *Client's* Data to the *Client* and/or the replacement consultant;
  - (aa) providing access to the *Client* and/or the replacement consultant during the Termination Assistance Period and for a period not exceeding 6 months afterwards for the purpose of the smooth transfer of the *service* to the *Client* and/or the replacement consultant:
    - (i) to information and documentation relating to the Transferring Services that is in the possession or control of the *Consultant* or its Subcontractors (and the *Consultant* agrees and procures that its Subcontractors 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 *Consultant's* normal business hours, to members of the *Consultant* personnel who have been involved in the provision or management of the *service* and who are still employed or engaged by the *Consultant* or its Subcontractors; and
  - (bb) knowledge transfer services, including:
    - (i) transferring all training material and providing appropriate training to those *Client* and/or replacement consultant staff responsible for internal training in connection with the provision of the *service*;
    - (ii) providing for transfer to the *Client* and/or the replacement consultant of all knowledge reasonably required for the provision of the *service* which may, as appropriate, include information, records and documents;
    - (iii) providing the *Client* and/or the replacement consultant with access to such members of the *Consultant's* or its Subcontractors' personnel as have been involved in the design, development, provision or management of the *service* and who are still employed or engaged by the *Consultant* or its Subcontractors; and
    - (iv) allowing the *Client* and/or the replacement consultant to work alongside and observe the performance of the *service* by the *Consultant* at its sites used to fulfil the *service* (subject to compliance by the *Client* and the replacement consultant with any applicable security and/or health and safety restrictions), and any such person who is provided with such knowledge transfer services signs a

## Programme Delivery Partner Contract

confidentiality undertaking in favour of the *Consultant* (in such form as the *Consultant* reasonably requires).

2 The *Consultant*.

- (a) provides a documented plan relating to the training matters referred to in Paragraph 22.1(n) for agreement by the *Client* at the time of termination or expiry of this Contract;
- (b) co-operates fully in the execution of the handover plan agreed pursuant to Paragraph 22.1(r), providing skills and expertise of a suitable standard; and
- (c) fully co-operates in the execution of the Client Data migration plan agreed pursuant to Paragraph 22.1(z), providing skills and expertise of a reasonably acceptable standard.

3 To facilitate the transfer of knowledge from the *Consultant* to the *Client* and/or its replacement consultant, the *Consultant* provides a detailed explanation of the procedures and operations used to provide the *service*, the change management process and other standards and procedures to the operations personnel of the *Client* and/or the replacement consultant.4 The information which the *Consultant* provides to the *Client* and/or the replacement consultant pursuant to Paragraph 22.1(aa) 22.1(z) includes:

- (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 *Client* and/or the replacement consultant;
- (d) key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the *Client* pursuant to this Appendix;
- (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 *Client*, and
- (g) any relevant interface information,

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

5 During the Termination Assistance Period the *Consultant* grants any agent or personnel (including employees, consultants and suppliers) of the replacement consultant and/or the *Client* 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 22.5:
  - (i) signs a confidentiality undertaking in favour of the *Consultant* (in such form as the *Consultant* reasonably requires); and
  - (ii) during each period of access complies with the security, systems and facilities operating procedures of the *Consultant* relevant to such site and that the *Client* deems reasonable; and
- (b) the *Client* and/or the replacement consultant pays the reasonable, proven and proper costs of the *Consultant* incurred in facilitating such access.



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**Annex 2: Draft Ethical Wall Agreement**

[THE CLIENT]

**and**

[THE COUNTERPARTY]

**ETHICAL WALL AGREEMENT**

## Programme Delivery Partner Contract

This Agreement is dated [ ] 20[ ] (the "Effective Date")

**Between:**

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

together the "**Parties**" and each a "**Party**".

**BACKGROUND**

- A. The Client is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Procurement Regulations (defined below). The purpose of this document ("**Agreement**") is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Purpose (defined below).
- B. The Client is conducting a procurement exercise for the [supply/purchase/provision] of [insert details of project/goods/services] (the "**Purpose**").
- C. The Parties wish to enter into this Agreement to ensure that a set of management processes, barriers and disciplines are put in place to ensure that conflicts of interest do not arise, and that the Counterparty does not obtain an unfair competitive advantage over Other Bidders.

**IT IS AGREED:****1 DEFINITIONS AND INTERPRETATION**

- 1.1 The following capitalised words and expressions shall have the following meanings in this Agreement and its recitals:

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

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

"**Bid Team**" means any Representatives of the Counterparty, any of its Affiliates and/or any Subcontractors connected to the preparation of an ITT Response;

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

- a) Government Departments;
- b) Non-Departmental Public Bodies or Assembly Sponsored Public Bodies (advisory, executive, or tribunal);
- c) Non-Ministerial Departments; or
- d) Executive Agencies;

"**Conflicted Personnel**" means any Representatives of:

- a) the Counterparty;
- b) any of the Counterparty's Affiliates; and/or
- c) any Subcontractors,

## Programme Delivery Partner Contract

who, because of the Counterparty's, any of its Affiliates' and/or any Subcontractors' relationship with the Client under any Contract, have or have had access to information which creates or may create a conflict of interest or provide the Bid Team with an unfair advantage as regards information Other Bidders would not have;

"**Contract**" means any pre-existing or previous contract between the Client and:

- a) the Counterparty;
- b) any of the Counterparty's Affiliates;
- c) any Subcontractor; and
- d) any other Third Party,

relating to the subject matter of the Purpose at the date of the commencement of the ITT Process;

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

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

"**Invitation to Tender**" or "**ITT**" means an invitation to submit tenders issued by the Client as part of an ITT Process (and shall include an Invitation to Participate in Negotiations);

"**ITT Process**" means, with regard to the Purpose, the relevant procedure provided for in the Procurement Regulations (as amended), which the Client has elected to use to select a contractor or contractors, together with all relevant information, data, correspondence and/or documents issued and/or made available by or on behalf of the Client as part of that procurement exercise and all information, correspondence and/or documents issued and/or made available by or on behalf of the bidders in response together with any resulting contracts;

"**ITT Response**" means the tender(s) submitted, or to be submitted, by the Counterparty, any of its Affiliates and/or any Subcontractors in response to any invitation(s) to submit bids under the ITT process;

"**Other Bidder**" means any other bidder or potential bidder that is not the Counterparty or any of its Affiliates that has taken or is taking part in the ITT Process;

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

"**Procurement Regulations**" means the Public Contracts Regulations 2015, the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020, the Defence and Security Public Contracts Regulations 2011, the Utilities Contracts Regulations 2016, and the Concession Contracts Regulations 2016, each as amended from time to time, and any successor legislation;

"**Professional Advisor**" means a supplier, subcontractor, advisor or consultant engaged by the Counterparty and/or any of its Affiliates under the auspices of compiling its ITT response;

"**Purpose**" has the meaning given to it in recital B to this Agreement;

"**Representative**" refers to a person's officers, directors, employees, advisers (including the officers, directors, employees, advisers and agents of any Professional Advisors), agents and, where the context admits, providers or potential providers of finance (including their representatives) to the Counterparty, any of its Affiliates and/or any subcontractors engaged in connection with the ITT Process;

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"**Subcontractor**" means an existing or proposed subcontractor of:

- a) the Counterparty; and/or
- b) any of the Counterparty's Affiliates,

who is connected to the preparation of an ITT Response (including key subcontractors named in the ITT Response);

"**Third Party**" means any person who is not a Party, including Other Bidders, their Affiliates and/or their Representatives; and

"**Working Day**" means any day of the week other than a weekend, when Banks in England and Wales are open for business.

- 1.2 Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
- 1.3 Reference to the disclosure of information, or provision of access, by or to the Client, the Counterparty, any of the Counterparty's Affiliates and/or any Subcontractors includes disclosure, or provision of access, by or to the Representatives of the Client, the Counterparty, any of its Affiliates and/or any Subcontractors (as the case may be).
- 1.4 Reference to persons includes legal and natural persons.
- 1.5 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
- 1.6 Reference to clauses and recitals is to clauses of and recitals to this Agreement.
- 1.7 Reference to any gender includes any other.
- 1.8 Reference to writing includes email.
- 1.9 The terms "**associate**", "**holding company**", "**subsidiary**", "**subsidiary undertaking**" and "**wholly owned subsidiary**" have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act, the words 'holds a majority of the voting rights' shall be changed to 'holds 30% or more of the voting rights', and other expressions shall be construed accordingly.
- 1.10 The words "**include**" and "**including**" are to be construed without limitation.
- 1.11 The singular includes the plural and vice versa.
- 1.12 The headings contained in this Agreement shall not affect its construction or interpretation.

## 2 ETHICAL WALLS

- 2.1 In consideration of the sum of £1 payable by the Client to the Counterparty, receipt of which is hereby acknowledged, the Parties agree to be bound by the terms of this Agreement.

### Conflicts of Interest

- 2.2 The Counterparty:
  - 2.2.1 shall take all appropriate steps to ensure that neither the Counterparty, nor its Affiliates, nor any Subcontractors nor any Representatives are in a position where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives and the duties owed to

## Programme Delivery Partner Contract

the Client under any Contract or pursuant to an open and transparent ITT Process;  
and

- 2.2.2 acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives intend to take part in the ITT Process and because of the Counterparty's, any of its Affiliates', any Subcontractors' and/or any Representatives' relationship with the Client under any Contract, the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives have or have had access to information which could provide the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives with an advantage and render unfair an otherwise genuine and open competitive ITT Process.
- 2.3 Where there is or is likely to be a conflict of interest, or the perception of a conflict of interest, of any kind in relation to the ITT Process, the Counterparty shall take such steps that are necessary to eliminate the conflict of interest to the Client's satisfaction, including one or more of the following:
- 2.3.1 not assigning any of the Conflicted Personnel to the Bid Team at any time;
- 2.3.2 providing to the Client promptly upon request a complete and up to date list of any Conflicted Personnel and the personnel comprising the Bid Team and reissue such list to the Client promptly upon any change to it;
- 2.3.3 ensuring that no act or omission by itself, its Affiliates, any Subcontractors and/or any Representatives results in information of any kind, however conveyed, or in any format and however so stored:
- (a) about the ITT Process (gleaned from the performance of any Contract or otherwise); and/or
- (b) which would or could in the opinion of the Client confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process,
- becoming available to the Bid Team where the Client has not made generally available that information to Other Bidders;
- 2.3.4 ensuring that by no act or omission by itself, its Affiliates, any Subcontractors and/or any Representatives and in particular the Bid Team results in information of any kind, however conveyed, in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
- 2.3.5 ensure that agreements that flow down the Counterparty's obligations in this Agreement, are entered into as necessary, between the Counterparty and its Affiliates and any Subcontractors in a form to be approved by the Client;
- 2.3.6 physically separating the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
- 2.3.7 providing regular training to its Affiliates, any Subcontractors and/or Representatives to ensure it is complying with this Agreement;
- 2.3.8 monitoring Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement and to ensure

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adherence to the ethical wall arrangements the Counterparty, its Affiliates, any Subcontractors and/or any Representatives have put in place in order to comply with this Agreement;

- 2.3.9 ensuring that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
- 2.3.10 complying with any other action as the Client, acting reasonably, may direct in connection with the ITT Process and/or this Agreement.

#### **Notification of Conflicts of Interest**

2.4 The Counterparty shall:

- 2.4.1 notify the Client immediately in writing of all perceived, potential and/or actual conflicts of interest that arise or have arisen;
- 2.4.2 submit in writing to the Client full details of the nature of the perceived, potential and/or actual conflict of interest including full details of the risk assessments undertaken, the impact or potential impact of the perceived, potential and/or actual conflict, the measures and arrangements that have been established and/or are due to be established, to eliminate the perceived, potential and/or actual conflict, and the Counterparty's plans to prevent potential conflicts of interests from arising ("**Proposed Avoidance Measures**"); and
- 2.4.3 seek the Client's approval to the Proposed Avoidance Measures which the Client shall have the right to grant, grant conditionally or deny (if the Client rejects the Proposed Avoidance Measures the Counterparty shall repeat the process set out in this Clause 2.4 until such time as the Client grants approval or the Counterparty withdraws from the ITT Process).

- 2.5 The Counterparty will provide to the Client, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 2.2 and 2.3 as reasonably requested by the Client.
- 2.6 The Client reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 2.2 and 2.3.
- 2.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses 2.5 and 2.6, does not constitute acceptance by the Client of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Agreement.

#### **Exclusion from the ITT Process**

- 2.8 Where, in the reasonable opinion of the Client, there has been any breach by the Counterparty of Clauses 2.2, 2.3, or 2.4 or failure to obtain the Client's approval of the Proposed Avoidance Measures the Client shall be entitled to exclude the Counterparty, or any of its Affiliates and/or any Representatives, from the ITT Process, and the Client may, in addition to the right to exclude, take such other steps as it deems necessary.
- 2.9 The actions of the Client pursuant to Clause 2.8 shall not prejudice or affect any right of action or remedy under this Agreement or at law which shall have accrued or shall thereafter accrue to the Client.

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**Bid Costs**

2.10 In no event shall the Client be liable for any bid costs incurred by:

2.10.1 the Counterparty or any of its Affiliates, any Representatives and/or any Subcontractors; or

2.10.2 any Third Party,

as a result of any breach of this Agreement by the Counterparty, any of its Affiliates, any Subcontractors and/or Representatives, including where the Counterparty, any of its Affiliates, any Subcontractors or Representatives, or any Third Party is or are excluded from the ITT Process.

**Specific Remedies**

2.11 The Counterparty acknowledges and agrees that:

2.11.1 neither damages nor specific performance are adequate remedies in the event of a breach of the obligations in Clause 2; and

2.11.2 in the event of a breach of any of the obligations in Clause 2 which cannot be effectively remedied the Client shall have the right to terminate both this Agreement and the Counterparty's participation in the ITT Process in each case with immediate effect on written notice.

**3 SOLE RESPONSIBILITY**

3.1 It is the sole responsibility of the Counterparty to comply with the terms of this Agreement, including ensuring its Affiliates, any Subcontractors, and/or any Representatives comply with the terms of this Agreement. No approval by the Client of any procedures, agreements or arrangements provided by the Counterparty, any of its Affiliates, any Subcontractors and/or their Representatives to the Client shall discharge the Counterparty's obligations.

**4 WAIVER AND INVALIDITY**

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

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

**5 ASSIGNMENT AND NOVATION**

5.1 The Counterparty 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 Client.

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

5.2.1 any Central Government Body; or

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- 5.2.2 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 Client; and
- 5.2.3 the Counterparty shall, at the Client's request, enter into a novation agreement in such form as the Client may reasonably specify in order to enable the Client to exercise its rights pursuant to this Clause 5.
- 5.3 A change in the legal status of the Client such that it ceases to be a Central Government Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Client.

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

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

**7 TRANSPARENCY**

- 7.1 The Parties acknowledge and agree that the Client is under a legal duty pursuant to the Procurement Regulations to run transparent and fair procurement processes. Accordingly, the Client may disclose the contents of this Agreement to Other Bidders (and/or potential Other Bidders) for the purposes of transparency and in order to evidence that a fair procurement process has been followed.

**8 NOTICES**

- 8.1 Any notices sent under this Agreement must be in writing.
- 8.2 The following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

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



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Manner of Delivery	Deemed time of service	Proof of service
	delivery before 9.00am) or on the next Working Day (if after 5.00pm).	

8.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

	Counterparty	Client
<b>Contact</b>		
<b>Address</b>		
<b>Email</b>		

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

**9 WAIVER AND CUMULATIVE REMEDIES**

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

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

**10 TERM**

10.1 Each Party's obligations under this Agreement shall continue in full force and effect for a period of [ ] years from the Effective Date/[or for the period of the duration of the Procurement Process]

**11 GOVERNING LAW AND JURISDICTION**

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

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

Signed by the Client

Name:

Signature:

Position in Client:

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Signed by the Counterparty

Name:

Signature:

Position in Counterparty:

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**APPENDIX 14: SERVICE CONTINUITY PLAN AND CORPORATE RESOLUTION PLANNING****PART A: SERVICE CONTINUITY PLAN****1. Definitions**

1.1 In this Appendix, the following definitions shall apply:

- “Accounting Reference Date”** means in each year the date to which the *Consultant* prepares its annual audited financial statements;
- “Annual Revenue”** 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 Affiliates) reported by the *Consultant* or, as appropriate, the Group Companies in its most recent published accounts, subject to the following methodology:
- (a) figures for accounting periods of other than 12 months should be scaled pro rata to produce a proforma figure for a 12 month period; and
  - (b) where the *Consultant*, the Group Companies and/or their joint ventures and Affiliates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date;
- “Assurance”** means written confirmation from a Relevant Authority to the *Consultant* that the CRP Information is approved by the Relevant Authority;
- “Business Continuity Plan”** has the meaning given in Paragraph 2.2.1(b);
- “Business Continuity Services”** has the meaning given in Paragraph 4.2.2;
- “Class 1 Transaction”** has the meaning set out in the listing rules issued by the UK Listing 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;
- “Corporate Change Event”** means:
- (a) any change of Control of the *Consultant* or a parent company of the *Consultant*;
  - (b) any change of Control of any Group Company which, in the reasonable opinion of the *Client*, could have a material adverse effect on the *service*;
  - (c) any change to the business of the *Consultant* or Group Company which, in the reasonable opinion of the *Client*, could have a material adverse effect on the *service*;

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- (d) a Class 1 Transaction taking place in relation to the shares of the *Consultant* or any parent company of the *Consultant* 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 *Consultant* or any parent company of the *Consultant*;
- (f) payment of dividends by the *Consultant* or the ultimate parent company of the Group Company exceeding 25% of the Net Asset Value of the *Consultant* or the ultimate parent company of the Group Company respectively in any 12 month period;
- (g) an order is made or an effective resolution is passed for the winding up of any Group Company;
- (h) any Group Company 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 Group Company ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any Group Company;
- (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 Group Company; and/or

any process or events with an effect analogous to those in Paragraphs (e) to (g) inclusive above occurring to a Group Company in a jurisdiction outside England and Wales;

**“Corporate Change Event Grace Period”** means a grace period agreed to by the Relevant Authority for providing CRP Information and/or updates to Service Continuity Plan after a Corporate Change Event;

**“Corporate Resolvability Assessment (Structural Review)”** means part of the CRP Information relating to the Group Companies to be provided by the *Consultant* in accordance with Paragraphs 2 and Annex 2: Corporate Resolvability Assessment (Structural Review) of this Appendix 14 (Service Continuity Plan and Corporate Resolution Planning);

**“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
- (b) significant impact on the national security, national defence, or the functioning of the UK;

**“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:

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	(a) Government Department; or
	(b) Non-Ministerial Department;
<b>“Disaster”</b>	the occurrence of one or more events which, either separately or cumulatively, mean that the <i>service</i> , or a material part of the <i>service</i> will be unavailable for a period of one (1) month or which is reasonably anticipated will mean that the <i>service</i> or a material part of the <i>service</i> will be unavailable for that period;
<b>“Disaster Recovery Plan”</b>	has the meaning given in Paragraph 2.2.1(c);
<b>“Disaster Recovery Services”</b>	the services embodied in the processes and procedures for restoring the <i>service</i> following the occurrence of a Disaster;
<b>“Disaster Recovery System”</b>	the system identified by the <i>Consultant</i> which shall be used for the purpose of delivering the Disaster Recovery Services;
<b>“Exposure Information (Contracts List)”</b>	means part of the CRP Information relating to the Group Companies to be provided by the <i>Consultant</i> in accordance with Paragraph 2 and Annex 1 of Part B of this Appendix 14 (Service Continuity Plan and Corporate Resolution Planning);
<b>“Financial Distress Event”</b>	has the meaning given in Appendix 6 (Financial Distress) to this Contract;
<b>“Financial Information and Commentary”</b>	means part of the CRP Information requirements set out in accordance with Paragraph 2 and Annex 3 of Part B of this Appendix 14 (Service Continuity Plan and Corporate Resolution Planning);
<b>“Insolvency Continuity Plan”</b>	has the meaning given in Paragraph 2.2.1(d).
<b>“Insolvency Event”</b>	means the events listed in clause 91.1 of the Contract;
<b>“Public Sector Dependent Supplier”</b>	means a supplier where that supplier, or that supplier’s group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business;
<b>“Related Service Provider”</b>	any person who provides services to the <i>Client</i> in relation to this Contract from time to time;
<b>“Relevant Authority”</b>	means the <i>Client</i> and the Cabinet Office Markets and Suppliers Team or, where the <i>Consultant</i> is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;
<b>“Review Report”</b>	has the meaning given in Paragraphs 7.2.1 to 7.2.3;
<b>“Service Continuity Plan”</b>	means the plan prepared pursuant to Paragraph 2 of this Appendix which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan;
<b>“Strategic Supplier”</b>	means those suppliers to government listed at <a href="https://www.gov.uk/government/publications/strategic-suppliers">https://www.gov.uk/government/publications/strategic-suppliers</a> ;

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**“UK Public Sector Business”** means any goods, service or works provision to UK public sector bodies, including Crown Bodies 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; and

**“Valid”** in respect of an Assurance, has the meaning given to it in Paragraph 2.7 of Part B to this Appendix 14 (Service Continuity Plan and Corporate Resolution Planning).

## 2. Service Continuity Plan

2.1 Within 40 Working Days from the Contract Date the *Consultant* shall prepare and deliver to the *Client* for the *Client’s* written approval a plan, which shall detail the processes and arrangements that the *Consultant* shall follow to:

2.1.1 ensure continuity of the business processes and operations supported by the *service* following any failure or disruption of any element of the *service* (including where caused by an Insolvency Event of the *Consultant*, any Key Subcontractor and/or any Group Company); and

2.1.2 the recovery of the *service* in the event of a Disaster.

2.2 The Service Continuity Plan shall:

2.2.1 be divided into four parts:

- (a) Part A which shall set out general principles applicable to the Service Continuity Plan;
- (b) Part B which shall relate to business continuity (the “**Business Continuity Plan**”);
- (c) Part C which shall relate to disaster recovery (the “**Disaster Recovery Plan**”);
- (d) Part D which shall relate to an Insolvency Event of the *Consultant*, any Key Subcontractors and/or any Group Company (the “**Insolvency Continuity Plan**”); and

2.2.2 unless otherwise required by the *Client* 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 *Consultant*, the *Client* shall:

2.3.1 review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and

2.3.2 notify the *Consultant* in writing that it approves or rejects the draft Service Continuity Plan no later than 20 Working Days after the date on which the draft Service Continuity Plan is first delivered to the *Client*.

2.4 If the *Client* rejects the draft Service Continuity Plan:

2.4.1 the *Client* shall inform the *Consultant* in writing of its reasons for its rejection; and

2.4.2 the *Consultant* shall then revise the draft Service Continuity Plan (taking reasonable account of the *Client’s* comments) and shall re-submit a revised draft Service Continuity Plan to the *Client* for the *Client’s* approval within 20 Working Days of the date of the *Client’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,

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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:

- 3.1.1 set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;
- 3.1.2 provide details of how the invocation of any element of the Service Continuity Plan may impact upon the operation of the *service* and any services provided to the *Client* by a Related Service Provider;
- 3.1.3 contain an obligation upon the *Consultant* to liaise with the *Client* and (at the *Client's* request) any Related Service Provider with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable;
- 3.1.4 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 *Client* and any of its other Related Service Providers in each case as notified to the *Consultant* by the *Client* from time to time;
- 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the *Client*;
- 3.1.6 contain a risk analysis, including:
  - (a) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
  - (b) identification of any single points of failure within the *service* and processes for managing the risks arising therefrom;
  - (c) identification of risks arising from the interaction of the *service* with the services provided by a Related Service Provider;
  - (d) identification of risks arising from an Insolvency Event of the *Consultant*, any Key Subcontractors and/or Group Company; and
  - (e) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- 3.1.7 provide for documentation of processes, including business processes, and procedures;
- 3.1.8 set out key contact details (including roles and responsibilities) for the *Consultant* (and any Subcontractors) and for the *Client*;
- 3.1.9 identify the procedures for reverting to “normal service”;
- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
- 3.1.11 identify the responsibilities (if any) that the *Client* has agreed it will assume in the event of the invocation of the Service Continuity Plan; and
- 3.1.12 provide for the provision of technical advice and assistance to key contacts at the *Client* as notified by the *Client* from time to time to inform decisions in support of

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the *Client's* business continuity plans.

- 3.2 The Service Continuity Plan shall be designed so as to ensure that:
- 3.2.1 the *service* is provided in accordance with this Contract at all times during and after the invocation of the Service Continuity Plan;
  - 3.2.2 the adverse impact of any Disaster; service failure; an Insolvency Event of the *Consultant*, any Key Subcontractor and/or any Group Company; or disruption on the operations of the *Client*, is minimal as far as reasonably possible;
  - 3.2.3 it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and
  - 3.2.4 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 *service*, to the business processes facilitated by and the business operations supported by the *service*, and/or changes to the *Consultant's* group structure.
- 3.4 The *Consultant* shall not be entitled to any relief from its obligations under the Key Performance Indicators or to any increase in the Prices to the extent that a Disaster occurs as a consequence of any breach by the *Consultant* of this Contract.

## 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 *service* remain supported and to ensure continuity of the business operations supported by the *service* including, unless the *Client* expressly states otherwise in writing:
- 4.1.1 the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the *service*; and
  - 4.1.2 the steps to be taken by the *Consultant* upon resumption of the *service* 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:
- 4.2.1 address the various possible levels of failures of or disruptions to the *service*;
  - 4.2.2 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 *service* (such services and steps, the “**Business Continuity Services**”);
  - 4.2.3 specify any applicable Key Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Key Performance Indicators in respect of other parts of the *service* during any period of invocation of the Business Continuity Plan; and
  - 4.2.4 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



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Disaster the *Consultant* ensures continuity of the business operations of the *Client* supported by the *service* 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:
- 5.3.1 the technical design and build specification of the Disaster Recovery System;
  - 5.3.2 details of the procedures and processes to be put in place by the *Consultant* 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:
    - (a) data centre and disaster recovery site audits;
    - (b) backup methodology and details of the *Consultant's* approach to data back-up and data verification;
    - (c) identification of all potential disaster scenarios;
    - (d) risk analysis;
    - (e) documentation of processes and procedures;
    - (f) hardware configuration details;
    - (g) network planning including details of all relevant data networks and communication links;
    - (h) invocation rules;
    - (i) *service* recovery procedures; and
    - (j) steps to be taken upon resumption of the *service* to address any prevailing effect of the failure or disruption of the *service*;
  - 5.3.3 any applicable Key Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Key Performance Indicators in respect of other parts of the *service* during any period of invocation of the Disaster Recovery Plan;
  - 5.3.4 details of how the *Consultant* shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
  - 5.3.5 access controls to any disaster recovery sites used by the *Consultant* in relation to its obligations pursuant to this Appendix; and
  - 5.3.6 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 *Consultant* to permit continuity of the business operations of the *Client* supported by the *service* through continued provision of the *service* following an Insolvency Event of the *Consultant*, any Key Subcontractor and/or any Group Company with, as far as reasonably possible, minimal adverse impact.
- 6.2 The Insolvency Continuity Plan shall include the following:

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- 6.2.1 communication strategies which are designed to minimise the potential disruption to the provision of the *service*, including key contact details in respect of the supply chain and key contact details for operational and contract *Consultant* personnel, Key Subcontractor personnel and Group Company personnel;
  - 6.2.2 identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the *Consultant*, Key Subcontractors and Group Companies where failure of those dependencies could reasonably have an adverse impact on the *service*;
  - 6.2.3 plans to manage and mitigate identified risks;
  - 6.2.4 details of the roles and responsibilities of the *Consultant*, Key Subcontractors and/or Group Companies to minimise and mitigate the effects of an Insolvency Event of such persons on the *service*;
  - 6.2.5 details of the recovery team to be put in place by the *Consultant* (which may include representatives of the *Consultant*, Key Subcontractors and Group Companies); and
  - 6.2.6 sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the *Consultant*.
- 7. Review and Amendment of the Service Continuity Plan**
- 7.1 The *Consultant* shall review and update the Service Continuity Plan (and the risk analysis on which it is based):
    - 7.1.1 on a regular basis and as a minimum once every 12 months;
    - 7.1.2 within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9;
    - 7.1.3 within 14 days of a Financial Distress Event;
    - 7.1.4 within 30 days of a Corporate Change Event (unless the Relevant Authority (acting reasonably) agrees to a Corporate Change Event Grace Period, as set out in Paragraph 2.8.2(a), in which case that Corporate Change Event Grace Period will apply); and
    - 7.1.5 where the *Client* requests any additional reviews (over and above those provided for in Paragraphs 7.1.1 to 7.1.4) by notifying the *Consultant* to such effect in writing, whereupon the *Consultant* shall conduct such reviews in accordance with the *Client's* written requirements. Prior to starting its review, the *Consultant* shall provide an accurate written estimate of the total costs payable by the *Client* for the *Client's* approval. The costs of both Parties of any such additional reviews shall be met by the *Client* except that the *Consultant* shall not be entitled to charge the *Client* for any costs that it may incur above any estimate without the *Client'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 *service* or any underlying business processes and operations facilitated by or supported by the *service* 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 *Consultant* within the period required by the Service Continuity Plan or, if no such period is required, within such period as the *Client* shall reasonably require. The *Consultant* shall, within 20 Working Days of the conclusion of each such review of the Service Continuity Plan, provide to the *Client* a report (a "**Review Report**") setting out:

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- 7.2.1 the findings of the review;
  - 7.2.2 any changes in the risk profile associated with the *service*; and
  - 7.2.3 the *Consultant's* proposals (the "**Consultant'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 *Consultant* 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 Consultant's Proposals, the *Client* shall:
- 7.3.1 review and comment on the Review Report and the Consultant's Proposals as soon as reasonably practicable; and
  - 7.3.2 notify the *Consultant* in writing that it approves or rejects the Review Report and the Consultant's Proposals no later than 20 Working Days after the date on which they are first delivered to the *Client*.
- 7.4 If the *Client* rejects the Review Report and/or the Consultant's Proposals:
- 7.4.1 the *Client* shall inform the *Consultant* in writing of its reasons for its rejection; and
  - 7.4.2 the *Consultant* shall then revise the Review Report and/or the Consultant's Proposals as the case may be (taking reasonable account of the *Client's* comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Consultant's Proposals to the *Client* for the *Client's* approval within 20 Working Days of the date of the *Client's* notice of rejection. The provisions of Paragraph 7.3 and this Paragraph 7.4 shall apply again to any resubmitted Review Report and Consultant's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 7.5 The *Consultant* shall as soon as is reasonably practicable after receiving the *Client's* approval of the Consultant'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 Consultant's Proposals. Any such change shall be at the *Consultant's* expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the *service*.
- 8. Testing of the Service Continuity Plan**
- 8.1 The *Consultant* shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every year of the Contract). Subject to Paragraph 8.2, the *Client* may require the *Consultant* to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where the *Client* considers it necessary, including where there has been any change to the *service* 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 *Client* requires an additional test of the Service Continuity Plan, it shall give the *Consultant* written notice and the *Consultant* shall conduct the test in accordance with the *Client's* requirements and the relevant provisions of the Service Continuity Plan. The *Consultant's* costs of the additional test shall be borne by the *Client* unless the Service Continuity Plan fails the additional test in which case the *Consultant's* costs of that failed test shall be borne by the *Consultant*.
- 8.3 The *Consultant* shall undertake and manage testing of the Service Continuity Plan in full consultation with the *Client* and shall liaise with the *Client* in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the *Client* in this regard. Each test shall be carried out under the supervision of the *Client* or its nominee.

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- 8.4 The *Consultant* shall ensure that any use by it or any Subcontractor of “live” data in such testing is first approved with the *Client*. Copies of live test data used in any such testing shall be (if so required by the *Client*) destroyed or returned to the *Client* on completion of the test.
- 8.5 The *Consultant* shall, within 20 Working Days of the conclusion of each test, provide to the *Client* a report setting out:
- 8.5.1 the outcome of the test;
  - 8.5.2 any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and
  - 8.5.3 the *Consultant's* proposals for remedying any such failures.
- 8.6 Following each test, the *Consultant* shall take all measures requested by the *Client*, (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 *Consultant*, at no additional cost to the *Client*, by the date reasonably required by the *Client* 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 *Consultant* of any of its obligations under this Contract.
- 8.8 The *Consultant* shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the *service* or as otherwise reasonably requested by the *Client*.

**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 *Consultant* 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 *Client* promptly of such invocation. In all other instances the *Consultant* shall invoke the business continuity and disaster recovery plan elements only with the prior consent of the *Client*.
- 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 *Consultant*:
- 9.2.1 where an Insolvency Event of a Key Subcontractor and/or Group Company (other than the *Consultant*) could reasonably be expected to adversely affect delivery of the *service*; and/or
  - 9.2.2 where there is an Insolvency Event of the *Consultant* and the insolvency arrangements enable the *Consultant* to invoke the plan.

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**PART B: CORPORATE RESOLUTION PLANNING****1 Service Status and Consultant Status**

- 1.1 The *Consultant* shall notify the *Client* and the Cabinet Office Markets and Suppliers Team ([Resolution.planning@cabinetoffice.gov.uk](mailto:Resolution.planning@cabinetoffice.gov.uk)) in writing within 5 Working Days of the Contract Date and throughout the Service Period within 120 days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier.

**2 Provision of Corporate Resolution Planning Information (“CRP Information”)**

- 2.1 Subject to Paragraphs 2.6, 2.10 and 2.11 of this Part B:
- 2.1.1 the *Consultant* shall provide the Relevant Authority or Relevant Authorities with CRP Information within 60 days of the Contract Date; and
- 2.1.2 except where it has already been provided in accordance with Paragraph 2.2.1 of this Part B, where the *Consultant* is a Public Sector Dependent Supplier, it shall provide the Relevant Authority or Relevant Authorities with the CRP Information within 60 days of the date of the Relevant Authority’s or Relevant Authorities’ request.
- 2.2 The *Consultant* shall ensure that the CRP Information provided pursuant to Paragraphs 2.2, 2.8 and 2.9 of this Part B:
- 2.2.1 is full, comprehensive, accurate and up to date;
- 2.2.2 is split into three parts:
- (a) Exposure Information (Contracts List);
  - (b) Corporate Resolvability Assessment (Structural Review);
  - (c) Financial Information and Commentary
- and is structured and presented in accordance with the requirements and explanatory notes set out at the relevant Annex of the latest published versions of the Resolution Planning Guidance Notes published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-sourcing-and-consultancy-playbooks> and contains the level of detail required (adapted as necessary to the *Consultant*’s circumstances);
- 2.2.3 incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Authority or Relevant Authorities to understand and consider the information for approval;
- 2.2.4 provides a clear description and explanation of the Group Companies 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
- 2.2.5 complies with the requirements set out at Annex 1 (Exposure Information (Contracts List)), Annex 2 (Corporate Resolvability Assessment (Structural Review)) and Annex 3 (Financial Information And Commentary) of this Appendix respectively.
- 2.3 Following receipt by the Relevant Authority or Relevant Authorities of the CRP Information pursuant to Paragraphs 2.2, 2.8 and 2.9 of this Part B, the *Client* shall procure that the Relevant Authority or Relevant Authorities discuss in good faith the contents of the CRP Information with the *Consultant* and no later than 60 days after the date on which the CRP Information was delivered by the *Consultant* either provide an Assurance to the *Consultant* that the Relevant Authority or Relevant Authorities approve the CRP Information or that the Relevant Authority or

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Relevant Authorities reject the CRP Information.

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

2.4.1 the *Client* shall (and shall procure that the Cabinet Office Markets and Suppliers Team shall) inform the *Consultant* in writing of its reasons for its rejection; and

2.4.2 the *Consultant* shall revise the CRP Information, taking reasonable account of the Relevant Authority's or Relevant Authorities' comments, and shall re-submit the CRP Information to the Relevant Authority or Relevant Authorities for approval within 30 days of the date of the Relevant Authority's or Relevant Authorities' rejection. The provisions of Paragraph 2.3 to 2.5 of this Part B shall apply again to any resubmitted CRP Information provided that either Party may refer any disputed matters for resolution by the dispute procedure at clause W2 of the Contract at any time.

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

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

2.6.1 the Assurance is within the validity period stated in the Assurance (or, if no validity period is stated, no more than 12 months has elapsed since it was issued and no more than 18 months has elapsed since the Accounting Reference Date on which the CRP Information was based); and

2.6.2 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 Contract had then been in force) have occurred since the date of issue of the Assurance.

2.7 The *Consultant* shall provide an updated version of the CRP Information (or, in the case of Paragraph 2.8.3 of this Part B its initial CRP Information) to the Relevant Authority or Relevant Authorities:

2.7.1 within 14 days of the occurrence of a Financial Distress Event (along with any additional highly confidential information no longer exempted from disclosure under Paragraph 2.11 of this Part B) unless the *Consultant* is relieved of the consequences of the Financial Distress Event under Paragraph 7.1 of Appendix 6 (Financial Distress);

2.7.2 within 30 days of a Corporate Change Event unless:

- (a) the *Consultant* requests and the Relevant Authority (acting reasonably) agrees to a Corporate Change Event Grace Period, in the event of which the time period for the *Consultant* to comply with this Paragraph shall be extended as determined by the Relevant Authority (acting reasonably) but shall in any case be no longer than six months after the Corporate Change Event. During a Corporate Change Event Grace Period the *Consultant* shall regularly and fully engage with the Relevant Authority to enable it to understand the nature of the Corporate Change Event and the Relevant Authority shall reserve the right to terminate a Corporate Change Event Grace Period at any time if the *Consultant* fails to comply with this Paragraph; or

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- (b) not required pursuant to Paragraph 2.10;
- 2.7.3 within 30 days of the date that:
  - (a) the credit rating(s) of each of the *Consultant* and its parent company fail to meet any of the criteria specified in Paragraph 2.10; or
  - (b) none of the credit rating agencies specified at Paragraph 2.10 hold a public credit rating for the *Consultant* or any of its parent companies; and
- 2.7.4 in any event, within 6 months after each Accounting Reference Date or within 15 months of the date of the previous Assurance received from the Relevant Authority (whichever is the earlier), unless:
  - (a) updated CRP Information has been provided under any of Paragraphs 2.8.1 2.8.2 or 2.8.3 since the most recent Accounting Reference Date (being no more than 12 months previously) within the timescales that would ordinarily be required for the provision of that information under this Paragraph 2.8.4; or
  - (b) unless not required pursuant to Paragraph 2.10.

2.8 Not used.

2.9 Where the *Consultant* or a parent company of the *Consultant* has a credit rating of either:

- [REDACTED]
- [REDACTED]
- [REDACTED]

the *Consultant* will not be required to provide any CRP Information unless or until either (i) a Financial Distress Event occurs (unless the *Consultant* is relieved of the consequences of the Financial Distress Event under Paragraph 7.1 of Appendix 6 (Financial Distress)) or (ii) the *Consultant* and its parent companies cease to fulfil the criteria set out in this Paragraph 2.10, in which cases the *Consultant* shall provide the updated version of the CRP Information in accordance with Paragraph 2.8.

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

**3 Termination Rights**

- 3.1 The *Client* shall be entitled to terminate this Contract in accordance with clause 9 (Termination), such termination being deemed R11 for the purposes of clause 9 (Termination), if the *Consultant* is required to provide CRP Information under Paragraph 2 of this Part B and either:
  - 3.1.1 the *Consultant* fails to provide the CRP Information within 4 months of the Contract Date or otherwise within 4 months of the Relevant Authority's or Relevant Authorities' request; or
  - 3.1.2 the *Consultant* fails to obtain an Assurance from the Relevant Authority or Relevant Authorities within 4 months of the date that it was first required to provide the CRP Information under this Contract.

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**4 Confidentiality and usage of CRP Information**

- 4.1 The *Client* agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the *Consultant* and/or Group Company on its UK Public Sector Business and/or services in respect of CNI and to enable contingency planning to maintain service continuity for end users and protect CNI in such eventuality.
- 4.2 Where the Relevant Authority is the Cabinet Office Markets and Suppliers Team, at the *Consultant's* request, the *Client* shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and usage agreement with the *Consultant* containing terms no less stringent than those placed on the *Client* under Paragraph 4.1 of this Part B and Clause Z10 (Confidential Information).
- 4.3 The *Consultant* shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to enable disclosure of that information to the Relevant Authority or Relevant Authorities pursuant to Paragraph 2 of this Part B subject, where necessary, to the Relevant Authority or Relevant Authorities entering into an appropriate confidentiality agreement in the form required by the third party.
- 4.4 Where the *Consultant* is unable to procure consent pursuant to Paragraph 4.3 of this Part B, the *Consultant* 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:
- 4.4.1 redacting only those parts of the information which are subject to such obligations of confidentiality
  - 4.4.2 providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:
    - (a) summarising the information;
    - (b) grouping the information;
    - (c) anonymising the information; and
    - (d) presenting the information in general terms.
- 4.5 The *Consultant* shall provide the Relevant Authority or Relevant Authorities with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the *Consultant* is legally permitted to do so.



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

- 1 The *Consultant* shall:
  - 1.1 provide details of all agreements held by members of the Group Companies where those agreements are for goods, services or works provision and:
    - 1.1.1 are with any UK public sector bodies including: Crown Bodies 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 Annex 1 and where the member of the Group Company is acting as a key subcontractor 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 £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.

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

- 1 The *Consultant* shall:
  - 1.1 provide sufficient information to allow the Relevant Authority to understand the implications on the Group Companies' UK Public Sector Business and CNI contracts listed pursuant to Annex 1 if the *Consultant* or another member of the Group Companies 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 Group Companies; and
  - 1.3 provide full details of the importance of each member of the Group Companies to the Group Companies' UK Public Sector Business and CNI contracts listed pursuant to Annex 1 and the dependencies between each.

## Programme Delivery Partner Contract

**ANNEX 3: FINANCIAL INFORMATION AND COMMENTARY**

- 1 The *Consultant* shall:
  - 1.1 provide sufficient financial information for the Group Company level, contracting operating entities level, and shared services entities' level to allow the Relevant Authority to understand the current financial interconnectedness of the Group Companies and the current performance of the *Consultant* as a standalone entity; and
  - 1.2 ensure that the information is presented in a simple, effective and easily understood manner.
- 2 For the avoidance of doubt the financial information to be provided pursuant to Paragraph 1 of this Annex 3 should be based on the most recent audited accounts for the relevant entities (or interim accounts where available) updated for any material changes since the Accounting Reference Date provided that such accounts are available in a reasonable timeframe to allow the *Consultant* to comply with its obligations under this Appendix 14 (Service Continuity Plan and Corporate Resolution Planning). If such accounts are not available in that timeframe, financial information should be based on unpublished unaudited accounts or management accounts (disclosure of which to the Cabinet Office Markets and Suppliers Team remains protected by confidentiality).

## Programme Delivery Partner Contract

**APPENDIX 15: BENCHMARKING****1 DEFINITIONS**

1.1 In this Appendix, the following definitions shall apply:

<b>“Benchmarked Service”</b>	a part of the <i>service</i> that the <i>Client</i> elects to include in a Benchmark Review under Paragraph 2.3;
<b>“Benchmarker”</b>	the independent third party appointed under Paragraph 3.1;
<b>“Benchmark Report”</b>	the report produced by the Benchmarker following the Benchmark Review as further described in Paragraph 5;
<b>“Benchmark Review”</b>	a review of one or more parts of the <i>service</i> carried out in accordance with Paragraph 4 to determine whether that <i>service</i> represents Good Value;
<b>“Comparable Service”</b>	in relation to a Benchmarked Service, a service that is identical or materially similar to the Benchmarked Service (including in terms of scope, specification, volume and quality of performance);
<b>“Comparison Group”</b>	in relation to a Comparable Service, a sample group of organisations providing the Comparable Service identified by the Benchmarker under Paragraph 4.8 which consists of organisations which are either of similar size to the <i>Consultant</i> or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker's professional opinion) fair comparators with the <i>Consultant</i> or which, in the professional opinion of the Benchmarker, are best practice organisations and, where there are a reasonable number of such organisations, referencing only those organisations that are carrying on at least a significant part of their business within the United Kingdom;
<b>“Equivalent Services Data”</b>	in relation to a Comparable Service, data derived from an analysis of the Comparable Service provided by the Comparison Group as adjusted in accordance with Paragraphs 4.8(a) and 4.9 provided that the Benchmarker shall not use any such data that relates to a period which ended more than 36 months prior to the date of the appointment of the Benchmarker;
<b>“Good Value”</b>	in relation to a Benchmarked Service, that having taken into account the KPIs, the value for money of the Prices and the Rates attributable to that Benchmarked Service is at least as good as the value for money of the Upper Quartile; and
<b>“Upper Quartile”</b>	the top 25% of instances of provision of a Comparable Service by members of the Comparison Group ranked by best value for money to the recipients of that Comparable Service.

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**2 FREQUENCY, PURPOSE AND SCOPE OF BENCHMARK REVIEW**

- 2.1 The *Client* may, by written notice to the *Consultant*, require a Benchmark Review of any part or all of the Service in order to establish whether a Benchmarked Service is, and/or the Benchmarked Services as a whole are, Good Value.
- 2.2 The *Client* shall not be entitled to carry out a Benchmark Review of any of the service during the 12 month period from the *starting date*, nor at intervals of less than 12 months after any previous Benchmark Review relating to the same *service*.
- 2.3 The parts of the *service* that are to be the Benchmarked Services shall be identified by the *Client* in the notice given under Paragraph 2.1.

**3 APPOINTMENT OF BENCHMARKER**

- 3.1 The *Client* shall appoint as the Benchmarker to carry out the Benchmark Review such organisation as may be agreed in writing between the Parties acting reasonably. Where the Parties fail to agree on the organisation to carry out the Benchmark Review within four (4) weeks of the *Client's* notice issued given under Paragraph 2.1, the *Client* shall appoint the Benchmarker at its absolute discretion.
- 3.2 The *Client* shall, at the written request of the *Consultant*, require the Benchmarker to enter into a confidentiality agreement with the *Consultant* in, or substantially in, the form set out in Annex 1.
- 3.3 The costs and expenses of the Benchmarker and the Benchmark Review shall be shared equally between both Parties provided that each Party shall bear its own internal costs of the Benchmark Review. The Benchmarker shall not be compensated on a contingency fee or incentive basis.
- 3.4 The *Client* shall be entitled to pay the Benchmarker's costs and expenses in full and to recover the *Consultant's* share from the *Consultant*.

**4 BENCHMARK REVIEW**

- 4.1 The *Client* shall require the Benchmarker to produce, and to send to each Party for approval, a draft plan for the Benchmark Review within 10 Working Days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances. The plan must include:
- (a) a proposed timetable for the Benchmark Review;
  - (b) a description of the information that the Benchmarker requires each Party to provide;
  - (c) a description of the benchmarking methodology to be used;
  - (d) a description that clearly illustrates that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives under Paragraph 2.1;
  - (e) an estimate of the resources required from each Party to underpin the delivery of the plan;
  - (f) a description of how the Benchmarker will scope and identify the Comparison Group;
  - (g) details of any entities which the Benchmarker proposes to include within the Comparison Group; and
  - (h) if in the Benchmarker's professional opinion there are no Comparable Services or the number of entities carrying out Comparable Services is insufficient to create a Comparison Group, a detailed approach for meeting the relevant benchmarking

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objective(s) under Paragraph 2.1 using a proxy for the Comparison Services and/or Comparison Group as applicable.

- 4.2 The Parties acknowledge that the selection and/or use of proxies for the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarkers' professional judgment.
- 4.3 Each Party shall give notice in writing to the Benchmarkers and to the other Party within 10 Working Days after receiving the draft plan either approving the draft plan or suggesting amendments to that plan which must be reasonable. Where a Party suggests amendments to the draft plan pursuant to this Paragraph 4.3, the Benchmarkers shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 4.1 and this Paragraph 4.3 shall apply to any amended draft plan.
- 4.4 Failure by a Party to give notice under Paragraph 4.3 shall be treated as approval of the draft plan by that Party. If the Parties fail to approve the draft plan within 30 Working Days of its first being sent to them pursuant to Paragraph 4.1 then the Benchmarkers shall prescribe the plan.
- 4.5 Once the plan is approved by both Parties or prescribed by the Benchmarkers, the Benchmarkers shall carry out the Benchmark Review in accordance with the plan. Each Party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarkers is provided to the Benchmarkers without undue delay. If the *Consultant* fails to provide any information requested from it by the Benchmarkers and described in the plan, such failure shall constitute a material default.
- 4.6 Each Party shall co-operate fully with the Benchmarkers, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarkers, provided that the Benchmarkers shall be instructed to minimise any disruption to the *service*.
- 4.7 Either Party may provide additional material to the Benchmarkers to assist the Benchmarkers in conducting the Benchmark Review.
- 4.8 Once it has received the information it requires, the Benchmarkers shall:
- (a) finalise the sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The final selection of the Comparison Group (both in terms of number and identity of entities) and of the Comparable Services shall be a matter for the Benchmarkers' professional judgment;
  - (b) derive the Equivalent Services Data by applying the adjustment factors listed in Paragraph 4.9 and from an analysis of the Comparable Services;
  - (c) derive the relative value for money of the charges payable for the Comparable Services using the Equivalent Services Data and from that derive the Upper Quartile;
  - (d) compare the value for money of the Prices and the Rates attributable to the Benchmarked Services (having regard in particular to the applicable Key Performance Indicators) to the value for money of the Upper Quartile; and
  - (e) determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.
- 4.9 The Benchmarkers shall have regard to the following matters when performing a comparative assessment of a Benchmarked Service and a Comparable Service in order to derive Equivalent Services Data:
- (a) the contractual and business environment under which the *service* is being provided (including the scope, scale, complexity and geographical spread of the *service*);

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- (b) any front-end investment and development costs of the *Consultant*;
- (c) the *Consultant's* risk profile including the financial, performance or liability risks associated with the provision of the *service* as a whole;
- (d) the extent of the *Consultant's* management and contract governance responsibilities;
- (e) any other reasonable factors demonstrated by the *Consultant*, which, if not taken into consideration, could unfairly cause the *Consultant's* pricing to appear non-competitive (such as erroneous costing, non-sustainable behaviour including excessive consumption of energy or over-aggressive pricing).

**5 BENCHMARK REPORT**

- 5.1 The Benchmarker shall be required to prepare a Benchmark Report and deliver it simultaneously to both Parties, at the time specified in the plan approved under Paragraph 4, setting out its findings. The Benchmark Report shall:
- (a) include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;
  - (b) include other findings (if any) regarding the quality and competitiveness or otherwise of those parts of the *service*;
  - (c) if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Prices, the Rates and/or the KPIs that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value; and
  - (d) illustrate the method used for any normalisation of the Equivalent Services Data.
- 5.2 The Benchmarker shall act as an expert and not as an arbitrator.
- 5.3 If the Benchmark Report states that any Benchmarked Service is not Good Value or that the Benchmarked Services as a whole are not Good Value, then the *Consultant* shall (subject to Paragraphs 5.5 and 5.6) implement the changes set out in the Benchmark Report as soon as reasonably practicable within timescales agreed with the *Client* but in any event within no more than 3 months. Any associated changes to the Price shall take effect only from the same date and shall not be retrospective.
- 5.4 The *Consultant* acknowledges and agrees that Benchmark Reviews shall not result in any increase to the Prices or the Rates or disapplication/reduction of the KPIs.
- 5.5 The *Consultant* shall be entitled to reject any Benchmark Report if the *Consultant* reasonably considers that the Benchmarker has not followed the procedure for the related Benchmark Review as set out in this Appendix in any material respect.
- 5.6 The *Consultant* shall not be obliged to implement any Benchmark Report to the extent this would cause the *Consultant* to provide the *service* at a loss, or to the extent the *Consultant* cannot technically implement the recommended changes.
- 5.7 In the event of any dispute arising over whether the Benchmarker has followed the procedure for the related Benchmark Review under Paragraph 5.5 and/or any matter referred to in Paragraph 5.6, the dispute shall be referred to an expert ("Expert Determination"). For the avoidance of doubt in the event of a dispute between the Parties, the *Client* shall continue to pay the Price to the *Consultant* in accordance with the terms of this Contract and the KPIs shall remain unchanged pending the conclusion of the Expert Determination.
- 5.8 On conclusion of the Expert Determination:
- (a) if the expert determines that all or any part of the Benchmark Report recommendations regarding any reduction in the Price shall be implemented by the

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*Consultant*, the *Consultant* shall immediately repay to the *Client* the difference between the Price paid by the *Client* up to and including the date of the expert's determination and the date upon which the recommended reduction in the Price should have originally taken effect pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and

- (b) if the expert determines that all or any part of the Benchmark Report recommendations regarding any changes to the KPIs shall be implemented by the *Consultant* and:
- (i) the *Consultant* shall immediately implement the relevant changes;
  - (ii) the *Consultant* shall immediately pay an amount equal to any Profit deduction which would have accrued up to and including the date of the Expert's determination if the relevant changes had taken effect on the date determined pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998; and
  - (iii) the relevant changes shall thereafter be agreed in accordance with clause 12.3 of the Contract for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Contract.

- 5.9 Any failure by the *Consultant* to implement the changes as set out in the Benchmark Report in accordance with the relevant timescales determined in accordance with Paragraph 5.3 (unless the provisions of Paragraph 5.6 and/or Paragraph 5.7 apply) or in accordance with Paragraph 5.8 shall give the *Client* the right to terminate the *Consultant's* obligation to Provide the Service, such termination being deemed R11 for the purposes of clause 9 (Termination).



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**Annex 1: Confidentiality Agreement**

**CONFIDENTIALITY AGREEMENT**

**THIS AGREEMENT** is made on [date]

**BETWEEN:**

- (1) **[insert name]** of **[insert address]** (the “**Consultant**”); and
- (2) **[insert name]** of **[insert address]** (the “**Benchmarker**” and together with the Consultant, the “**Parties**”).

**WHEREAS:**

- (A) [insert name of Client] (the “**Client**”) and the Consultant are party to a contract dated [insert date] (the “**Contract**”) for the provision by the Consultant of [insert brief description of services] to the Client.
- (B) The Benchmarker is to receive Confidential Information from the Consultant for the purpose of carrying out a benchmarking review for the Client of one or more of such services pursuant to the terms of the Contract (the “**Permitted Purpose**”).

**IT IS AGREED as follows:**

**1 Interpretation**

1.1 In this Agreement, unless the context otherwise requires:

“**Confidential Information**” means:

- a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Consultant to the Benchmarker pursuant to this Agreement that relates to:
  - i. the Consultant; or
  - ii. the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Consultant;
- b) other Information provided by the Consultant pursuant to this Agreement to the Benchmarker that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Benchmarker’s attention or into the Benchmarker’s possession in connection with the Permitted Purpose;
- c) discussions, negotiations, and correspondence between the Consultant or any of its directors, officers, employees, consultants or professional advisers and the Benchmarker or any of its directors, officers,

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employees, consultants and professional advisers in connection with the Permitted Purpose and all matters arising therefrom; and

- d) Information derived from any of the above, but not including any Information that:
  - e) was in the possession of the Benchmarker without obligation of confidentiality prior to its disclosure by the Consultant;
  - f) the Benchmarker obtained on a non-confidential basis from a third party who is not, to the Benchmarker's knowledge or belief, bound by a confidentiality agreement with the Consultant or otherwise prohibited from disclosing the information to the Benchmarker;
  - g) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
  - h) was independently developed without access to the Confidential Information;

**“Information”** means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

**“Permitted Purpose”** has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

- (a) a reference to any gender includes a reference to other genders;
- (b) the singular includes the plural and vice versa;
- (c) the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;
- (d) references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
- (e) headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- (f) references to Clauses are to clauses of this Agreement.

**2 Confidentiality Obligations**

2.1 In consideration of the Consultant providing Confidential Information to the Benchmarker, the Benchmarker shall:

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- (a) treat all Confidential Information as secret and confidential;
- (b) have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- (c) not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Consultant or, if relevant, other owner or except as expressly set out in this Agreement;
- (d) not transfer any of the Confidential Information outside the United Kingdom;
- (e) not use or exploit any of the Confidential Information for any purpose whatsoever other than the Permitted Purpose;
- (f) immediately notify the Consultant in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- (g) once the Permitted Purpose has been fulfilled:
  - (i) destroy or return to the Consultant all documents and other tangible materials that contain any of the Confidential Information;
  - (ii) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Benchmarker) from any computer, word processor, voicemail system or any other device; and
  - (iii) make no further use of any Confidential Information.

**3 Permitted Disclosures**

- 3.1 The Benchmarker may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
- (a) reasonably need to receive the Confidential Information in connection with the Permitted Purpose; and
  - (b) have been informed by the Benchmarker of the confidential nature of the Confidential Information; and
  - (c) have agreed to terms similar to those in this Agreement.
- 3.2 The Benchmarker shall be entitled to disclose Confidential Information to the *Client* for the Permitted Purpose and to any Expert appointed in relation to a Dispute as referred to in Paragraph 5.7 of Appendix 15 (Benchmarking) to the Contract.
- 3.3 The Benchmarker shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Benchmarker.
- 3.4 Before making a disclosure pursuant to Clause 3.3, the Benchmarker shall, if the circumstances permit:
- (a) notify the Consultant in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and

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- (b) ask the court or other public body to treat the Confidential Information as confidential.

**4 General**

- 4.1 The Benchmarker acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Consultant shall remain with and be vested in the Consultant.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
  - (a) to grant the Benchmarker any licence or rights other than as may be expressly stated in this Agreement;
  - (b) to require the Consultant to disclose, continue disclosing or update any Confidential Information; or
  - (c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this Agreement.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Consultant may have, the Benchmarker acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Benchmarker of any of the provisions of this Agreement. Accordingly, the Benchmarker acknowledges that the Consultant shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Benchmarker to the Consultant for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

**5 Notices**

- 5.1 Any notice to be given under this Agreement (each a "**Notice**") shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.
- 5.2 Any Notice:
  - (a) if to be given to the Consultant shall be sent to:

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[Address]

Attention: [Contact name and/or position, e.g. "The Finance Director"]

(b) if to be given to the Benchmarking shall be sent to:

[Name of Organisation]

[Address]

Attention: [ ]

**6 Governing law**

6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.

6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

**IN WITNESS** of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

**For and on behalf of [name of Consultant]**

Signature: \_\_\_\_\_

Date:

Name:

Position:

**For and on behalf of [name of Benchmarking]**

Signature: \_\_\_\_\_

Date:

Name:

Position:

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**APPENDIX 16: MODERN SLAVERY**

1 The following definitions shall apply in this Appendix:

**“Modern Slavery Assessment Tool”** means the modern slavery risk identification and management tool which can be found online at:

<https://supplierregistration.cabinetoffice.gov.uk/msat>

**“Supply Chain Map”** means details of (i) the *Consultant*, (ii) all Subcontractors and (iii) any other entity that the *Consultant* is aware is in its supply chain that is not a Subcontractor, setting out at least:

- (a) the name, registered office and company registration number of each entity in the supply chain;
- (b) the function of each entity in the supply chain; and
- (c) the location of any premises at which an entity in the supply chain carries out a function in the supply chain;

2 The *Consultant*:

- (a) shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;
- (b) shall not require any *Consultant* employees or the employees of any Subcontractors to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;
- (c) warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- (d) warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
- (e) shall make reasonable enquires to ensure that its officers, employees and subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- (f) shall have and maintain throughout the Service Period its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its subcontractors anti-slavery and human trafficking provisions;
- (g) shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;
- (h) shall prepare and deliver to the *Client*, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;
- (i) shall not use, nor allow its employees or subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or subcontractors;

## Programme Delivery Partner Contract

- (j) shall not use or allow child or slave labour to be used by its subcontractors;
- (k) shall report the discovery or suspicion of any slavery, trafficking, forced labour, involuntary prison labour or labour rights abuses by it or its subcontractors to the *Client* and the Modern Slavery Helpline and relevant national or local law enforcement agencies;
- (l) shall, if the *Consultant* or the *Client* identifies any occurrence of modern slavery connected to this Contract, comply with any request of the *Client* to submit a remedial action plan which follows the form set out in Annex D of the guidance *Tackling Modern Slavery in Government Supply Chains*;
- (m) shall allow the *Client* or independent third party to carry out an unannounced or semi-announced inspection of any Site and speak directly to any *Consultant* employee in a confidential manner and in the native language of such *Consultant* employee in respect of workforce conditions, working or employment practices;
- (n) for the purposes of an audit carried out pursuant to limb (m), the *Client* may instruct the *Consultant* to carry out such an audit of any subcontractor by an independent third party and, if so instructed, the *Consultant* shall deliver a report to the *Client* within ninety (90) days of such instruction; and
- (o) if the *Consultant* notifies the *Client* pursuant to limb (l), it shall respond promptly to the *Client's* enquiries, co-operate with any investigation, and allow the *Client* to audit any books, records and/or any other relevant documentation in accordance with the Contract.

2.2 If the *Consultant* does not comply with Paragraph 2.1 above, the *Client* may by notice:

- (a) require the *Consultant* to remove from performance of the Contract any Subcontractor, *Consultant* employee or other persons associated with it whose acts or omissions are not compliant; or
- (b) immediately terminate the Contract in accordance with clause 9 (Termination), such termination being deemed R11 for the purposes of clause 9 (Termination).

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**APPENDIX 17: SOCIAL VALUE PLAN**

**Qualitative**















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**Quantitative**























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**APPENDIX 18: SOCIAL VALUE STATEMENT**



Department  
of Health &  
Social Care

# **NHP Social Value Objectives Statement 2024**













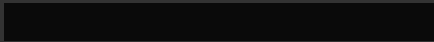
























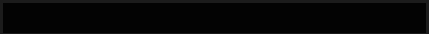
















## Programme Delivery Partner Contract

**APPENDIX 19: EXPENSES POLICY****1 PAYMENT**

- 1.1 The Rates are inclusive of any travel expenses to and from Base Offices (see definition below).
- 1.2 Any travel to and from any office or place of work which is not an Employee's Base Office will be an eligible expense, calculated on the basis of additional cost beyond regular travel to and from a Base Office only.
- 1.3 Base Offices are offices that are either an Employee's regular place of work, an Employee's contracted place of work, or an Employer's nearest, permanent office to the Employee's home address.
- 1.4 The additional cost beyond regular travel to and from a Base Office, as referred to in clause 1.2, is calculated as follows:
  - 1.4.1 If the travel is undertaken by car, this is the total distance (in miles) of the travel, less the distance from the Employee's home address to their furthest Base Office. This calculation will be completed for the outward and return journeys respectively.
  - 1.4.2 If the journey is undertaken by any form of public transport (including rail, bus, tram, underground), then this shall be calculated based on the total cost of the ticket, less the cost of a ticket from the Employee's home address to their furthest Base Office for the same date, time, and class of travel.
- 1.5 Additional expenses (i.e. all expenses except travel expenses to and from an Employee's Base Office) will only be reimbursed where approved by the *Service Manager* in advance, such approval must be in writing for extraordinary expenses, including extraordinary travel and overnight accommodation. The *Service Manager* may, at its sole discretion, approve expenses in advance on a Task Order basis.
- 1.6 Expenses are included in the application for payment for the period in which they were incurred, or the following application period at the latest. Expenses will not be accepted without receipts.

**2 EXPENSES**

- 2.1 The *Consultant* considers the impact on the environment and reduction in carbon in providing the scope of services and organising travel.
- 2.2 The *Consultant* considers the interest of public money when incurring expenses.
- 2.3 The *Consultant* eliminates the need to travel or minimises the number of miles travelled by considering alternatives to physical travel such as virtual meetings. Travel is the last option considered. Where physical travel is required, the *Consultant* uses the most economical locations, considering all participants' travel times and costs; varying venues to even out participants' travel arrangements.
- 2.4 The *Consultant* uses public transport wherever possible. The *Consultant* uses the most economical means of public transport on every occasion, including travelling outside of peak times where

## Programme Delivery Partner Contract

practicable. The *Consultant* purchases advance tickets except in exceptional cases and these are required to only be standard class rail travel, bus travel, or low-cost airlines.

- 2.5 Where additional expenses are approved in accordance with paragraph 1.3 above and subject to paragraph 2.6, the *Consultant* complies with the NHSE Business Travel and Expenses Policy (where relevant) contained at Annex 1 to this Appendix 19 and as updated from time to time.
- 2.6 Where the *Consultant* is claiming expenses for travel undertaken by car, the mileage and fuel expenses comply with the HMRC 'Travel – mileage and fuel rates and allowances' guidance.<sup>21</sup> Where *Consultant* staff are entitled to a car allowance, mileage and fuel expenses comply with the advisory fuel rates for company cars in the HMRC guidance.
- 2.7 Where meetings are held at the beginning or end of a working week, the start and end times must not require an overnight stay on a Sunday or Friday.

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<sup>21</sup><https://www.gov.uk/government/publications/rates-and-allowances-travel-mileage-and-fuel-allowances/travel-mileage-and-fuel-rates-and-allowances>

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**Annex 1: NHSE Business Travel and Expenses Policy**



# Business Travel and Expenses Policy

## Business Travel and Expenses Policy

<b>Version number and status:</b>	2
<b>First published:</b>	14/11/2017
<b>Date updated:</b>	15/05/2024
<b>Next review date:</b>	15/05/2026
<b>Policy prepared by:</b>	Policy Sub-Group
<b>Policy owner:</b>	[REDACTED] [REDACTED] [REDACTED]
<b>Policy approved by and date:</b>	Executive HR Group 02/05/2024
<b>Brief summary of changes since previous version:</b>	<ul style="list-style-type: none"> <li>• The hotel accommodation caps have increased: <ul style="list-style-type: none"> <li>○ London up to £[REDACTED] per night</li> <li>○ outside London up to £[REDACTED] per night</li> </ul> </li> <li>• To encourage colleagues to use more sustainable ways of travelling, we have increased the rate you can claim when you need to travel by car and take colleagues as passengers, and the cycle rate: <ul style="list-style-type: none"> <li>○ passenger rate: [REDACTED]p</li> <li>○ pedal cycle rate: [REDACTED]p</li> </ul> </li> </ul> <p>Note, reimbursements above His Majesty's Revenue &amp; Customs (HMRC) approved rates of [REDACTED]p and</p>

	<p>[REDACTED] p per mile respectively are taxable.</p> <ul style="list-style-type: none"><li>• All employees can only claim for the subsistence rates in this policy. This includes Monitor staff who previously retained their subsistence rates and legacy NHS Digital colleagues who were previously able to claim £[REDACTED] breakfast allowance, which is not permitted in this policy.</li><li>• Domestic flights within mainland UK have not been permitted since 2020, and this is now incorporated into this policy. The revised booking system and approval mechanism reflect this.</li><li>• The revised approval process for air travel is outlined in this policy. Air travel cannot be booked until approval by the panel has been granted.</li><li>• Further guidance has been provided on HMRC rules around travel for contractual home-based workers, geographic workers, and dual based staff.</li></ul>
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This is a controlled document. The electronic version on the intranet is the controlled version and any printed copies are not controlled.

As a controlled document, this document should not be saved onto local or network drives and should always be accessed from the intranet.



## 1. Purpose

As a public body, NHS England must ensure the highest standards of rigour, value for money and propriety in the way that we deliver our objectives and support the wider NHS to improve patient outcomes.

This policy covers business travel and related expenses for authorised duties that are a requirement of an individual's role with NHS England. It describes the rules you must comply with to reduce business travel and minimise costs to the taxpayer.

We can use technology and smarter working techniques to work remotely and in person, while continuing to connect face-to-face with our colleagues and external partners. It is largely expected that by using these practices there will be less need for business travel, minimising costs and environmental impact.

We also recognise the real benefits of in-person connections from a work, productivity and social perspective. Managers and employees should consider whether business travel is necessary and appropriate when planning in-person connections.

NHS England's Green Plan supports the commitment to reach net zero by 2040. We need to reduce our emissions from business travel by 61% by 2025 (measured from our 2017/18 emission baselines). To achieve a sustainable approach to travel and transport, we initially aim to keep emissions from business travel below 50% of pre-pandemic levels as we implement hybrid working.

This policy sets out:

- key principles to adhere to for approved business travel
- travel and subsistence rates
- the responsibilities of line managers and employees when claiming and authorising expenses
- Outlines how we'll achieve a sustainable approach to travel.

## 2. Scope

This policy applies to all staff employed by NHS England on a substantive contract of employment, either full or part time, including those on fixed term contracts and those seconded to external organisations. It does not cover other workers, such as secondees into NHS England (who will be paid by their substantive employer) or agency workers, although they can book approved travel and accommodation through our central booking system.

Medical and dental staff employed on a Consultant contract should refer to Section 21 of the Consultant Terms and Conditions of Service for rules regarding specific provisions for expenses which vary from those in this policy. As this policy applies to all staff employed by NHS England, it is only the overall differences outlined within the Consultant Terms and Conditions of Service which will be adhered to in accordance with an individual's contractual terms.

This policy covers personal business expenses only such as mileage, travel and subsistence. You can only expense items related to approved travel. NHS England's

[procurement processes](#) must be followed for all other purchases and services, including home working equipment. Approved purchases, for example, as part of delivering an approved external event, must be made in accordance with the [Event and Venue Booking Policy](#) and procurement processes.

Colleagues whose business travel and expenses are met provided for them by a third party should refer to the [Standards of Business Conduct Policy](#).

### 3. Principles

The principles of this policy are to ensure that:

- we meet the requirements of [HM Treasury's Managing Public Money](#), including to provide value for money for taxpayers
- you know your business travel and expenses responsibilities and what you are entitled to claim (in accordance with [Sections 17 and 18 of the NHS Terms and Conditions](#))
- maximum rates/limits for approved expenses and accommodation are not seen as targets to reach
- you consider whether business travel is necessary and appropriate, including when planning in-person meetings
- you are supported to choose the most sustainable travel and subsistence option (where associated expenses may be claimed), and where travel and/or accommodation is essential, efforts should be made to secure the lowest possible cost, including booking as far in advance as possible, considering factors like reasonable adjustments, caring responsibilities, limited public transport in rural areas, or lengthy travel connections that make a journey impractical
- your safety is prioritised (in discussion with your line manager) by, for instance, using a car instead of public transport for late-night or seasonal travel, while being mindful of overall hotel and travel costs
- you are reimbursed within 90 days of incurring authorised expenses during work duties, such as meal costs
- you can book rail travel and hotel stays (within set limits) when required (including out of hours)
- if you use your own car for business travel, you do duty of care assurance checks with your line manager.
- you are allowed reasonable travel time when traveling to a different work location significantly exceeding your usual travel time at the start or end of a working day.
- you are clear on your responsibilities in relation to business travel and expenses and the requirements for any personal expenses reimbursed or arranged for by a third party to be declared in accordance with the Standards of Business Conduct Policy.
- fraudulent claims are discouraged and eliminated.

## 4. Roles and responsibilities

### 4.1 Employee responsibilities

- 4.1.1 Have approval from your line manager to travel for business purposes ahead of making any booking(s).
- 4.1.2 Maximise the use of in-person opportunities, technology and smarter working tools to ensure travel happens only when required for business purposes. As outlined in key principles, when business travel is essential and approved, use the most sustainable, suitable mode of transport at the lowest possible cost, including by using public transport and by booking as far in advance as possible as outlined in the key principles of the policy.
- 4.1.3 Organise work patterns to make the most of the approved business travel expense, for example, fit in meetings with several people/teams to reduce the frequency of travelling.
- 4.1.4 All approved travel and accommodation must be booked through [the central booking system](#) – if not, expenses incurred will not be reimbursed.
- 4.1.5 You must have approval for any air travel before it is booked through the central booking system. This includes when a third party may be offering to provide this at their expense. Before booking air travel, first seek approval by completing the air travel application form. You can only book using the central travel system, or via a third party if they are meeting the cost and booking this for you, once you have approval from the central air travel panel.
- 4.1.6 Carefully consider your travel and expense claims with regard to probity and value for money in terms of the public purse, providing justification for any exceptional expense claims and applying this policy when arranging/claiming for business travel. This includes seeking and reporting any refunds because of delayed and cancelled travel.
- 4.1.7 If your travel arrangements change, review the implications first with your line manager.
- 4.1.8 If you drive while on business, do so in accordance with the law and do not, for example, use a mobile phone (including hands-free equipment), drive while under the influence of drugs, alcohol or prescription drugs (including where the prescribed drug has any potential effect on your fitness to drive).
- 4.1.9 Inform your line manager straight away if you:
- use your own vehicle for business purposes and you are charged with or convicted of a driving offence or if your driving licence is endorsed (other than speeding fines)
  - are required to drive for all or part of your job and you are disqualified from driving.
- 4.1.10 If you use your car for business travel, ensure it is in a roadworthy condition,

insured for business use (or similar phraseology on your insurance certificate) and you have a valid driver's licence and MOT certificate. Failure to include business use means that your insurance could be invalidated while driving for business and could lead to a prosecution. Commuting to a single place of employment does not cover you for business use. If you intend to claim mileage on expenses, it is classed as business mileage and therefore you must be covered for business use on your own policy.

- 4.1.11 Upload your car insurance, MOT and driving licence documents onto the expenses system. Your line manager will need to approve them in the expenses system in advance of the journey so that NHS England meets its requirements under the Corporate Manslaughter Act. Car details for legacy NHSD colleagues and staff using EASY expenses, are entered directly onto EASY under the "Vehicle" section of the EASY self-service account and MOT, Road Fund Licence and driving licences can be auto checked via DVLA to assure compliance with legal requirements. The Business Services team will check the car insurance documents.
- 4.1.12 If you use your own car for business travel, adhere to section 17 of the Agenda for Change Terms and Conditions and claim the correct mileage rate.
- 4.1.13 Ensure all legitimate claims are uploaded onto the online expenses system with valid receipts – see section 5.4 – in a timely manner and within 90 days of the expense being incurred. Expenses associated with excess fares on public transport, motoring fines, excess parking fines etc are the responsibility of the employee and will not be reimbursed.
- 4.1.14 Submit all receipts onto the e-expenses system and for ease do so by using the App (legacy NHSD staff should continue to use EASY Expenses until further notice). [Guidance on how to claim expenses](#) is on The hub. If you have any questions, ask the HR & OD Services Team.
- 4.1.15 Ensure all claims submitted comply with NHS England's Standing Financial Instructions and are not made under false pretences. All staff must respond to requests from the Corporate Compliance team to validate expense claims as part of their regular compliance checks. Where a compliance check has identified that a claim has been made incorrectly, NHS England will recover expenses from the employee.
- 4.1.16 Claims suspected to be of a fraudulent nature will be investigated in accordance with the [Tackling Fraud, Bribery and Corruption Policy](#). Be aware of your responsibility to report any such concerns/ suspected fraudulent claims to our Counter Fraud team at [england.counter-fraud@nhs.net](mailto:england.counter-fraud@nhs.net).
- 4.1.17 The costs of approved business travel or expenses met by a third party should be managed in accordance with the Standards of Business Conduct Policy.

## **4.2 Line manager/approver responsibilities**

- 4.2.1 Make your staff aware of this policy and other associated policies and

processes as part of the local induction process. Advise new employees of the procedure for booking travel and submitting claims through the online expenses system for all approved travel.

- 4.2.2 Lead by example and be mindful of our Green Plan by arranging meetings and travelling only when essential and use technology and smarter working where available to avoid unnecessary travel and environmental impact.
- 4.2.3 Actively encourage the most cost/time effective travel options, using the most sustainable, suitable modes of transport for each journey, while recognising there may be genuine reasons why sustainable forms of travel are unsuitable for some employees. such as those set out in the key principles of this policy.
- 4.2.4 From a duty of care perspective, consider employee safety. For example, using a car rather than public transport when travelling late at night or for seasonal variations (such as shorter daylight hours in winter), taking into account the overall cost of hotels and associated travel. when considering value for money.
- 4.2.5 If an employee needs to travel to another work location as part of their job, and the travel time is significantly above their usual travel time, ensure reasonable travel time is provided at the start or end of a working day.
- 4.2.6 When approving travel and subsistence claims, you must be able to clearly demonstrate the expenditure incurred was necessary, reasonable, in the interest of the organisation and in line with Section 17 and 18 of the NHS Terms and Conditions and Standards of Business Conduct Policy, and that valid receipts are uploaded before authorising reimbursement. Approvals of claims made outside of this policy and section 17 and 18 of the NHS Terms and Conditions will be considered as gross misconduct under the Disciplinary Policy.
- 4.2.7 Authorised signatories, for example, line managers/ approvers, must scrutinise all claims prior to authorisation to assure themselves that the claims are legitimate. This includes, where relevant, that the claimant holds a current driving licence, valid MOT certificate and valid motor insurance which covers them to use their vehicle for business purposes when claiming for business mileage. Line managers must approve documentation relating to the driver's licence and business use of an employee's car on the expenses system prior to the car being used for business travel. Guidance is on The hub. If you have any questions about expenses or the e-expenses system, ask the HR & OD Services team.
- 4.2.8 Ensure that all air travel complies with the Standards of Business Conduct Policy and is approved through the corporate air travel panel before an employee makes a booking through the central booking system or an approved third party provider.
- 4.2.9 Review and approve travel arrangements within your areas of responsibility in accordance with the [Standing Financial Instructions](#). Incorporate the principles

in this policy into your decision-making and business planning decisions.

- 4.2.10 Approval should be given in accordance with the payroll deadlines to allow claims to be processed in good time.
- 4.2.11 Monitor and review the frequency of travel and associated booking and expenses for your employees and against your respective cost centre/budgets to ensure they comply with this policy and the Standing Financial Instructions and Scheme of Delegation. Address any areas of concern or instances of non-compliance with this policy, which may lead to disciplinary action where this is warranted.
- 4.2.12 Respond to requests from the Corporate Compliance team to validate expense claims that managers/ approvers have approved as part of their regular compliance checks and engage in any lessons learned from non-compliance of this policy.
- 4.2.13 As a line manager, it is your responsibility to report any such concerns to our Counter Fraud team at [england.counter-fraud@nhs.net](mailto:england.counter-fraud@nhs.net). Claims suspected to be of a fraudulent nature will be investigated in accordance with the Tackling Fraud, Bribery and Corruption policy.
- 4.2.14 Ensure that your teams are only expensing items related to approved travel and that NHS England's procurement processes are followed for all other purchases, including home working equipment. Approved purchases, for example, as part of delivering an external event, must be made in accordance with the Event and Venue Booking Policy.
- 4.2.15 Ensure that the costs of approved business travel or expenses met by a third party should be managed in accordance with the Standards of Business Conduct Policy.

### **4.3 HR & OD responsibilities**

- 4.3.1 Provide advice and guidance on the application of this policy.
- 4.3.2 Ensure that any exceptions have the relevant ESM or budget holder approvals before processing.  
Process all expense claims and escalate any issues to senior colleagues in HR&OD.
- 4.3.3 Advise on cases of non-compliance of this policy by managers/ approvers and employees that are referred by the Corporate Compliance team or Counter Fraud in respect of action being taken under the Disciplinary policy.

### **4.4 Business Services team responsibilities (for EASY expenses system for legacy NHS Digital users):**

- 4.4.1 Provide advice and guidance on the application of this policy.

- 4.4.2 Process all expense claims and escalate any issues to senior colleagues in HR&OD or ensure that employees are referred to the Standards of Business Conduct Policy.
- 4.4.3 Approve all car insurance details uploaded onto the EASY expense system.
- 4.4.4 Ensure that any exceptions have the relevant “approver” approval.
- 4.4.5 Advise on cases of non-compliance of this policy that are referred by the Corporate Compliance team or Counter Fraud.

#### **4.5 Corporate Compliance team responsibilities:**

- 4.5.1 Undertake regular validation checks of approved expenses to ensure compliance with this policy, including contacting employees and line managers to request this validation.
- 4.5.2 Issue non-compliance correspondence to colleagues to support lessons learned and recover overpayments for serious or repeated breaches of policy from the employee.
- 4.5.3 Escalate instances of continued non-compliance and/or serious policy breaches to the HR & OD team for consideration of action under the Disciplinary policy and escalate any instances of potential fraud to the Counter Fraud and HR & OD teams.

#### **4.6 Corporate Social Responsibility team responsibilities:**

- 4.6.1 Monitor and report on business miles travelled and greenhouse gas emissions produced from business travel.

#### **4.7 Commercial team responsibilities:**

- 4.7.1 Generate monthly dashboards for line managers and budget holders to review and monitor business travel and accommodation spend.

## **5. Policy requirements**

This policy relates to business travel and subsistence expenses for authorised duties that are a requirement of an individual's role with NHS England. Sections 17 and 18 of The NHS Terms and Conditions of Service Handbook provide for the reimbursement of travel costs and subsistence allowances. These allowances are the maximum amount that can be claimed for any expense incurred and these allowances will apply unless otherwise stated in this policy.

### **5.1 Business travel**

#### **5.1.1 Contractual work base**

An employee's contractual work base is designated on appointment, assignment or following an approved flexible working request, for example, to become a contractual home-based worker. An employee's contractual base location is used for the calculation of relevant business travel and the entitlement to the associated mileage or subsistence expenses.

**5.1.2 Office based workers (hybrid or fully office-based employees)**

NHS England will not pay for you to travel to your normal work base. In a small number of cases, there may be contractual protection for a period of up to 4 years for excess travel incurred where staff have undergone an involuntary move under the Organisational Change policy. In all cases, refer to the [Excess Travel Guidance](#).

Employees will be reimbursed for miles travelled in the performance of their duties for NHS England by private transport, which exceed the home to contractual work base return journey. If travelling from home to a different location, if the journey is less mileage than the home to contractual work base, no mileage is payable.

The table below is for illustrative purposes (in this example, the distance from the employee’s home to their contractual base is 15 miles):

<b>Journey (outward)</b>	<b>Distance</b>	<b>Eligible business mileage</b>
Home to base	15 miles	None
Home to first visit	Less than 15 miles	None – eligible business mileage starts after 15 miles have been travelled
Home to first visit	More than 15 miles	In this example, eligible business mileage starts after 15 miles have been travelled, for example, if the journey was 20 miles then 5 miles could be claimed
<b>Journey (return)</b>	<b>Distance</b>	<b>Eligible business mileage</b>
Last visit to base		Eligible business mileage ends at base
Last visit to home	Less than 15 miles	Eligible business mileage ends 15 miles from home
Last visit to home	More than 15 miles	Eligible business mileage ends 15 miles from home

You should choose the most sustainable and cost effective method of travel wherever possible which may include using public transport rather than your own vehicle.



### 5.1.3 Dual office bases

Many employees will have occasional journeys to other offices or to other locations as a requirement of their role. Where journeys to one location becomes an integral part of an employee's role, and these journeys are frequent and regular, this may result in this second location becoming a second permanent workplace with expenses becoming personally taxable as per His Majesty's Revenue and Customs (HMRC) guidance.

See the Business Travel & Expenses Guidance for more information and illustrated examples.

Where there is the possibility that a dual base may occur, advice and approval must be sought from your HR Business Partner team. For employees with a dual base, there are additional implications, and these include support, supervision, access and reasonable adjustments. Approvals for dual bases should be considered and approved consistently, with appropriate personalisation to each application on a case-by-case basis.

### 5.1.4 Contractual home-based workers

If you are a contractual home-based employee and you travel regularly to an 'permanent workplace', for example, an NHS England office base, for example, to attend team meetings or to collaborate in person with colleagues, these journeys are classed as 'ordinary commuting' by the HMRC and we do not pay travel expenses. 'Regularly' is defined as a pattern of once a month or more frequent, or any regular pattern, for example, the first Monday of every quarter.

If you travel to a 'temporary workplace', for example, to visit provider organisation(s) as a requirement of your role, you can claim travel expenses from your home to the location visited via our e-expenses system or book travel via our agreed booking system.

Please see the illustrated examples in the Business Travel & Expenses Guidance for further information.

### 5.1.5 Geographic workers

A small number of employees do not have a single site as a permanent workplace and instead have an employment for which their duties are defined by a particular geographical area. For these employees, HMRC guidance is that the whole of that geographical area is treated as their permanent workplace where all the following conditions are met:

- the employee has no single place that is their permanent workplace.
- the employee attends the area regularly.
- the duties of the employee's employment are defined by reference to that area.

To be classed as a geographic worker, the employee's role and the area covered must be set out in the employee's contract of employment, and they do not travel

regularly or frequently to an office (within or outside their geographic area) which we define as more than once per month. These employees can claim travel from home to the place they are visiting, however:

- any travel from home to the edge of their deemed geographic area is classed as ordinary commuting and would be taxable
- any travel within the deemed geographic area is not taxable

See the Business Travel & Expenses Guidance for further information and an illustrated example from the [HMRC guidance](#). Advice should be sought from your HR & OD Business Partner team before defining this arrangement as a requirement of a role.

#### 5.1.6 Public transport

Public transport is not bookable or reimbursable for travel from home to contractual base.

For approved essential business travel, our booking platform enables employees to 'self-serve' and book their own travel and accommodation at a time that's convenient to them and make any last-minute changes to avoid cancellation charges. Employees must book as far in advance as possible and are expected to choose the most sustainable mode of transport.

#### 5.1.7 Rail travel

Rail travel is not bookable or reimbursable for travel from home to contractual base.

For approved travel for business purposes, all rail travel must be standard class – first-class travel is not permitted. The only exception is where it has been identified as an agreed reasonable adjustment due to a disability/long term health condition, for example, following an Occupational Health report, and detailed within the individual's Workplace Passport.

Rail tickets must only be purchased through NHS England's centralised booking system and must be booked as far in advance as possible (at least a minimum of a working week in advance of travel) to obtain the lowest cost fares. If tickets are not booked through our booking system, they will not be reimbursed unless a valid reason for a justified exception and ESM approval has been provided.

The booking of open and flexible return tickets must be avoided as these are generally more expensive than tickets at fixed times. Only in exceptional circumstances can open tickets be purchased and where ESM/Director approval has been provided. Our agreed booking system enables underground tickets to be included when purchasing a rail ticket.

Should a meeting date change, the ticket date and time must be changed through the booking system, including trying to get a full or partial refund where a meeting is cancelled.

Read further details on how to [self-book rail travel](#) on The hub.

### 5.1.8 Oyster card

Employees who are not based or work in London and who travel regularly in London may require an Oyster Card. The initial cost of the Oyster Card may be reclaimed with a valid receipt (see section 5.4) through e-expenses. Oyster cards must be registered online. Employees cannot claim for the value of any top-ups, but rather the costs of the journeys they have taken for business purposes. Information about the journeys taken can be found on the Transport for London website which can be used as a receipt. Claims without official documentation from the Oyster website cannot be claimed.

### 5.1.9 Bus or tram

If an employee uses a bus or tram for business purposes the cost of fares should be reimbursed on production of the relevant receipt only. These expenses must be claimed through our online expenses system.

### 5.1.10 Taxis

Travel by taxi should be in exceptional circumstances only. A valid receipt (see section 5.4) must be submitted with all claims. Examples of exceptional circumstances include:

- as an agreed reasonable adjustment, for example a disability
- carrying large/heavy luggage or equipment
- where personal safety might be identified as a risk by the employee or the line manager, for example, public transport is unavailable or where it feels unsafe to travel late at night by public transport
- no other reliable or regular forms of public transport are available to and from the location of essential business travel
- where this option is more cost effective than public transport, for example, several people are travelling and the cost of a taxi is likely to be cheaper than the cumulative cost of public transport

Some larger towns and cities have an increasing number of electric taxis. In suitable circumstances, you may wish to do a quick internet search to see if this is an option in your location.

### 5.1.11 Air travel

As part of the commitment to a Greener NHS, domestic air travel within mainland United Kingdom (UK) is not permitted. In exceptional circumstances, domestic flights may be allowable for example as a reasonable adjustment, subject to the approval process below.

Air travel to Northern Ireland and other offshore UK destinations may be permitted if deemed essential and subject to the approval process below.

International travel can only be approved in exceptional circumstances, where it is essential for the achievement of NHS England's business objectives and can demonstrate value for money and transparency of prior approval. Where

approved, Eurostar may be a suitable alternative to air travel to some European destinations.

All flight requests must be authorised by the weekly Flight Approval Panel (the panel) before booking. Requestors must complete a Flight Authorisation Form, which requires approval from an ESM in the line management chain. ESM requestors must obtain approval from their line manager.

For approved air travel, all bookings must be in economy class only unless in exceptional circumstances and approved by the panel. For example, business class travel may be approved where there are no suitable economy class facilities, to accommodate people with disabilities or other special needs requirements.

All bookings must be made through the corporate travel booking system, only when formal approval has been received from the panel. Under no circumstances can air travel be booked outside of the approval process and corporate travel booking system. Costs cannot be claimed through the business expenses system.

Any bookings which are made without formal approval and/or claimed through business expenses will be considered a breach of this policy and NHS England will recover the cost from the employee.

#### **5.1.12 Car, motorcycle, lease car mileage claims**

There may be several reasons why an employee finds they need to use their own vehicle for business travel, rather than taking public transport, some of which are in the policy principles.

If you need to use your own vehicle for business travel, you must be able to demonstrate to your line manager/approver that the cost of the journey is less and more efficient than the cost of the same journey by public transport. Where the mileage cost exceeds the public transport cost, you must claim the mileage at the reserve rate, as set out in [Section 17 of The NHS Terms and Conditions Service Handbook](#).

If it is agreed that you can use your own vehicle for a business-related journey, you must ensure that the vehicle is insured for business use, the car has a valid MOT certificate, and you have a valid driving licence. Insurance and all other legal requirements (for example car tax and a valid MOT) are an employee's personal responsibility.

Where travelling by car is identified as the most appropriate way to travel, car sharing is strongly encouraged for journeys where more than one person is travelling to the same location. As set out in The NHS Terms and Conditions Handbook, the driver may claim a passenger allowance (the name and designation of each passenger must be declared when claiming expenses), only for mileage which exceeds the driver's home to contractual work base return journey. To encourage car sharing, NHS England has increased this allowance

from the rate set out in the NHS Terms and Conditions Handbook, and employees can claim [REDACTED]p per mile per passenger (the reserve reimbursement rate).

Mileage reimbursement for employees who are based at a specific location (this could either be an office or home base – see section 5.1) should be compiled on the basis of the mileage which would have been travelled if the journey had started and finished at the contractual base, or the distance actually travelled if it is less. The online expenses system will automatically deduct the home to contractual base mileage from the mileage entered for the complete journey for office-based employees.

Mileage reimbursements for employees who are contractually based at home for mileage purposes should be compiled on the basis of the most direct route from their home to all places necessarily visited on duty and back to their home, unless it can be demonstrated that an alternative route is more efficient or where an alternative route couldn't have been avoided, for example, a diversion as a result of roadworks or a traffic incident.

### 5.1.13 Bicycle

Employees who choose to cycle for business purposes will be reimbursed, at the pedal cycle rate set out in the NHS Terms and Conditions Handbook, for mileage which is more than the home to contractual work base return journey. We have increased this rate to encourage sustainable travel for shorter journeys and support active travel to [REDACTED]p per mile (the car reimbursement rate).

## 5.2 Subsistence

[Annex 14](#) of the NHS Terms and Conditions of Service provides the rates at which subsistence can be claimed and the situations where you are eligible to claim. These are the maximum rates that can be claimed and you should always ensure value for money for the taxpayer and not see these maximum rates as targets to reach.

Employees will not be reimbursed for alcohol. Tips or gratuities will not be reimbursed and are at your discretion and expense.

### 5.2.1 Subsistence rates

Subsistence allowances can be reimbursed for the necessary costs of meals while travelling on business, but only up to the maximum allowances set out in [Annex 14](#) of the NHS Terms and Conditions Handbook and on production of a valid receipt (see section 5.4). Expenses cannot be reimbursed for recreational team building and social activities.

### 5.2.2 Meal subsistence allowance

Day and evening meal allowances are payable in line with section 18 of the NHS Terms and Conditions of Service, with rates set out in [Annex 14](#) – these are the maximum rates that can be claimed. All claims must be submitted with a valid receipt (see section 5.4). Expenses for meals outside of these provisions cannot

be claimed. Expenses cannot be reimbursed for recreational team building and social activities.

### 5.2.3 Late night duties allowance

An evening meal allowance is payable in line with section 18 of the NHS Terms and Conditions of Service, with rates set out in [Annex 14](#) – these are the maximum rates that can be claimed. All claims must be submitted with a valid receipt (see section 5.4). Expenses for meals outside of these provisions cannot be claimed.

### 5.2.4 Overnight accommodation

#### 5.2.4.1 Commercial accommodation

Where it has been agreed that you should stay overnight on business grounds, the allowance limit – inclusive of VAT and other charges – for hotels including breakfast and other charges are:

- up to £[REDACTED] per night for hotels outside of London
- up to £[REDACTED] per night for hotels in London

Hotels must be booked through our booking system and you must find the most economical hotel rather than using the maximum allowance. On some occasions, factors such as location of accommodation and personal safety will need to be considered and this could mean that the most economical hotel may not be the appropriate option.

If hotels are not booked through this system, they will not be reimbursed unless a valid reason exists, and ESM approval has been provided together with a valid receipt (see section 5.4). The upper limits should not be exceeded unless there are exceptional circumstances, for example where a reasonable adjustment is appropriate. Hotel bookings above the allowance limits cannot be made without prior written approval from an ESM in the line management chain. ESM requestors must seek approval from their line manager.

Accommodation can only be booked for approved business travel. It cannot be booked for any recreational team building and social activities.

#### 5.2.4.2 Oversight, monitoring and legitimacy of bookings

NHS England will check that all bookings of accommodation are legitimate and offer the most effective value for money for taxpayers. Any hotel bookings that are not made for legitimate business reasons and/or are made with the purpose of obtaining any personal benefits, such as to claim reward points for personal use, will be investigated in line with the Tackling Fraud, Bribery and Corruption Policy.

You cannot book a hotel which is more expensive than the cheapest alternative to take advantage of any benefits such as a hotel reward scheme. Booking into a hotel chain to claim reward points for personal use is not permitted.

### 5.2.4.3 Non-commercial allowance

Some staff may prefer to stay with friends or family when travelling for business. Employees can claim an allowance for each 24-hour period, payable in line with section 18 of the NHS Terms and Conditions of Service, with rates set out in [Annex 14](#). This includes an allowance for meals and is the maximum rate that can be claimed. This should be claimed through the expenses system. No receipts will be required; however, the employee must include details of where and who they are staying with when submitting their claim.

## 5.3 Other business expenses

### 5.3.1 Wi-Fi

Mobile phones can be used to create a local Wi-Fi hot spot and prevent the need for additional expenditure. If this isn't possible, where Wi-Fi charges are incurred because of business requirements, these will be reimbursed where submitted with a valid receipt (see section 5.4). Evidence of the business requirement necessitating such a charge must be provided along with the submission of the claim and associated receipts.

### 5.3.2 Refunds and compensation for late/cancelled travel

It is the responsibility of employees who can claim a refund or compensation due to late and cancelled travel arrangements to do so on behalf of NHS England. Any such claims are not to be treated as payments to individuals as the ticket has been paid from the public purse.

The traveller or booker must cancel any bookings through our agreed booking system. For air, bookers need to email the helpdesk on [north.air@travelctm.com](mailto:north.air@travelctm.com) and add 'cancellation' to the subject header and include the booking reference.

## 5.4 Expense claims and valid receipts

Claims made outside of the 90-day timescale and/or without a valid receipt (see below) will not be approved unless for exceptional circumstances and must be approved by the budget holder. An example of an exceptional circumstance is where an employee has been on long term sickness absence and has been unable to submit their expenses.

In exceptional one-off situations managers can approve claims for less than £[REDACTED] without a receipt where an employee has lost a receipt or one wasn't available. Managers are responsible for ensuring claims are not approved where this situation occurs repeatedly.

A valid receipt should include the date the expense was incurred; the supplier (for example, restaurant, supermarket, taxi); the purchase (for example, a meal, the journey travelled to and from if in a taxi); and the amount paid; or a bank statement/invoice which states the supplier; date; and the amount paid, where an electronic/ paper receipt wasn't available, for example, travel on the underground transport.

## **5.5 Monitoring business travel and expenses spend**

Budget holders and line managers must review and monitor business travel and accommodation spend. Each month, budget holders and line managers will be notified via email when the monthly summary has been uploaded to the dashboard. The report will be broken down by: hotels, trains, air travel and the top ten bookers.

There is also a 'Behaviours and Compliance' section, including information on the frequency of short notice bookings for hotels, flights, and train journeys. Short notice is defined as 0 to 3 days before the arrival date. This section also shows how much the passenger could have saved if the cheapest option was purchased, as well as the reasons why the cheapest option was not selected.

The Corporate Compliance team is responsible for providing additional assurances to that approved expense claims are compliant with this policy, and to escalate circumstances where they are not. Escalations will be made to employees, line managers and in some cases HR & OD and Counter Fraud teams. This includes but is not limited to validation checks and travel approvals checks. These checks will be undertaken on a regular basis, and at least monthly.

## **6. Equality and Health Inequalities Assessment**

As part of the development of this policy, its impact on equality has been analysed and no detriment identified.



**SCHEDULE 2 – SCOPE**



# **New Hospital Programme**

## **Programme Delivery Partner (PDP)**

### **Scope**

February 2025

Security Classification: OFFICIAL-SENSITIVE: COMMERCIAL



































































































































































































































































































































































































































































































































