

Schedule 3 - TUPE

STAFF TRANSFER

1 Definitions

- 1.1. In this Schedule 3 (*TUPE*) and where used elsewhere in this Contract, the following definitions shall apply:

“Acquired Rights Directive” means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;

“Consultant’s Final Personnel List” means a list provided by the *Consultant* of all staff who will transfer under the Employment Regulations on the Relevant Transfer Date;

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

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

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

“Employment Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;

“Former Consultant” means the *Consultant* supplying services to the Client before the Relevant Transfer Date that are the same as or substantially similar to the *service* (or any part of the *service*) 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:

- (a) any amendments to that document immediately prior to the Relevant Transfer Date; and
- (b) any similar pension protection in accordance with Annex D1 (CSPS) of Part D of this Schedule 3;

“Notified Subcontractor” means a Subcontractor identified in Annex E1 (*List of Notified Subcontractor*) of this Schedule 3 to whom Transferring Client’s 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 Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues” issued in June 2004;

“Principles of Good Employment Practice” means the guidance published by the Cabinet Office and found at www.gov.uk/government/publications/principles-of-good-employment-practice ;

“Relevant Transfer” means a transfer of employment to which the Employment Regulations applies;

“Relevant Transfer Date” means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. For the purposes of Part D (*Pensions*) of this Schedule 3 and its Annex, where the *Consultant* or a Subcontractor was the Former Consultant and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the *Consultant* (or Subcontractor), references to the Relevant Transfer Date shall become references to the Contract Date;

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

“Replacement Services” means any services which are substantially similar to any of the *service* and which the *Client* receives in substitution for any of the *service* following the end of the *service period* or earlier termination, whether those services are provided by the *Client* internally and/or by any third party;

“Replacement Subcontractor” means 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);

“Service Transfer” any transfer of the *service* (or any part of the *service*), for whatever reason, from the *Consultant* or any Subcontractor to a Replacement Consultant or a Replacement Subcontractor;

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

“Staffing Information” means, in relation to all persons identified on the *Consultant’s* Provisional Personnel List or *Consultant’s* Final Personnel List, as the case may be, all information required in Annex E2 (*Staffing Information*) in the format specified and with the identities of Data Subjects anonymised where possible. The *Client* may acting reasonably make changes to the format or information requested in Annex E2 (*Staffing Information*) from time to time;

“Transferring Consultant Employees” means those employees of the *Consultant* and/or the Subcontractor to whom the Employment Regulations will apply on the Service Transfer Date;

“Transferring Client Employees” means those employees of the *Client* to whom the Employment Regulations will apply on the Relevant Transfer Date; and

“Transferring Former Consultant Employees” means, in relation to a Former Consultant, those employees of the Former Consultant to whom the Employment Regulations will apply on the Relevant Transfer Date.

Interpretation

Where a provision in this Schedule 3 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.

PART A

TRANSFERRING CLIENT EMPLOYEES AT COMMENCEMENT OF THE PROVISION OF SERVICE

1 Relevant Transfers

1.1. The *Client* and the *Consultant* agree that:

1.1.1 the commencement of the provision of the *service* or of each relevant part of the *service* will be a Relevant Transfer in relation to the Transferring Client Employees; and

1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the *Client* and the Transferring Client Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the *Consultant* and/or any Notified Subcontractor and each such Transferring Client Employee.

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

2 *Client* Indemnities

2.1 Subject to paragraph 2.2 of Part A of this Schedule 3, the *Client* shall indemnify the *Consultant* and any Notified Subcontractor against any Employee Liabilities in respect of any Transferring Client Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

2.1.1 any act or omission by the *Client* occurring before the Relevant Transfer Date;

2.1.2 the breach or non-observance by the *Client* before the Relevant Transfer Date of:

(a) any collective agreement applicable to the Transferring Client Employees; and/or

(b) any custom or practice in respect of any Transferring Client Employees which the *Client* is contractually bound to honour;

2.1.3 any claim by any trade union or other body or person representing the Transferring Client Employees arising from or connected with

any failure by the *Client* to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

2.1.4 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 Client Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
- b) in relation to any employee who is not a Transferring Client 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 *Client* to the *Consultant* and/or any Notified Subcontractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date;

2.1.5 a failure of the *Client* 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 Client Employees arising before the Relevant Transfer Date;

2.1.6 any claim made by or in respect of any person employed or formerly employed by the *Client* other than a Transferring Client Employee for whom it is alleged the *Consultant* and/or any Notified Subcontractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and

2.1.7 any claim made by or in respect of a Transferring Client Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Client Employee relating to any act or omission of the *Client* 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 of Part A of this Schedule 3 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 or not a Notified Subcontractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:

2.2.1 arising out of the resignation of any Transferring Client Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the *Consultant* and/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* 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 Client Employee claims, or it is determined in relation to any person who is not identified by the *Client* as a Transferring Client Employee, that his/her contract of employment has been transferred from the *Client* to the *Consultant* and/or any Notified Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the *Consultant* shall, or shall procure that the Notified Subcontractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Client*, and
- 2.3.2 the *Client* may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of receipt of the notification by the *Consultant* and/or any Notified Subcontractor, or take such other reasonable steps as the *Client* considers appropriate to deal with the matter provided always that such steps are in compliance with law of the contract.
- 2.4 If an offer referred to in paragraph 2.3.2 of Part A of this Schedule 3 is accepted, or if the situation has otherwise been resolved by the *Client*, the *Consultant* shall, or shall procure that the Notified Subcontractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the fifteen (15) Working Day period specified in paragraph 2.3.2 Part A of this Schedule 3:
- 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 five (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 of Part A of this Schedule 3 and in accordance with all applicable proper employment procedures set out in the law of the contract, the *Client* shall indemnify the *Consultant* and/or any Notified Subcontractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.5 of Part A of this Schedule 3 provided that the *Consultant* takes, or procures that the Notified Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in paragraph 2.6 of Part A of this Schedule 3
- 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,

in any case in relation to any alleged act or omission of the *Consultant* and/or any Subcontractor;

- (b) 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 of Part A of this Schedule 3 is made by the *Consultant* and/or any Notified Subcontractor (as appropriate) to the *Client* within six (6) months of the Contract Date.

2.8 If any such person as is referred to in paragraph 2.3 of Part A of this Schedule 3 is neither re-employed by the *Client* nor dismissed by the *Consultant* and/or any Notified Subcontractor within the time scales set out in paragraph 2.5 of Part A of this Schedule 3 such person shall be treated as having transferred to the *Consultant* and/or any 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 of the contract.

3 Consultant Indemnities and Obligations

3.1 Subject to paragraph 3.2 of Part A of this Schedule 3, the *Consultant* shall indemnify the *Client* against any Employee Liabilities in respect of any Transferring Client Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

3.1.1 any act or omission by the *Consultant* or any Subcontractor 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 Client Employees; and/or
- (b) any custom or practice in respect of any Transferring Client 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 Client Employees arising from or connected with any failure by the *Consultant* or any 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 made before the Relevant Transfer Date to change the terms and conditions of employment or working conditions of any Transferring Client Employees to their material detriment on or after their transfer to the *Consultant* or the relevant 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 Client Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the *Consultant* or any Subcontractor to, or in respect of, any Transferring Client Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Client* 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 Client 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 Client 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 *Client* to the *Consultant* or a Subcontractor, 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;
- 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 Client 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 Client Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Client Employee relating to any act or omission of the *Consultant* or any Subcontractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the *Client'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 or their obligations under paragraph 2.8 of Part A of this Schedule 3 above.

3.2 The indemnities in paragraph 3.1 of Part A of this Schedule 3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Client* whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the *Client'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 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 the Transferring Client Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the *Client* and the *Consultant*.

4 Information

4.1 The *Consultant* shall, and shall procure that each Subcontractor shall, promptly provide to the *Client* in writing such information as is necessary to enable the *Client* to carry out its duties under regulation 13 of the Employment Regulations. The *Client* 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 Parties agree that the principles set out in the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the *Consultant* of employees whose employment begins after the Relevant Transfer Date, and the *Consultant* undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.

5.2 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 Client Employee as set down in:

5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;

5.2.2 Old Fair Deal; and/or

5.2.3 the New Fair Deal.

6 Pensions

6.1 The *Consultant* shall, and shall procure that each of its Subcontractor shall, comply with:

6.1 the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and

6.2 Part D (*Pensions*) (and its Annex) to this Schedule 3.

PART B

TRANSFERRING FORMER CONSULTANT EMPLOYEES AT COMMENCEMENT OF THE PROVISION OF SERVICE

1 Relevant Transfers

1.1 The Parties agree that:

1.1.1 the commencement of the provision of the *service* 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 of Part B of this Schedule 3, the *Client* shall procure that each Former Consultant shall indemnify the *Consultant* and any Notified Subcontractor against any Employee Liabilities in respect of any Transferring Former Consultant Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

2.1.1 any act or omission by the Former Consultant 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 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/or the Acquired Rights Directive; 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 of Part B of this Schedule 3 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 his/her contract of employment has been transferred from a Former Consultant to the *Consultant* and/or any Notified Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the *Consultant* shall, or shall procure that the Notified Subcontractor shall, within five (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 fifteen (15) Working Days of the notification by the *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 the law of the contract.
- 2.4 If an offer referred to in paragraph 2.3.2 of Part B of this Schedule 3 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 his/her employment or alleged employment.
- 2.5 If by the end of the fifteen (15) Working Day period specified in paragraph 2.3.2 of Part B of this Schedule 3:
- 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 five (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 of Part B of this Schedule 3 and in accordance with all applicable proper employment procedures set out in the law of the contract, 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 pursuant to the provisions of paragraph 2.5 of Part B of this Schedule 3 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 of Part B of this Schedule 3
- 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,

in any case in relation to any alleged act or omission of the *Consultant* and/or any Subcontractor; or

- (b) 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 2.3.2 of Part B of this Schedule 3 is made by the *Consultant* and/or any Notified Subcontractor (as appropriate) to the *Client* and, if applicable, the Former Consultant, within six (6) months of the Contract Date.

2.8 If any such person as is described in paragraph 2.3 of Part B of this Schedule 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 of Part B of this Schedule 3, such person shall be treated as having transferred to the *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 of the contract.

3 *Consultant* Indemnities and Obligations

3.1 Subject to paragraph 3.2 of Part B of this Schedule 3, the *Consultant* shall indemnify the *Client* and/or the Former Consultant against any Employee Liabilities in respect of any Transferring Former Consultant Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

3.1.1 any act or omission by the *Consultant* or any Subcontractor 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 change 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 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 of Part B of this Schedule 3 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 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.

6 Procurement Obligations

6.1 Notwithstanding any other provisions of this Part B of this Schedule 3, 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:

7.1.1 the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and

7.1.2 Part D (*Pensions*) (and its Annex) to this Schedule 3.

PART C

NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF THE PROVISION OF SERVICE

1 Procedure in the Event of Transfer

- 1.1 The *Client* and the *Consultant* agree that the commencement of the provision of the *service* or of any part of the *service* will not be a Relevant Transfer in relation to any employees of the *Client* and/or any Former Consultant.
- 1.2 If any employee of the *Client* and/or a Former Consultant claims, or it is determined in relation to any employee of the *Client* and/or a Former Consultant, that his/her contract of employment has been transferred from the *Client* and/or the Former Consultant to the *Consultant* and/or any Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
 - 1.2.1 the *Consultant* shall, and shall procure that the relevant Subcontractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Client* and, where required by the *Client*, give notice to the Former Consultant; and
 - 1.2.2 the *Client* and/or the Former Consultant may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the *Consultant* or the Subcontractor (as appropriate) or take such other reasonable steps as the *Client* or Former Consultant (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with the law of the contract.
- 1.3 If an offer referred to in paragraph 1.2.2 of Part C of this Schedule 3 is accepted (or if the situation has otherwise been resolved by the *Client* and/or the Former Consultant), the *Consultant* shall, or shall procure that the Subcontractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the fifteen (15) Working Day period specified in paragraph 1.2.2
 - 1.4.1 no such offer of employment has been made;
 - 1.4.2 such offer has been made but not accepted; or
 - 1.4.3 the situation has not otherwise been resolved,

the *Consultant* and/or the Subcontractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2 Indemnities

- 2.1 Subject to the *Consultant* and/or the relevant Notified Subcontractor acting in accordance with the provisions of paragraphs 1.2 to 1.4 of Part C of this Schedule 3 and in accordance with all applicable employment procedures set out in the law of the contract and subject also to paragraph 1.4 of Part C of this Schedule 3, the *Client* shall:

- 2.1.1 indemnify the *Consultant* and/or the relevant Notified Subcontractor against all Employee Liabilities arising out of the termination of the employment of any employees of the *Client* referred to in paragraph 1.2 of Part C of this Schedule 3 made pursuant to the provisions of paragraph 1.4 of Part C of this Schedule 3 provided that the *Consultant* takes, or shall procure that the Notified Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- 2.1.3 procure that the Former Consultant indemnifies the *Consultant* and/or any Notified Subcontractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Consultant made pursuant to the provisions of paragraph 1.2 of Part C of this Schedule 3 provided that the *Consultant* takes, or shall procure that the relevant Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in paragraph 1.2 of Part C of this Schedule 3 is neither re employed by the *Client* and/or the Former Consultant as appropriate nor dismissed by the *Consultant* and/or any Subcontractor within the fifteen (15) Working Day period referred to in paragraph 1.4 of Part C of this Schedule 3 such person shall be treated as having transferred to the *Consultant* and/or the Subcontractor (as appropriate) and the *Consultant* shall, or shall procure that the Subcontractor shall, comply with such obligations as may be imposed upon it under the law of the contract.
- 2.3 Where any person remains employed by the *Consultant* and/or any Subcontractor pursuant to paragraph 1.2 of Part C of this Schedule 3, all Employee Liabilities in relation to such employee shall remain with the *Consultant* and/or the Subcontractor and the *Consultant* shall indemnify the *Client* and any Former Consultant, and shall procure that the Subcontractor shall indemnify the *Client* and any Former Consultant, against any Employee Liabilities that either of them may incur in respect of any such employees of the *Consultant* and/or employees of the Subcontractor.
- 2.4 The indemnities in paragraph 2.1 of Part C of this Schedule 3
- 2.4.1 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, orin any case in relation to any alleged act or omission of the *Consultant* and/or any Subcontractor; or
 - (b) any claim that the termination of employment was unfair because the *Consultant* and/or Notified Subcontractor neglected to follow a fair dismissal procedure; and

2.4.2 shall apply only where the notification referred to in paragraph 1.2.1 of Part C of this Schedule 3 is made by the *Consultant* and/or any Subcontractor to the *Client* and, if applicable, Former Consultant within six (6) months of the Contract Date.

3 Procurement Obligations

3.1 Where in this Part C of this Schedule 3 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.

PART D

PENSIONS

1 DEFINITIONS

1.1 In this Part D (*Pensions*) and Part E (*Employment Exit Provisions*), the following words have the following meanings and they shall supplement paragraph 1 of this Schedule 3 (*Definitions*), and shall be deemed to include the definitions set out in the Annex D1 (CSPS) to this Part D:

- "Actuary"** a Fellow of the Institute and Faculty of Actuaries;
- "Broadly Comparable"**
- (a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and/or
 - (b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,
- and **"Broad Comparability"** shall be construed accordingly;
- "Fair Deal Eligible Employees"** means each of the CSPS Eligible Employees (and shall include any such employee who has been admitted to and/or remains eligible to join a Broadly Comparable pension scheme at the relevant time in accordance with paragraph 10 (*Broadly Comparable Pension Scheme*) of this Part D);
- "Fair Deal Employees"** any of:
- (a) Transferring Client Employees;
 - (b) Transferring Former Consultant Employees; and/or
 - (c) employees who are not Transferring Client Employees or Transferring Former Consultant Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the *Consultant* or a Subcontractor, and whose employment is not terminated in accordance with the provisions of paragraphs 2.5 of Parts A (*Transferring Client Employees at Commencement of the Provision of Service*) or B (*Transferring Former Consultant Employees at Commencement of the Provision of Service*) or paragraph 1.4 of Part C (*No Transfer of*

Employees at Commencement of the Provision of Service);

- (d) where the *Consultant* or a Subcontractor was the Former Consultant, the employees of the *Consultant* (or Subcontractor); or
- (e) who at the Relevant Transfer Date are or become entitled to New Fair Deal protection in respect of the CSPA or a Broadly Comparable pension scheme provided in accordance with paragraph 10 (*Broadly Comparable Pension Scheme*) of this Part D as notified by the *Client*.

2 PARTICIPATION

- 2.1 In respect of all or any Fair Deal Employees Annex D1 (CSPA) shall apply, as appropriate.
- 2.2 The *Consultant* undertakes to do all such things and execute any documents (including any relevant CSPA Admission Agreement) as may be required to enable the *Consultant* to participate in the CSPA in respect of the Fair Deal Employees and shall bear its own costs in such regard. The *Consultant* undertakes:
 - 2.2.1 to pay to the CSPA all such amounts as are due under the relevant CSPA Admission Agreement or otherwise and shall deduct and pay to the CSPA such employee contributions as are required; and
 - 2.2.2 be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the CSPA.
- 2.3 Where the *Consultant* is the Former Consultant (or a Subcontractor is a subcontractor of the Former Consultant) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the *Consultant* (or Subcontractor) at the Contract Date, this Part D and its Annex shall be modified accordingly so that the *Consultant* (or Subcontractor) shall comply with its requirements from the Contract Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The *Consultant* (or Subcontractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant CSPA in accordance with the requirements of the previous contract with the *Client*.

3 PROVISION OF INFORMATION

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

- 3.1.3 retain such records as would be necessary to manage the pension aspects in relation to any current or former Fair Deal Eligible Employees arising on expiry or termination of this Contract.

4 INDEMNITIES

- 4.1 The *Consultant* shall indemnify and keep indemnified the *Client*, any Replacement Consultant and/or any Replacement Subcontractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:

- 4.1.1 arise out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any breach by the *Consultant* of this Part D, and/or the CSPS Admission Agreement;

- 4.1.2 relate to the payment of benefits under and/or participation in a pension scheme (as defined in section 150(1) Finance Act 2004) provided by the *Consultant* or a Subcontractor on and after the Relevant Transfer Date until the date of termination or expiry of this Contract, including the CSPS or any Broadly Comparable pension scheme provided in accordance with paragraph 10 (*Broadly Comparable Pension Scheme*) of this Part D;

- 4.1.3 relate to claims by Fair Deal Employees of the *Consultant* and/or of any Subcontractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:

- (i) relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; and/or
- (ii) arise out of the failure of the *Consultant* and/or any relevant Subcontractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract.

- 4.2 The indemnities in this Part D and its Annex:

- 4.2.1 shall survive termination of this Contract; and

- 4.2.2 shall not be affected by any caps on liability contained elsewhere in this Contract.

5 DISPUTES

- 5.1 Any dispute (i) between the *Client* and/or the *Consultant* or (ii) between their respective actuaries about any of the actuarial matters referred to in this Part D and its Annex shall, in the absence of agreement between the *Client* and/or the *Consultant*, be referred to an independent Actuary:

- 5.1.1 who will act as an expert and not as an arbitrator;

- 5.1.2 whose decision will be final and binding on the *Client* and/or the *Consultant*; and

5.1.3 whose expenses shall be borne equally by the *Client* and/or the *Consultant* unless the independent Actuary shall otherwise direct.

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

6 THIRD PARTY RIGHTS

6.1 The Parties agree Option Y(UK)3 (*The Contracts (Rights of Third Parties) Act 1999*) does not apply and that the Contracts (Rights of Third Parties) Act 1999 applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation in respect of or to him or her by the *Consultant* under this Part D, in his or her or its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

6.2 Further, the *Consultant* must ensure that the Contracts (Rights of Third Parties) Act 1999 will apply to any Subcontract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Subcontractor in his or her own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

7 BREACH

7.1 The *Consultant* agrees to notify the *Client* should it breach any obligations it has under this Part D and agrees that the *Client* shall be entitled to terminate this Contract for material Default in the event that the *Consultant*:

7.1.1 commits an irremediable breach of any provision or obligation it has under this Part D; or

7.1.2 commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within twenty-eight (28) days of the date of a notice from the *Client* giving particulars of the breach and requiring the *Consultant* to remedy it.

8 TRANSFER TO ANOTHER EMPLOYER/SUBCONTRACTORS

8.1 Save on expiry or termination of this Contract, if the employment of any Fair Deal Eligible Employee transfers to another employer (by way of a transfer under the Employment Regulations or other form of compulsory transfer of employment), the *Consultant* shall, or shall procure that any relevant Subcontractor shall:

8.1.1 notify the *Client* as far as reasonably practicable in advance of the transfer to allow the *Client* to make the necessary arrangements for participation with the relevant CSPS;

8.1.2 consult with about, and inform those Fair Deal Eligible Employees of, the pension provisions relating to that transfer; and

8.1.3 procure that the employer to which the Fair Deal Eligible Employees are transferred (the "**New Employer**") complies with the provisions of this Part D and its Annex provided that references to the "*Consultant*" will become references to the New Employer, references to "Relevant Transfer Date"

will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Eligible Employees so transferred to the New Employer.

9 PENSION ISSUES ON EXPIRY OR TERMINATION

- 9.1 The provisions of Part E (*Employment Exit Provisions*) apply in relation to pension issues on expiry or termination of this Contract.
- 9.2 The *Consultant* shall (and shall procure that any of its Subcontractors shall) prior to the termination of this Contract provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme's Actuary) as the Replacement Consultant and/or CSPS and/or the *Client* may reasonably require, to enable the Replacement Consultant to participate in the CSPS in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection following a Service Transfer.

10 BROADLY COMPARABLE PENSION SCHEME

- 10.1 If the terms of any of paragraphs 2.2 of Annex D1(CSPS) apply, the *Consultant* must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the cessation of participation in the CSPS, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the CSPS at the date of cessation of participation in the CSPS, and then on such terms as may be decided by the *Client*.
- 10.2 Such Broadly Comparable pension scheme must be:
- 10.2.1 established by the date of cessation of participation in the CSPS;
 - 10.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
 - 10.2.3 capable of receiving a bulk transfer payment from the relevant CSPS (where instructed to do so by the *Client*);
 - 10.2.4 capable of paying a bulk transfer payment to the Replacement Consultant's Broadly Comparable pension scheme (or the CSPS, if applicable) (unless otherwise instructed by the *Client*); and
 - 10.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the *Client*).
- 10.3 Where the *Consultant* has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 10, the *Consultant* shall (and shall procure that any of its Subcontractors shall):
- 10.3.1 supply to the *Client* details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the CSPS) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the CSPS (where possible) and in any event no later than seven (7) days after receipt of the certificate;

- 10.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
- 10.3.3 where required to do so by the *Client*, instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with the Actuary to the CSPA and to provide all such co-operation and assistance with any other Actuary appointed by the *Client* (where applicable). The *Consultant* must ensure that day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the CSPA and the *Consultant* shall be fully responsible for any costs of providing those credits in excess of the bulk transfer payment received by the Broadly Comparable pension scheme; and
- 10.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this paragraph 10 with immediate effect for those Fair Deal Eligible Employees who are still employed by the *Consultant* and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the *Consultant* and/or Subcontractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).
- 10.4 Where the *Consultant* has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 10, the *Consultant* shall (and shall procure that any of its Subcontractors shall) prior to the termination of this Contract allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Consultant's Broadly Comparable pension scheme. The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Consultant's Broadly Comparable pension scheme. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Consultant's Broadly Comparable pension scheme to fund the required credits ("**the Shortfall**"), the *Consultant* or the Subcontractor (as agreed between them) must pay the Replacement Consultant's Broadly Comparable pension scheme the Shortfall as required, provided that in the absence of any agreement between the *Consultant* and any Subcontractor, the Shortfall shall be paid by the *Consultant*. The *Consultant* shall indemnify the *Client* or the Replacement Consultant's Broadly Comparable pension scheme (as the *Client* directs) for any failure to pay the Shortfall under this paragraph.

11 **RIGHT OF SET-OFF**

- 11.1 The *Client* shall have a right to set off against any payments due to the *Consultant* under this Contract an amount equal to any unpaid employer's contributions or

employee's contributions or any other financial obligations under the CSPA or any CSPA Admission Agreement in respect of the CSPA Eligible Employees whether due from the *Consultant* or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee.

- 11.2 The *Client* shall also have a right to set off against any payments due to the *Consultant* under this Contract all reasonable costs and expenses incurred by the *Client* as result of paragraph 11.1 above.

ANNEX D1: CSPS

1 DEFINITIONS

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

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

"CSPS Eligible Employee" any CSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the CSPS under a CSPS Admission Agreement;

"CSPS Fair Deal Employee" a Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the CSPS in accordance with the provisions of New Fair Deal;

"CSPS" the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014.

2 FUTURE SERVICE BENEFITS

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

2.2 If the *Consultant* and/or any of its Subcontractors enters into a CSPS Admission Agreement in accordance with paragraph 2.1 but the CSPS Admission Agreement is terminated during the term of this Contract for any reason at a time when the *Consultant* or Subcontractor still employs any CSPS Eligible Employees, the *Consultant* shall (and procure that its Subcontractors shall) at no extra cost to the *Client*, offer the remaining CSPS Eligible Employees membership of a pension scheme which is Broadly

Comparable to the CSPA on the date those CSPA Eligible Employees ceased to participate in the CSPA in accordance with the provisions of paragraph 10 (*Broadly Comparable Pension Scheme*) of Part D of this Schedule 3.

PART E

EMPLOYMENT EXIT PROVISIONS

1 Pre-service Transfer Obligations

1.1 The *Consultant* agrees that within twenty (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 twelve (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 six (6) month period),

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

1.2 At least twenty (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 Personnel List, which shall identify which of the staff are Transferring *Consultant* Employees; and
- 1.2.2 the Staffing Information in relation to the *Consultant's* Final 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 of Part D (*Pensions*) of this Schedule 3 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 of Part D (*Pensions*) of this Schedule 3 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 paragraphs 1.1.1 to 1.1.3 of Part D (*Pensions*) of this Schedule 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 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 staff listed on the Consultant's Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- 1.5.2 make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the staff (including any pensions and payments connected with the termination of employment);
- 1.5.3 increase the proportion of working time spent on the *service* (or the relevant part of the *service*) by any of the Staff 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 Personnel List;
- 1.5.6 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
- 1.5.7 terminate or give notice to terminate the employment or contracts of any persons on the Consultant's Provisional 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 Personnel List regardless of when such notice takes effect.

- 1.6 During the *service period*, the *Consultant* 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*;
 - 1.6.3 the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to Part D (*Pensions*) of this Schedule 3 (as appropriate); and
 - 1.6.4 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 co-operation 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 five (5) Working Days following the Service Transfer Date, the *Consultant* shall provide, and shall procure that each Subcontractor shall provide, 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 Personnel List who is a Transferring Consultant Employee:

- 1.7.1 the most recent month's copy payslip data;
- 1.7.2 details of cumulative pay for tax and pension purposes;
- 1.7.3 details of cumulative tax paid;
- 1.7.4 tax code;
- 1.7.5 details of any voluntary deductions from pay; and
- 1.7.6 bank/building society account details for payroll purposes.

2 Employment Regulations Exit Provisions

- 2.1 The *Client* and the *Consultant* acknowledge that subsequent to the starting date, 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 *service* may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive 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 disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement 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 of Part D (*Pensions*) of this Schedule 3, the *Consultant* shall indemnify the *Client* and/or the Replacement Consultant and/or any Replacement Subcontractor against any Employee Liabilities in respect of any Transferring Consultant Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 2.3.1 any act or omission of the *Consultant* or any Subcontractor 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;
 - 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 a Transferring Consultant Employee identified in the Consultant's Final 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* 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 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/or the Acquired Rights Directive; 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 of Part D (*Pensions*) of this Schedule 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
- 2.4.1 arising from the Replacement Consultant's failure, and/or Replacement Subcontractor failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Consultant's Final Personnel List claims, or it is determined in relation to any person who is not identified in the Consultant's Final Personnel List, that his/her 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 or the Acquired Rights Directive, then:
- 2.5.1 the *Client* shall procure that the Replacement Consultant shall, or any Replacement Subcontractor shall, within five (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 fifteen (15) Working Days of the notification by the Replacement Consultant and/or any and/or 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 the law of the contract.

- 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 his/her employment or alleged employment.
- 2.7 If after the fifteen (15) Working Day period specified in paragraph 2.5.2 of Part D (*Pensions*) of this Schedule 3 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 five (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 of Part D (*Pensions*) of this Schedule 3 and in accordance with all applicable proper employment procedures set out in the law of the contract, the *Consultant* shall indemnify the Replacement Consultant and/or Replacement Subcontractor against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 1.7 of Part D (*Pensions*) of this Schedule 3 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 of Part D (*Pensions*) of this Schedule 3
- 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
- (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 of Part D (*Pensions*) of this Schedule 3 is made by the Replacement Consultant and/or Replacement Subcontractor to the *Consultant* within six (6) months of the Service Transfer Date.

- 2.10 If any such person as is described in paragraph 2.5 of Part D (*Pensions*) of this Schedule 3 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 of Part D (*Pensions*) of this Schedule 3, such person shall be treated as a Transferring Consultant Employee and the Replacement Consultant and/or Replacement Subcontractor shall comply with such obligations as may be imposed upon it under the law of the contract.
- 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 the Transferring Consultant Employees identified in the Consultant's Final Personnel List up to (but not 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 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 of Part D (*Pensions*) of this Schedule 3, 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 in respect of each Transferring Consultant Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Consultant Employee) arising from or as a result of:
- 2.13.1 any act or omission of the Replacement Consultant and/or Replacement Subcontractor;
- 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 Personnel List; and/or
 - (b) any custom or practice in respect of any Transferring Consultant Employees identified in the Consultant's Final 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 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 Relevant 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 Personnel List on or after their transfer to the Replacement Consultant or Replacement 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 Consultant Employee identified in the Consultant's Final Personnel List but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 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 Personnel List on or before the Relevant 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 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 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 Personnel List in respect of the period from (and including) the Service Transfer Date; and
 - 2.13.8 any claim made by or in respect of a Transferring Consultant Employee identified in the Consultant's Final Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any 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 2.3 of Part D (*Pensions*) of this Schedule 3 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 Relevant 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 SUBCONTRACTOR

No notified sub-contractor

Annex E2: STAFFING INFORMATION

EMPLOYEE INFORMATION (ANONYMISED)

Name of Transferor:

Number of Employees in-scope to transfer:

Completion notes

- 1 *If you have any Subcontractors, please complete all the above information for any staff employed by such 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.*

EMPLOYEE DETAILS & KEY TERMS							
Details	Job Title	Grade band /	Work Location	Age	Employment status (for example, employee, fixed-term employee, self-employed, agency worker)?	Continuous service date (dd/mm/yy)	Date employment started with existing employer
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

EMPLOYEE DETAILS & KEY TERMS

Details	Contract end date (if fixed term contract or temporary contract)	Contractual notice period	Contractual weekly hours	Regular overtime hours per week	Mobility or flexibility clause in contract?	Previously transferred to organisation? If so, please specify (i) date of transfer, (ii) name of transferor, and (iii) whether ex public sector	TUPE to so, name of transferor, and (iii) Any collective agreements?
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

	ASSIGNMENT	CONTRACTUAL PAY AND BENEFITS						
Details	% of working time dedicated to the provision of <i>service</i> 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								

CONTRACTUAL PAY AND BENEFITS

Details	Any existing or future commitment to training that has a time-off or financial implication	Car allowance (£ per year)	Lease or company car details	Any other allowances paid (e.g. shift allowance, standby allowance, travel allowance)	Private medical insurance (please specify whether single or family cover)	Life assurance (xSalary)	Long Term Disability / PHI (% of Salary)	Any other benefits in kind
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

CONTRACTUAL PAY AND BENEFITS

Details	Annual leave entitlement (excluding bank holidays)	Bank holiday entitlement	Method of calculating holiday pay (i.e. based on fixed salary only or incl. entitlements to variable remuneration such as bonuses, allowances, commission or overtime pay?)	Maternity or paternity or shared parental leave entitlement and pay	Sick leave entitlement and pay	Redundancy pay entitlement (statutory / enhanced / contractual / discretionary)
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

PENSIONS						
Details	Employee pension contribution rate	Employer pension contribution rate	Please provide the name of the pension scheme and a link to the pension scheme website	Is the scheme an occupational pension scheme as defined in the Pension Schemes Act 1993?	If the scheme is not an occupational pension scheme, what type of scheme is it? E.g. personal pension scheme?	Type of pension provision e.g. defined benefit (CARE or final salary, and whether a public sector scheme e.g. CSPS, NHSPS, LGPS etc. or a broadly comparable scheme) or a defined contribution scheme or an auto enrolment master trust?
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

PENSIONS

Details	If the Employee is in the Local Government Pension Scheme, please supply details of Fund and Administering Authority.	If the Employee is in the Civil Service Pension Scheme, please provide details of the Admission Agreement.	If the Employee is in the NHSPS, please provide details of the Direction Letter.	If the Employee is in a broadly comparable pension scheme, please supply a copy of the GAD certificate of Broad Comparability.	Did Fair Deal or any other similar pension protection for ex-public sector employees apply to the employee when they TUPE transferred into your employment? If so, what was the nature of that protection (e.g. right to participate in a public sector pension scheme, or a broadly comparable scheme, or to bulk transfer past pension service into their current scheme)?	If Fair Deal, Best Value or other pension protection applied, which public sector employer did they originally transfer out of and when?
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

OTHER			
Details	Security Check Level	Security Clearance Expiry date	Additional info or comments
Emp No 1			
Emp No 2			
Emp No			

PART F

TRANSFORMATION COSTS

1.1 In this Part F (*Transformation Costs*), the following words have the following meanings and they shall supplement paragraph 1 of this Schedule 3 (*Definitions*):

“Identified Transfer Personnel” those persons anticipated to transfer to the *Consultant’s* employment under this Contract pursuant to the Employment Regulations during the Transformation Phase, as specified in the Tender Documents;

“Operational Phase” the period from the Operational Service Commencement Date until expiry or earlier termination of this Contract or, if later, the completion of the Termination Services;

“Operational Service Commencement Date” the date immediately following the expiry of the Implementation Period;

“People Cost” the cost to the *Consultant* of the Identified Transfer Personnel and any other roles and job descriptions specifically priced against cost lines in the *Consultant’s* tendered prices in the Price List, including the:

- (a) salary paid;
- (b) employer’s national insurance contributions;
- (c) pension contributions;
- (d) holiday pay;
- (e) sick pay;
- (f) staff training;
- (g) ICT allocation;
- (h) bonus allowance;
- (i) car allowances;
- (j) travel and subsistence;
- (k) private health; and
- (l) other benefits identified

“Consultant Payrolling Fee” the *Consultant* mark up on Transformation Costs as stated in the Price List;

“Transformation Cost” the actual demonstrated cost to the *Consultant* of the following:

- (a) salaries;
- (b) contractual benefits including payments in lieu of notice;

- (c) employer NI contributions;
- (d) employer pension contributions;
- (e) statutory redundancy payments calculated under Part IX of the Employment Rights Act 1996;
- (f) re-training and/or redeploying people to provide the service for the purpose of avoiding redundancy;
- (g) any enhanced contractual redundancy payment and other contractual benefits which may be due on redundancy (including pension top up entitlements);
- (h) compensation payments made to people by way of compromise of their employment rights; and
- (i) the Consultant Payrolling Fee applied on items (a) to (f) above,

in respect of the people that transferred to the *Consultant* under the Employment Regulations during the Transformation Phase provided always and to the extent that such Transformation Costs:

- (i) are not People Costs;
- (ii) are incurred in the Transformation Phase;
- (iii) do not include any costs which are incurred as a consequence of any claim by any employee including but not limited to any claim for unfair dismissal, wrongful dismissal, discrimination, breach of its employment contract (including but not limited to for unpaid notice), failure to provide a contractual employment benefit (including health insurance) or any claim arising in relation to any employee's contractual and employment rights whether such costs arise as a result of damages, legal costs or otherwise;
- (iv) claimed under limbs (e), (f), (g) and (h) have been approved by the *Client* under Paragraph 1 (*Transformation Costs*) below, and
- (v) do not arise as a result of the *Consultant* amending any employee's contractual entitlements so that they are more favourable than those in place as a result of their transfer under the Employment Regulations;

“Transformation Costs Proposal” a written request by the *Consultant* for the *Client’s* consent pursuant to Paragraph 1.1.1, made in accordance with Clause 13 (*Communications*); and

“Transformation Phase” the period commencing on the Contract Date and expiring on the date falling seven (7) months after the Operational Service Commencement Date.

1 TRANSFORMATION COSTS

- 1.1 Subject to the following parts of this Paragraph 1 (*Transformation Costs*), the *Consultant* shall be entitled to recover any Transformation Costs incurred during the

Transformation Phase under Clause 50 (*Assessing the Amount Due*) provided always that:

- 1.1.1 the *Consultant* shall not be entitled to recover any Transformation Costs which fall under limbs (e), (f), (g) and (h) of the definition of Transformation Costs unless the same has been approved by the Client in writing before they have been incurred; and
- 1.1.2 the *Consultant* is not entitled to apply a profit margin in respect of Transformation Costs but is entitled to apply the Consultant Payrolling Fee where indicated.
- 1.2 Where the *Client's* approval is sought for Transformation Costs under Paragraph 1.1 (*Transformation Costs*), the *Consultant* shall at its own cost provide with its Transformation Costs Proposal sufficient information for the *Client* to understand:
 - 1.2.1 why the *Consultant* considers that the course of action which will give rise to the Transformation Costs is required and justified and such course of action shall take into account that as part of its tender offer the Consultant agreed that the Identified Transfer Personnel would be Key Personnel for the purposes of this Contract;
 - 1.2.2 what alternative courses of action the Consultant has considered and their likely cost;
 - 1.2.3 the mitigation action taken by the Consultant to avoid or reduce the Transformation Costs including requiring the employee to work their notice, re-deploying them and or transfer to a different role;
 - 1.2.4 the risks that the *Consultant* has taken into account prior to seeking approval; and
 - 1.2.5 the *Consultant's* calculation of the Transformation Costs for which approval is sought.
- 1.3 Subject to the receipt of adequate information from the *Consultant* as set out in Paragraph 1.2 (*Transformation Costs*) above, the *Client* shall provide a response within ten (10) Working Days of receipt of the Transformation Costs Proposal. Where the *Client* rejects a Transformation Costs Proposal without comment and the *Consultant* considers that it will, as a consequence, incur additional costs after the Transformation Phase for which it will be inadequately remunerated, this shall not be a compensation event for the purposes of the Contract, but the *Consultant* may issue a Change Request under Schedule 7 (*Change Control Procedure*).
- 1.4 Following submission of an application for payment which includes Transformation Costs, the Parties shall meet and jointly carry out a review within two (2) Working Days of submission of the relevant application to assess the extent to which the *Consultant* has incurred such Transformation Costs on or after the Operational Service Commencement Date as a result of the commencement of the service.
- 1.5 Where the *Consultant* can demonstrate to the *Client's* reasonable satisfaction that it has incurred a Transformation Cost, subject to the *Consultant* having taken all reasonable steps to reduce the relevant costs so far as legally permissible, the amount of such Transformation Cost shall be recoverable under (and subject to the provisions of) Clauses 50 (*Assessing the amount due*) and 51 (*Payment*).

1.6 Where the *Client* is reasonably satisfied that:

- 1.6.1 as regards any of the types of cost referred to in limbs (a) to (d) of the definition of Transformation Costs, the actual cost to the *Consultant* of a particular role and job description specifically priced against a cost line in the *Consultant's* tendered prices in the Price List is higher than the cost included in such cost line;
- 1.6.2 the relevant difference in cost is attributable to the application of the Employment Regulations and the need for the *Consultant* to employ in respect of the role and job description in question a person who transferred to the *Consultant* under the Employment Regulations during the Transformation Phase; and
- 1.6.3 the *Consultant* has taken all reasonable steps to minimise the relevant cost differential so far as legally permissible,

then:

- 1.6.4 as regards the amount of any such cost differential which is incurred during the Transformation Phase, such amount shall (for the avoidance of doubt) be treated as a Transformation Cost; and
- 1.6.5 as regards the amount of any such cost differential which is incurred at any time after the Transformation Phase, such amount shall not be treated as a Transformation Cost but shall nonetheless be recoverable from the *Client* subject to and in accordance with the following terms:
 - (i) for each role and job description in question, the *Consultant* shall identify to the *Client* prior to the end of the Transformation Phase the amount of the cost differential in question and the amount by which the *Consultant* proposes that the relevant line(s) in the Price List (as per the *Consultant's* originally tendered prices) should with effect from the end of the Transformation Phase and for the remainder of the Operational Phase be adjusted to reflect such cost differential;
 - (ii) to the extent that such proposal is approved by the *Client*, such approval not to be unreasonably withheld or delayed having regard to the matters set out in Paragraphs 1.6.1 to 1.6.3 (Transformation Costs) of this Part F (*Transformation Costs*) of Schedule 3, the Price List shall be adjusted accordingly; and
 - (iii) to the extent that for each role and job description in question the relevant cost differential continues necessarily to be incurred by the *Consultant* for the remainder of the Operational Phase, the amount of such cost differential shall accordingly be recoverable as part of the Fixed Fee subject always to the Price List (as determined under (b) above) and to the provisions of Clauses 50 (*Assessing the amount due*) and 51 (*Payment*).

1.7 Where and to the extent that the Identified Transfer Personnel:

- 1.7.1 do not transfer to the *Consultant* under the Employment Regulations on or before the Operational Services Commencement Date; and

- 1.7.2 were expressly priced for against one or more cost lines in the *Consultant's* tendered prices in the Price List,
- then:
- 1.7.3 the provisions of Clause 60 (*Compensation Events*) shall apply; and
- 1.7.4 the Consultant may issue a Change Request in accordance with Schedule 7 (*Change Control Procedure*).
- 1.8 For the avoidance of doubt, where at any time after the end of the Transformation Phase the *Consultant* incurs any cost in connection with:
- 1.8.1 the employment (including termination of employment, whether by reason of redundancy or otherwise) of any person for a particular role or job description that was not specifically priced for against a cost line in the *Consultant's* tendered prices in the Price List; and/or
- 1.8.2 the termination of employment (whether by reason of redundancy or otherwise) of any person for a particular role or job description that was specifically priced for against a cost line in the *Consultant's* tendered prices in the Price List,
- such cost shall not be recoverable from the *Client*, whether as a Transformation Cost, compensation event or otherwise, except and to the extent otherwise specifically agreed by the *Client* in accordance with Schedule 7 (*Change Control Procedure*).
- 1.9 Any dispute arising in connection with the review processes described in Paragraphs 1.1 to 1.7 (*Transformation Costs*) of this Part F (*Transformation Costs*) of Schedule 3 shall be resolved in accordance with the dispute resolution procedures in Options W1.1 and W2 (*Resolving and Avoiding Disputes*).

Schedule 4 - Template form of Undertaking to Others

Form of Undertaking to Others - *Consultant*/Subcontractor in favour of a Beneficiary

Dated _____ 20[]

(1) [Consultant]

(2) [Beneficiary]

[Consultant's][Subcontractor's] Undertaking to Others

relating to the

[insert details of Project]

Date:

Parties

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (“**Consultant**”).
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (“**Beneficiary**”).

Introduction

- A [Insert Client’s details] (the “**Client**”) has engaged the Consultant to perform the Services in relation to the Project.
- B The Beneficiary, as [NATURE OF BENEFICIARY'S INTEREST], has an interest in the Project.
- C The Client requires the Consultant to enter into a form of Undertaking to Others in favour of the Beneficiary.
- D The Consultant has agreed to enter into this agreement with the Beneficiary, for the benefit of the Beneficiary.
- E The Beneficiary has paid £10 to the Consultant as consideration under this agreement the receipt and sufficiency of which the Consultant acknowledges.

Agreed terms

1 Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

Material	all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, feasibility studies, planning submissions, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with this agreement and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to this agreement.
Permitted Uses	without limitation the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Property and the Project.
Professional Appointment	a professional appointment in writing dated [DATE] between the Client and the Consultant.
Project	[DESCRIPTION OF PROJECT].

Property	[DESCRIPTION OF PROPERTY].
Required Standard	all the reasonable skill, care, diligence and the best up-to-date practice to be expected of a qualified, competent and experienced member of the Consultant's profession undertaking the Services in relation to projects of a similar size, scope, complexity, timescale and character to the Project.
Services	the services referred to in the Professional Appointment, performed by or on behalf of the Consultant under the Professional Appointment.

- 1.2 Clause headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.4 A reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8 A reference to law and or legislation is a reference to any applicable law, Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of section 4(1) EU Withdrawal Act 2018 as amended by EU (Withdrawal Agreement) Act 2020, exercise of the royal prerogative, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, directive, and/or requirements or any Regulatory Body of which the *Consultant* is bound to comply.
- 1.9 A reference to legislation is a reference to that legislation as amended, modified, consolidated, re-enacted or replaced from time to time and to all subordinate legislation made under it from time to time.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 A reference to writing or written does not include fax or email.
- 1.12 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this agreement) at any time.
- 1.13 References to clauses are to the clauses of this agreement.
- 1.14 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 COMPLY WITH PROFESSIONAL APPOINTMENT

2.1 The Consultant warrants to the Beneficiary that it has:

2.1.1 and shall continue to comply with the Professional Appointment;

2.1.2 exercised and shall continue to exercise the Required Standard:

- (a) when performing the Services;
- (b) to comply with (and ensure the completed Services comply with) any legislation;
- (c) to perform the Services and prepare all Material for those elements of the Project for which the Consultant is responsible in sufficient time to facilitate the efficient progress of the Project;
- (d) to ensure that the Services comply with all planning agreements, permissions and conditions.

2.2 In proceedings for breach of this clause 2, the Consultant may:

2.2.1 rely on any limit of liability or other term of the Professional Appointment; and

2.2.2 raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint client, with the Client, under the Professional Appointment (for this purpose not taking into account any set-off or counterclaim against the actual client under the Professional Appointment).

2.3 The Consultant's duties or liabilities under this agreement shall not be negated or diminished by:

2.3.1 any approval or inspection of:

- (a) the Property; or
- (b) the Project; or
- (c) any designs or specifications for the Property or the Project; or

2.3.2 any testing of any work, goods, materials, plant or equipment; or

2.3.3 any omission to approve, inspect or test,

by or on behalf of the Beneficiary or the Client.

2.4 This agreement shall not negate or diminish any other duty or liability otherwise owed to the Beneficiary by the Consultant.

3 PROFESSIONAL INDEMNITY INSURANCE

3.1 The Consultant shall maintain professional indemnity insurance for an amount of at least £5,000,000 (five million pounds) of professional indemnity insurance required to be maintained under the Professional Appointment in respect of each claim without limit to the number of claims except for claims arising out of pollution or contamination,

where the minimum amount of cover applies in the aggregate in any one (1) period of insurance and except for claims arising out of asbestos where a lower level may apply in the aggregate for a period beginning on the date of this agreement and ending twelve (12) years after the date of practical completion of the Project, provided that such insurance is available at commercially reasonable rates. The Consultant shall maintain that professional indemnity insurance:

- 3.1.1 with reputable insurers lawfully carrying on insurance business in the United Kingdom; and
- 3.1.2 on customary and usual terms and conditions prevailing for the time being in the insurance market including on terms that:
 - (i) do not require the Consultant to discharge any liability before being entitled to recover from the insurers; and
 - (ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights against Insurers) Act 2010.
- 3.2 Any increased or additional premium, or offer of insurance on terms more onerous than those usually offered, required by insurers because of the Consultant's claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.
- 3.3 The Consultant shall immediately inform the Beneficiary if the Consultant's required professional indemnity insurance ceases to be available at commercially reasonable rates, so that the Consultant and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Consultant regarding the Project and the Property, without that insurance. The Beneficiary may require the Consultant to take out and maintain insurance at the best premium rates and on the best commercial terms available to the Consultant. If the Beneficiary exercises this right, subject to clause 3.4, it shall reimburse to the Consultant the difference between the premium paid and the premium that would have been reasonable.
- 3.4 Whenever the Beneficiary reasonably requests, the Consultant shall send the Beneficiary evidence that the Consultant's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Consultant's insurers or brokers confirming the Consultant's then current professional indemnity insurance and that the premiums for that insurance have been paid in full at the date of that letter.
- 3.5 Without the Beneficiary's prior written consent, the Consultant shall not:
 - 3.5.1 settle or compromise any claim against the insurers that relates to a claim by the Beneficiary against the Consultant; or
 - 3.5.2 by any act or omission lose or affect the Consultant's right to make, or to proceed with, any claim against the insurers that relates to a claim by the Beneficiary against the Consultant.

4 COPYRIGHT

- 4.1 The Consultant grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Consultant for any purpose relating to the Project and the Property, including any of the Permitted Uses.

- 4.2 This licence allows the Beneficiary to use the Material in connection with any extension of the Project, but not to reproduce the designs contained in the Material in any such extension.
- 4.3 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Consultant.
- 4.4 The Consultant shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided
- 4.5 The Beneficiary may request a copy (or copies) of some or all of the Material from the Consultant. On the Beneficiary's payment of the Consultant's reasonable charges for providing the copy (or copies), the Consultant shall provide the copy (or copies) to the Beneficiary.

5 LIABILITY PERIOD

The Beneficiary may not commence any legal action against the Consultant under this agreement after twelve (12) years from the date of practical completion of all of the Project.

6 ASSIGNMENT

- 6.1 The Beneficiary may assign the benefit of this agreement:
- 6.1.1 on two (2) occasions to any person with an interest in the Project; and
- 6.1.2 without counting as an assignment under clause 6.1.1:
- (a) by way of security to a funder (including any reassignment on redemption of security); or
 - (b) to and from a subsidiary or other associated companies within the same group of companies as the Beneficiary so long as that assignee company remains within the same group of companies as the Beneficiary.
- 6.2 The Beneficiary shall notify the Consultant of any assignment. If the Beneficiary fails to do this, the assignment shall still be valid.
- 6.3 The Consultant shall not contend that any person to whom the benefit of this agreement is assigned under clause 6.1 may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement.

7 THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

8 CONFLICT

If there is any conflict between the terms and conditions of this agreement and the terms and conditions of the Professional Appointment, the terms and conditions of this agreement shall have priority.

9 SEVERABILITY

If any provision of this agreement is declared to be unenforceable, invalid or illegal by the decision-maker in any dispute-resolution process to which it is subject, that provision shall be severed from this agreement and its unenforceability, invalidity or illegality shall not prejudice or affect the enforceability, validity or legality of the remaining provisions of this agreement.

10 GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

11 JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into as a deed on the date stated at the beginning of it.

[RELEVANT EXECUTION BLOCKS TO BE INSERTED]

Schedule 5 - Template form of Deed of Guarantee

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

BETWEEN:

- (1) [Insert the name of the Guarantor] [a company incorporated in England and Wales] with number [insert company no.] whose registered office is at [insert details of the Guarantor's registered office here] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ("**Guarantor**"); and
- (2) [Insert the name of the Contracting Authority] which is a company incorporated in and accordance with the laws of [] (Company No. [insert company no] whose registered office address is at [insert details] ("**Beneficiary**").

WHEREAS:

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

The Beneficiary has paid £10 to the Guarantor as consideration under this Deed of Guarantee the receipt and sufficiency of which the Guarantor acknowledges

2. DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee:

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

Agreement	means the agreement in writing between the Beneficiary and the Consultant dated [insert date of Agreement].
Consultant	means the Consultant as defined in the Agreement.
Deed of Guarantee	means this deed of guarantee entered into by the Guarantor and Beneficiary.
Guaranteed Obligations	means all obligations and liabilities of the Consultant to the Beneficiary under the Agreement together with all obligations owed by the Consultant to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Agreement;

- 2.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Agreement) are to be construed

as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;

- 2.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 2.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 2.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 2.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 2.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 2.9 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 2.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 2.11 references to liability are to include any liability whether actual, contingent, present or future.

3. GUARANTEE AND INDEMNITY

- 3.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Consultant duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Consultant to the Beneficiary.
- 3.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Consultant to the Beneficiary under or in connection with the Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 3.3 If at any time the Consultant shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
 - 3.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Agreement had been entered into directly by the Guarantor and the Beneficiary; and

- 3.3.2 as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Consultant to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Consultant under the Agreement.
- 3.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 (*Definitions and Interpretation*) above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Consultant's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

4. OBLIGATION TO ENTER INTO A NEW CONTRACT

- 4.1 If the Agreement is terminated for any reason, whether by the Beneficiary or the Consultant, or if the Agreement is disclaimed by a liquidator of the Consultant or the obligations of the Consultant are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Agreement or under an agreement entered into on the same terms and at the same time as the Agreement with the Beneficiary.

5. DEMANDS AND NOTICES

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

5.1.1 [Address of the Guarantor in England and Wales]

5.1.2 For the Attention of [insert details]

or such other address in England and Wales as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address for the receipt of such demands or notices.

- 5.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served if:

5.2.1 delivered by hand, at the time of delivery; or

5.2.2 posted, at 10.00 a.m. on the second Working Day after it was put into the post.

5.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter.

5.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

6. BENEFICIARY'S PROTECTIONS

6.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Consultant and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

6.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:

6.2.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Consultant of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;

6.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Consultant, the Beneficiary, the Guarantor or any other person;

6.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Consultant for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and

6.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.

6.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non-performance by the Consultant of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.

6.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Consultant or the

Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Consultant or any third party, or to take any action whatsoever against the Consultant or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.

- 6.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 6.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 6.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

7. GUARANTOR INTENT

- 7.1 Without prejudice to the generality of Clause 6 (*Beneficiary's Protections*), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Agreement and any associated fees, costs and/or expenses.

8. RIGHTS OF SUBROGATION

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

- 8.1.1 of subrogation and indemnity;

- 8.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Consultant's obligations; and

- 8.1.3 to prove in the liquidation or insolvency of the Consultant,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Consultant and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause 8 on trust for the Beneficiary.

9. DEFERRAL OF RIGHTS

- 9.1 Until all amounts which may be or become payable by the Consultant under or in connection with the Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:
- 9.1.1 exercise any rights it may have to be indemnified by the Consultant;
 - 9.1.2 claim any contribution from any other guarantor of the Consultant's obligations under the Agreement;
 - 9.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Agreement;
 - 9.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Consultant; or
 - 9.1.5 claim any set off or counterclaim against the Consultant.
- 9.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 9, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

10. REPRESENTATIONS AND WARRANTIES

- 10.1 The Guarantor hereby represents and warrants to the Beneficiary that:
- 10.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
 - 10.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
 - 10.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3 (*Guarantee and Indemnity*) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
 - (a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
 - (b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or

- (c) the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets;
- 10.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 10.1.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

11. PAYMENTS AND SET-OFF

- 11.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 11.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 11.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

12. GUARANTOR'S ACKNOWLEDGEMENT

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

13. ASSIGNMENT

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

14. SEVERANCE

- 14.1 If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this

Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

15. THIRD PARTY RIGHTS

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

16. GOVERNING LAW

- 16.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
- 16.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 16.3 Nothing contained in this Clause 16 shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 16.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause 16 on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- 16.5 [The Guarantor hereby irrevocably designates, appoints and empowers [the Consultant] [a suitable alternative to be agreed if the Consultant's registered office is not in England or Wales] at its registered office from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

[Guidance Note: Include the above provision when dealing with the appointment of English process agent by a non English incorporated Guarantor]

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

EXECUTED as a DEED by

[Insert name of the Guarantor] acting by [Insert/print names]

Director

Director/Secretary

Schedule 6 - Personal Data and Data Subjects

1. The Processor shall comply with any further written instructions with respect to processing by the Controller.
2. Any such further instructions shall be incorporated into this Schedule 6 (*Personal Data and Data Subjects*).
3. This Schedule 6 (*Personal Data and Data Subjects*) shall be completed by the Controller, who may take account of the view of the Processor, however, the final decision as to the content of this Schedule 6 (*Personal Data and Data Subjects*) shall be with the Controller at its absolute discretion.

4.

Description	Details
Identity of Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the <i>Client</i> is the Controller and the <i>Consultant</i> is the Processor in accordance with Clause Z49 (<i>Data Protection</i>).
Subject matter of the Processing	The Processing is needed in order to ensure that the Processor can effectively deliver this Contract to Provide the Service to the <i>Client</i> .
Duration of the Processing	Personal Data is Processed for the duration of the <i>service period</i> to allow <i>services</i> to be performed.
Nature and purposes of the Processing	The nature of the Processing will include the storage and use of names and business contact details of staff of both the <i>Client</i> and the <i>Consultant</i> as necessary to deliver the <i>services</i> and to undertake contract management. This Contract itself will include the names and business contact details of staff of both the <i>Client</i> and the <i>Consultant</i> involved in delivery or management of this Contract.
Type of Personal Data	Names, business telephone details and email addresses, office location and position of staff of both the <i>Client</i> and the <i>Consultant</i> .
Categories of Data Subject	Staff of both the <i>Client</i> and the <i>Consultant</i> , including where those staff are named in this Contract itself or involved in delivery or management of this Contract.
Plan for return and destruction of the data once the Processing is complete	Following the <i>completion date</i> , the <i>Consultant</i> will delete the Personal Data

UNLESS requirement under applicable Law to preserve that type of data	from any computers, storage devices and storage media that are to be retained by the <i>Consultant</i> after the expiry of this Contract. The <i>Consultant</i> will certify to the <i>Client</i> that it has completed such deletion.
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Schedule 7 - Change Control Procedure

1 Definitions

In this Schedule 7 (*Change Control Procedure*), and where used elsewhere in this Contract, the following definitions shall apply:

“Change Authorisation Note” a written acceptance of a request for a Contract Change which shall be substantially in the form of Annex 2 to this Schedule (*Form of Change Authorisation Note*);

“Change Request” a written request for a Contract Change which shall be substantially in the form of Annex 1 to this Schedule (*Form of Change Request*);

“Change Communication” any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule 7;

“Client Change Manager” the person appointed to that position by the *Client* from time to time and notified in writing to the *Consultant* or, if no person is notified, the *Service Manager*;

“Consultant Change Manager” the person appointed to that position by the *Consultant* from time to time and notified in writing to the *Client* or, if no person is notified, Mark Ward;

“Contract Change” any change to this Contract but ‘Contract Change’ excludes a Minor Change, unless the Parties agree or it is determined otherwise;

“Impact Assessment” an assessment of a Change Request in accordance with paragraph 5 (*Impact Assessment*);

“Minor Change” a Minor Change defined in paragraph 9.1 (*Minor Change*) of this Schedule 7; and

“Receiving Party” the Party which receives a proposed Contract Change.

2 General Principles of Change Control Procedure

2.1 This Schedule 7 sets out the procedure for dealing with Contract Changes.

2.2 The Parties deal with Contract Change as follows:

2.2.1 either Party may request a Contract Change which they initiate by issuing a Change Request in accordance with paragraph 4 (*Change Request*);

2.2.2 unless this Contract otherwise requires, the *Consultant* assesses and documents the potential impact of a proposed Contract Change in accordance with paragraph 5 (*Impact Assessment*) before the Contract Change is either approved or implemented;

2.2.3 the *Client* may request amendments to a Change Request, approve it or reject it in the manner set out in paragraph 6 (*Client’s Right of Approval*);

- 2.2.4 the *Consultant* may reject a Change Request solely in the manner set out in paragraph 7 (*Consultant's Right of Approval*); and
 - 2.2.5 save as otherwise provided in this Contract, no proposed Contract Change is implemented by the *Consultant* until the *Client* signs and issues a Change Authorisation Note in accordance with paragraph 6.2 (*Client's Right of Approval*).
- 2.3 Until the *Client* signs and issues a Change Authorisation Note in accordance with paragraph 6.2 (*Client's Right of Approval*), then:
- 2.3.1 unless the *Client* expressly agrees (or requires) otherwise in writing, the *Consultant* continues to Provide the Service in accordance with the existing terms of this Contract as if the proposed Contract Change did not apply; and
 - 2.3.2 any discussions, negotiations or other communications which may take place between the *Client* and the *Consultant* in connection with any proposed Contract Change, including the submission of any Change Communications, are without prejudice to each Party's other rights under this Contract.
- 2.4 The *Consultant*:
- 2.4.1 within ten (10) Working Days of the *Client's* signature and issue of a Change Authorisation Note, delivers to the *Client* a copy of this Contract updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
 - 2.4.2 thereafter provides to the *Client* such further copies of the updated Contract as the *Client* may from time to time request.

3 Costs

- 3.1 Subject to paragraph 3.2:
 - 3.1.1 the costs of preparing each Change Request are borne by the Party making the Change Request; and
 - 3.1.2 unless otherwise approved by the *Client* (acting reasonably), the costs incurred by the *Consultant* in undertaking an Impact Assessment are borne by the *Consultant*.
- 3.2 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the *Consultant* are paid by the *Consultant*.
- 3.3 The cost of any Contract Change is calculated and charged in accordance with the Price List. The *Consultant* increases the Fixed Fee only if it demonstrates in the Impact Assessment to the *Client's* reasonable satisfaction that the proposed Contract Change requires additional resources and, in any event, any change to the Fixed Fee resulting from a Contract Change (whether the change will cause an increase or a decrease in the Fixed Fee) is calculated as strictly proportionate to the increase or decrease in the

level of resources required for the provision of the *service* as amended by the Contract Change.

4 Change Request

- 4.1 Either Party may issue a Change Request to the other Party at any time during the *service period*.
- 4.2 If the *Consultant* issues the Change Request, then it also provides an Impact Assessment to the *Client* as soon as is reasonably practicable but in any event within ten (10) Working Days of the date of issuing the Change Request.
- 4.3 Subject to paragraph 4.4, if the *Client* issues the Change Request, then the *Consultant* provides as soon as reasonably practical and in any event within ten (10) Working Days of the date of receiving the Change Request (or such longer time period agreed by the *Client*) an Impact Assessment.
- 4.4 If the *Consultant* requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it promptly requests clarification from the *Client* and provided that sufficient information is received by the *Client* to fully understand the:
 - 4.4.1 nature of the request for clarification; and
 - 4.4.2 reasonable justification for the request,

the time period to complete the Impact Assessment is extended by the time taken by the *Client* to provide that clarification. The *Client* responds to the request for clarification as soon as is reasonably practicable.

5 Impact Assessment

- 5.1 Each Impact Assessment is completed in good faith and includes:
 - 5.1.1 details of the proposed Contract Change including the reason for the Contract Change;
 - 5.1.2 details of the impact of the proposed Contract Change on the *service*, including without limitation any impact on the *Client*'s CAFM System, and the *Consultant*'s ability to meet its other obligations under this Contract;
 - 5.1.3 any variation to the terms of this Contract that will be required as a result of that impact, including changes to:
 - (i) the Accepted Programme;
 - (ii) the Statement of Requirements;
 - (iii) the Core Team;
 - (iv) the Performance Indicators (including the Weighting thereof and any/or levels of any associated Service Failure Points and Service Credits and the Amount At Risk Per Annum);
 - (v) the Implementation Plan;

- (vi) the Exit Plan; and
 - (vii) other services provided by the Client Supply Chain Members to the *Client*, including any changes required by the proposed Contract Change to the Client's CAFM System;
- 5.1.4 details of the cost of implementing the proposed Contract Change;
- 5.1.5 details of the ongoing costs required by the proposed Contract Change when implemented, including:
 - (i) any increase or decrease in the Fixed Fee;
 - (ii) any alteration in the resources and/or expenditure required by either Party; and
 - (iii) any alteration to the working practices of either Party;
- 5.1.6 a timetable for the implementation of the Contract Change;
- 5.1.7 details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
- 5.1.8 such other information as the *Client* may reasonably request in (or in response to the Change Request).
- 5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause Z49 (*Data Protection*).
- 5.3 Subject to the provisions of paragraph 5.4, the *Client* reviews the Impact Assessment and responds to the *Consultant* in accordance with paragraph 6 (*Client's Right of Approval*) within fifteen (15) Working Days of receiving the Impact Assessment.
- 5.4 If the *Client* is the Receiving Party and the *Client* reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within five (5) Working Days of receiving the Impact Assessment, the *Client* notifies the *Consultant* of this fact and details the further information that it requires. The *Consultant* then re-issues the relevant Impact Assessment to the *Client* within ten (10) Working Days of receiving such notification. At the *Client's* discretion, the Parties may repeat the process described in this paragraph 5.4 until the *Client* is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
- 5.5 Without prejudice to paragraph 3.3 (*Costs*), the calculation of costs for the purposes of paragraphs 5.1.4 and 5.1.5 shall:
 - 5.5.1 be calculated as follows:
 - (i) in accordance with the Price List and utilising the Units Rates on a proportionate basis; and
 - (ii) where the Contract Change relates to an amendment to the Unit Rates, the work is valued at fair rates and prices;

- 5.5.2 facilitate the financial transparency objectives and open book accounting provisions set out in Clause Z45 (*Financial Transparency*) and Clause Z51 (*Records and Audit Access*);
- 5.5.3 include full disclosure of any assumptions underlying such Impact Assessment;
- 5.5.4 include evidence of the cost of any assets required for the Contract Change; and
- 5.5.5 include details of any new subcontracts necessary to accomplish the Contract Change.

6 Client's Right of Approval

- 6.1 Within fifteen (15) Working Days of receiving the Impact Assessment from the *Consultant* or within ten (10) Working Days of receiving the further information that it may request pursuant to paragraph 5.4, the *Client* evaluates the Change Request and the Impact Assessment and does one of the following:
 - 6.1.1 approves the proposed Contract Change, in which case the Parties follow the procedure set out in paragraph 6.2;
 - 6.1.2 in its absolute discretion rejects the Contract Change, in which case it notifies the *Consultant* of the rejection. The *Client* does not reject any proposed Contract Change to the extent that the Contract Change is necessary for the *Consultant* or the *service* to comply with any Changes in Law. If the *Client* does reject a Contract Change, then it explains its reasons in writing to the *Consultant* as soon as is reasonably practicable following such rejection; or
 - 6.1.3 in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, requires the *Consultant* to modify the relevant document accordingly, in which event the *Consultant* makes such modifications within five (5) Working Days of such request. Subject to paragraph 5.4 (*Impact Assessment*), on receiving the modified Change Request and/or Impact Assessment, the *Client* approves or rejects the proposed Contract Change within ten (10) Working Days.
- 6.2 If the *Client* approves the proposed Contract Change pursuant to paragraph 6.1 and it has not been rejected by the *Consultant* in accordance with paragraph 7 (*Consultant's Right of Approval*), then it informs the *Consultant* and the *Consultant* prepares two copies of a Change Authorisation Note which it signs and delivers to the *Client* for its signature. Following receipt by the *Client* of the Change Authorisation Note, it signs both copies and returns one copy to the *Consultant*. On the *Client's* signature the Change Authorisation Note constitutes (or, where the *Client* has agreed to or required the implementation of a Contract Change prior to signature of a Change Authorisation Note, constitutes confirmation of) a binding variation to this Contract.
- 6.3 If the *Client* does not sign the Change Authorisation Note within ten (10) Working Days, then the *Consultant* may notify the *Client* and if the *Client* does not sign the Change Authorisation Note within five (5) Working Days of such notification, then the *Consultant* may refer the matter to the dispute resolution procedure in Option W1.1 and Option W2.

7 Consultant's Right of Approval

7.1 Following an Impact Assessment, if:

7.1.1 the *Consultant* reasonably believes that any proposed Contract Change which is requested by the *Client* would:

- (i) materially and adversely affect the risks to the health and safety of any person; and/or
- (ii) require the *service* to be performed in a way that infringes any Law; and/or

7.1.2 the *Consultant* demonstrates to the *Client's* reasonable satisfaction that the proposed Contract Change is technically impossible to implement and the Statement of Requirements state that the *Consultant* does have the technical capacity and flexibility required to implement the proposed Contract Change,

then the *Consultant* may reject the proposed Contract Change and notifies the *Client* of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to paragraph 4.3 (*Change Request*).

8 Communications

For any Change Communication to be valid under this Schedule 7, it must be sent to either the Client Change Manager or the Consultant Change Manager, as applicable. The provisions of Clause 13 (*Communications*) shall apply to a Change Communication as if it were a notice.

9 Minor Change

9.1 The *Client* and/or the *Service Manager* may alter the Statement of Requirements, the Price List, the weighting of any Performance Indicator, the Accepted Programme and any other document which forms part of this Contract, provided always that such alteration shall not materially alter the characteristics of the *service*, adjust the total of the Fixed Fee and/or the risk profile of this Contract ("**Minor Change**").

9.2 A Minor Change shall not be deemed to be a:

9.2.1 Contract Change; and/or

9.2.2 a compensation event,

for the purposes of this Contract.

9.3 A Minor Change shall:

9.3.1 be notified by the *Client* and/or the *Service Manager* in writing;

9.3.2 apply from the date specified by the *Client* and/or the *Service Manager*; and

9.3.3 be recorded as a formal amendment to this Contract,

and, following such notification, the *Client* shall provide an updated Statement of Requirements, set of Performance Indicators, Price List, Accepted Programme and/or other relevant document (as the case may be) to reflect such Minor Change and the *Consultant* shall ensure that the *service* shall be delivered in accordance with such updated Statement of Requirements, set of Performance Indicators, Price List, Accepted Programme and/or other relevant document (as the case may be), from the date of the written notice.

9.4 Save where the Parties agree or it is determined that that a Minor Change should be deemed to be a Contract Change, a Minor Change shall not entitle the *Consultant* to:

9.4.1 an increase to the Fixed Fee;

9.4.2 any other sum, cost, expense or disbursement;

9.4.3 relief from a Service Credit and/or the levying of a Service Failure Point;

9.4.4 an extension of a time to any Key Date and/or the Completion Date; and/or

9.4.5 any other relief from performance under this Contract.

ANNEX 1: FORM OF CHANGE REQUEST

CR NO.:	TITLE:	TYPE OF CHANGE:
CONTRACT:		REQUIRED BY DATE:
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED (OPTIONAL FIELD):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
CONSULTANT REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT AND ANY ASSOCIATED AMENDMENTS TO THE PERFORMANCE INDICATORS INCLUDING THE AMOUNT AT RISK PER ANNUM):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

ANNEX 2: CHANGE AUTHORISATION NOTE

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE:		
SIGNED ON BEHALF OF THE <i>CLIENT</i> :		SIGNED ON BEHALF OF THE <i>CONSULTANT</i> :
Signature:_____		Signature:_____
Name:_____		Name:_____
Position:_____		Position:_____
Date:_____		Date:_____

Schedule 8 - Security Policy

1 Defined Terms

1.1 In this Schedule 8 (*Security Policy*), and where used elsewhere in this Contract, the following definitions shall apply:

“Availability Test” the activities performed by the *Consultant* to confirm the availability of any or all components of any relevant ICT system as specified by the *Client*;

“Breach of Security” the occurrence of:

- (a) any unauthorised access to or use of Client Data, the Client’s Systems Environment (or any part thereof) or the Consultant’s Systems Environment (or any part thereof);
- (b) the loss and/or unauthorised disclosure of any Client Data, the Client’s Systems Environment (or any part thereof) or the Consultant’s Systems Environment (or any part thereof);
- (c) any unauthorised event resulting in loss of availability of any Client Data, the Client’s Systems Environment (or any part thereof) or the Consultant’s Systems Environment (or any part thereof);
- (d) any unauthorised changes or modification to any Client Data, the Client’s Systems Environment (or any part thereof) or the Consultant’s Systems Environment (or any part thereof);

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

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

“Consultant’s Tender ISQ Response” the *Consultant’s* responses to the Information Security Questionnaire provided with its tender response, as annexed to this Schedule 8 at Annex 3 (*Consultant’s Tender ISQ Response*);

“Consultant’s Systems Environment” any ICT systems provided by the *Consultant* (and any Subcontractor) which are or may be used for the provision of the *service*;

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

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

“Client Assets” any Client Devices and Client Data;

“Client Data” the data, guidance, specifications, instructions, toolkits, plans, databases, patents, patterns, models, design, 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*; or
- (b) which the *Consultant* is required to generate, process, store or transmit pursuant to this Contract;

“Client Device” any asset that provides an ICT function and is used by the *Client* to conduct its business and operations;

“Client’s Systems Environment” all of the *Client’s* ICT systems which are or may be used for the provision of the *service*;

“Good Security Practice”

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

“Information Security”

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

“Information Security Manager” the person appointed by the *Consultant* with the appropriate experience, authority and expertise to ensure that the *Consultant* complies with the Security Policy;

“Information Security Management System” the set of policies, processes and systems designed, implemented and maintained by the *Consultant* to manage Information Security Risk as certified by ISO/IEC 27001;

“Information Security Questionnaire” the *Client’s* set of questions used to audit and on an ongoing basis assure the *Consultant’s* compliance with the Security Requirements, in the format stipulated by the *Client*;

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

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

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

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

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

“PCI DSS” the Payment Card Industry Data Security Standard as most recently published by the PCI Security Standards Council, LLC or its successor entity;

“Penetration Test” a simulated attack on any Client Assets, the Client’s Systems Environment (or any part thereof) or the Consultant’s Systems Environment (or any part thereof);

“Risk Management Policy” the policies and processes for risk management produced by the *Consultant*;

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

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

“Security Policy” the *Client’s* security policy attached as this Schedule 8 and as may be updated from time to time. The Security Policy includes, but is not limited to, requirements regarding the confidentiality, integrity and availability of Client Assets, the Client’s Systems Environment and the Consultant’s Systems Environment;

“Security Policies” the *Client’s* security policies published by the *Client* from time to time and shall include any successor, replacement or additional security policies. The Security Policies as at the Contract Date are set out in Annex 1 (*Client Security Policies*) to this Schedule 8;

“Security Policies and Standards” the Security Policies and the Security Standards;

“Security Standards” the *Client’s* security standards published by the *Client* from time to time and shall include any successor, replacement or additional security standards. The Security Standards as at the Contract Date are set out in Annex 2 (*Security Standards*) of this Schedule 8;

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

“**Vulnerability Scan**” an ongoing activity to identify any potential vulnerability in any Client Assets, the Client’s Systems Environment (or any part thereof) or the Consultant’s Systems Environment (or any part thereof).

2 General

- 2.1 The *Consultant* shall, and shall procure that any Subcontractor shall, comply with the *Client’s* security requirements as set out in this Contract which include the requirements set out in this Schedule 8 (the “**Security Requirements**”). Reference to any notice to be provided by the *Consultant* to the *Client* shall be construed as a notice to be provided by the *Consultant* to the *Service Manager*.

3 Principles Of Security

- 3.1 The *Consultant* shall at all times comply with the Security Policy and provide a level of security which is in accordance with the Security Policies and Standards, Good Security Practice and Law.

4 ISO/IEC 27001 Compliance and Audit

- 4.1 The *Consultant* shall, and shall procure that any Subcontractor (as applicable) shall, comply with ISO/IEC 27001 in relation to the *service* for the duration of this Contract.

- 4.2 The *Consultant* shall appoint an Information Security Manager and shall notify the *Client* of the identity of the Information Security Manager on the Contract Date and, where applicable, within five (5) Working Days following any change in the identity of the Information Security Manager.

- 4.3 The *Consultant* shall ensure that it operates and maintains the Information Security Management System during the *service period* and that the Information Security Management System meets the Security Policies and Standards, Good Security Practice and Law and includes:

4.3.1 a scope statement (which covers all of the *service* provided under this Contract);

4.3.2 a risk assessment (which shall include any risks specific to the *service*);

4.3.3 a statement of applicability;

4.3.4 a risk treatment plan; and

4.3.5 an incident management plan,

in each case as specified by ISO/IEC 27001.

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

- 4.4 The *Consultant* shall carry out regular Security Tests in compliance with ISO/IEC 27001 and shall within ten (10) Working Days after completion of the relevant audit provide any associated security audit reports to the *Client*.

- 4.5 Notwithstanding the provisions of paragraph 4.1 to paragraph 4.4, the *Client* may, in its absolute discretion, notify the *Consultant* that it is not in compliance with the Security Policy and provide details of such non-compliance. The *Consultant* shall, at its own expense, undertake those actions required in order to comply with the Security Policy within one (1) calendar month following such notification or on a date as agreed by the Parties. For the avoidance of doubt, any failure to comply with the Security Policy within the required timeframe (regardless of whether such failure is capable of remedy) shall constitute a substantial failure by the *Consultant* to comply with his obligations.

5 Cyber Essentials Scheme

- 5.1 The *Consultant* shall, and shall procure that any Subcontractor (as applicable) shall, obtain and maintain certification to Cyber Essentials (the “**Cyber Essentials Certificate**”) in relation to the *service* during the *service period*. The Cyber Essentials Certificate shall be provided by the *Consultant* to the *Client* annually on the dates as agreed by the Parties.
- 5.2 The *Consultant* shall notify the *Client* of any failure to obtain, or the revocation of, a Cyber Essentials Certificate within two (2) Working Days of confirmation of such failure or revocation. The *Consultant* shall, at its own expense, undertake those actions required in order to obtain a Cyber Essentials Certificate following such failure or revocation. For the avoidance of doubt, any failure to obtain and/or maintain a Cyber Essentials Certificate during the *service period* after the first date on which the *Consultant* was required to provide a Cyber Essentials Certificate in accordance with paragraph 5.1 (regardless of whether such failure is capable of remedy) shall constitute a substantial failure by the *Consultant* to comply with his obligations.

6 Risk Management

- 6.1 The *Consultant* shall operate and maintain the Risk Management Policy during the *service period* which includes standards and processes for the assessment of any potential risks in relation to the *service* and processes to ensure that the Security Policy is met (the “**Risk Assessment**”). The *Consultant* shall provide the Risk Management Policy to the *Client* upon request within ten (10) Working Days of such request. The *Client* may, at its absolute discretion, require changes to the Risk Management Policy to comply with the Security Policy. The *Consultant* shall, at its own expense, undertake those actions required in order to implement the changes required by the *Client* within one (1) calendar month of such request or on a date as agreed by the Parties.
- 6.2 The *Consultant* shall carry out a Risk Assessment (i) at least annually, (ii) in the event of a material change in the Consultant’s Systems Environment or in the threat landscape or (iii) at the request of the *Client*. The *Consultant* shall provide the report of the Risk Assessment to the *Client*, in the case of at least annual Risk Assessments, within five (5) Working Days of completion of the Risk Assessment or, in the case of all other Risk Assessments, within one (1) calendar month after completion of the Risk Assessment or on a date as agreed by the Parties. The *Consultant* shall notify the *Client* within five (5) Working Days if the Risk Profile in relation to the *service* has changed materially, for example, but not limited to, from one risk rating to another risk rating.
- 6.3 If the *Client* decides, at its absolute discretion, that any Risk Assessment does not meet the Security Policy, the *Consultant* shall repeat the Risk Assessment within one (1) calendar month of such request or as agreed by the Parties.

- 6.4 The *Consultant* shall, and shall procure that any Subcontractor (as applicable) shall, co-operate with the *Client* in relation to the *Client's* own risk management processes regarding the *service*.
- 6.5 For the avoidance of doubt, the *Consultant* shall pay all costs in relation to undertaking any action required to meet the requirements stipulated in this paragraph 6. Any failure by the *Consultant* to comply with any requirement of this paragraph 6 (regardless of whether such failure is capable of remedy), shall constitute a substantial failure by the *Consultant* to comply with his obligations.

7 Security Audit and Assurance

- 7.1 The *Consultant* shall, and shall procure that any Subcontractor (as applicable) shall, complete the Information Security Questionnaire at least annually or at the request by the *Client*. The *Consultant* shall provide the completed Information Security Questionnaire to the *Client* within one calendar month from the date of request.
- 7.2 Without prejudice to the requirements of this Schedule 8, the *Consultant* shall comply with and Provide the Service in a manner that is consistent with the Consultant's Tender ISQ Response. In the event that the *Consultant* becomes aware (or is notified by the *Client*) of any inconsistency between the services set out in the Consultant's Tender ISQ Response and the other requirements of this Contract, the *Consultant* shall immediately notify the *Client* in writing of such inconsistency and the *Client* shall, as soon as practicable, notify the *Consultant* which requirement the *Consultant* shall comply with.
- 7.3 The *Consultant* shall conduct Security Tests to assess the Information Security of the Consultant's Systems Environment and, if requested, the Client's Systems Environment. In relation to such Security Tests, the *Consultant* shall appoint a third party which,
- 7.3.1 in respect of any Penetration Test, is duly accredited by CHECK, CREST (International) or Tigerscheme; and
- 7.3.2 in respect of any Security Test to which PCI DSS apply, is an approved scanning vendor duly accredited by the PCI.

Such Security Test shall be carried out (i) at least annually, (ii) in the event of a material change in the Contractor's Systems Environment or in the Client's System Environment or (iii) at the request of the *Client* which request may include, but is not limited to, a repeat of a previous Security Test. The content, and format of any report of such Security Tests shall be approved in advance of the Security Test by the *Client*. The *Consultant* shall provide any report of such Security Tests within one calendar month following the completion of such Security Test or on a date agreed by the Parties. The *Consultant* shall, at its own expense, undertake those actions required to rectify any risks identified by any Security Test in the manner and within the timeframe required by the *Client* in its absolute discretion.

- 7.4 The *Client* shall be entitled to send a representative to witness the conduct of any Security Test. The *Consultant* shall provide to the *Client* notice of any Security Test at least one month prior to the relevant Security Test.
- 7.5 Where the *Consultant* provides code development services to the *Client*, the *Consultant* shall comply with the Security Requirements in respect of code

development within the Consultant's Systems Environment and the Client's Systems Environment.

- 7.6 Where the *Consultant* provides software development services, the *Consultant* shall comply with the code development practices specified in the Statement of Requirement or in the Security Requirements.
- 7.7 The *Client*, or an agent appointed by it, may undertake Security Tests in respect of the Consultant's Systems Environment after providing advance notice to the *Consultant*. If any Security Test identifies any non-compliance with the Security Requirements, the *Consultant* shall, at its own expense, undertake those actions required in order to rectify such identified non-compliance in the manner and timeframe as stipulated by the *Client* at its absolute discretion. The *Consultant* shall provide all such co-operation and assistance in relation to any Security Test conducted by the *Client* as the *Client* may reasonably require.
- 7.8 The *Client* may schedule regular security governance review meetings which the *Consultant* shall, and shall procure that any Subcontractor (as applicable) shall, attend.

8 Security Policies And Standards

- 8.1 The *Consultant* shall, and shall procure that any Subcontractor (as applicable) shall, comply with the Security Policies and Standards.
- 8.2 Notwithstanding the foregoing, the Security Policy applicable to the *service* may be subject to change following certain events including, but not limited to, any relevant change in the delivery of the *service*. The *Client* may issue instructions to the *Consultant* to comply with any amended Security Policy as required by the *Client* and such change shall be processed in accordance with the Change Control Procedure.
- 8.3 The *Consultant* shall, and shall procure that any Subcontractor (as applicable) shall, maintain appropriate records and is otherwise able to demonstrate compliance with the Security Policies and Standards.

9 Cyber Security Information Sharing Partnership

- 9.1 The *Consultant* may become a member of the Cyber Security Information Sharing Partnership in accordance with the recommendations by the NCSC during the *service period*. The *Consultant* may participate in the Cyber Security Information Sharing Partnership for the exchange of cyber threat information.
- 9.2 Where the *Consultant* becomes a member of the Cyber Security Information Sharing Partnership, it shall review the NCSC weekly threat reports on a weekly basis and implement recommendations in line with the Consultant's Risk Management Policy.