

## Short Order Form Template and Call-Off Schedules

### Order Form

|                      |   |
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| CALL-OFF REFERENCE:  | COPADS488P  |
| THE BUYER:           | Minister for the Cabinet Office                                     |
| BUYER ADDRESS        | 70 Whitehall, London, SW1A 2AS                                      |
| THE SUPPLIER:        | PROMEDICAL PERSONNEL LIMITED  |
| SUPPLIER ADDRESS:    | Swift House, Ground Floor, 18 Hoffmanns Way,<br>Chelmsford, CM1 1GU |
| REGISTRATION NUMBER: | 06428549  |
| DUNS NUMBER:         | 210988347   |

This Order Form, when completed and executed by both Parties, forms a Call-Off Contract. A Call-Off Contract can be completed and executed using an equivalent document or electronic purchase order system.

If an electronic purchasing system is used instead of signing as a hard-copy, text below must be copied into the electronic order form **starting from 'APPLICABLE FRAMEWORK CONTRACT' and up to, but not including, the Signature block.**

#### APPLICABLE FRAMEWORK CONTRACT

This Order Form is for the provision of the Call-Off Deliverables and dated 07 May 2025.

It's issued under the Framework Contract with the reference number RM6281 for the provision of Clinical and Healthcare Staffing through ProMedical. ProMedical has been appointed by the Minister for the Cabinet Office as the exclusive Managed Service Provider (MSP) responsible for the delivery of Clinical Advisors throughout the duration of the IBCA contract.

CALL-OFF LOT(S): LOT 2

## CALL-OFF INCORPORATED TERMS

The following documents are incorporated into this Call-Off Contract. Where numbers are missing we are not using those schedules. If the documents conflict, the following order of precedence applies:

1. This Order Form.
2. Joint Schedule 1 (Definitions and Interpretation) RM6281
3. The following Schedules in equal order of precedence:
  - Joint Schedules for RM6281
    - Joint Schedule 2 (Variation Form)
    - Joint Schedule 3 (Insurance Requirements)
    - Joint Schedule 4 (Commercially Sensitive Information)
    - Joint Schedule 7 (Financial Difficulties)
    - Joint Schedule 10 (Rectification Plan)
    - Joint Schedule 11 (Processing Data)
  - Call-Off Schedules for RM6281
    - Call-Off Schedule 1 (Transparency Reports)
    - Call-Off Schedule 2 (Staff Transfer) **NOT USED**
    - Call-Off Schedule 3 (Continuous Improvement)
4. Core Terms (version 3.0.11)
5. Joint Schedule 5 (Corporate Social Responsibility)

No other Supplier terms are part of the Call-Off Contract. That includes any terms written on the back of, added to this Order Form, or presented at the time of delivery.

CALL-OFF START DATE: 13 May 2025

CALL-OFF EXPIRY DATE: 12 May 2028

## CALL-OFF DELIVERABLES

IBCA requires 5-10 x Clinical Advisors to be within a pool of workers for IBCA, ready to make 'balance of probabilities' judgments based on the available clinical evidence, including historic and partial evidence (Clinical Advisors will not make decisions but will, with their clinical expertise, support the Claims Manager with who will be the ultimate decision maker)

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Crown Commercial Service

NHS Commercial Solutions

NHS East of England Collaborative Procurement Hub

NHS London Procurement Partnership

NHS North of England Commercial Procurement Collaborative

IBCA will make a request to ProMedical on a weekly basis for the week ahead, specifying what type of clinicians\* are required and for how long (this is likely to be 2 hours per week currently but will increase as IBCA expands and recruits more Claims Managers). The Clinical Advisors will review decision-making forms completed by Claims Managers and discuss them at organised drop-in sessions, the Clinical Advisors will write up their advice and share it with the Claim Manager. On a quarterly basis, Team Leaders will organise feedback sessions with Clinical Advisors to discuss ways of working.

\* Types of clinicians required:

Haematologist - for dating infections

Hepatologist - for hep B and hep C

Gastroenterologist - for HIV

GP / generalist - to confirm additional conditions

In addition to the claims requirements, we will request training sessions on an ad-hoc basis with sufficient notice, these are likely to be on specific diseases and how they impact individuals.

In addition, we will request Clinical Advisors to act as panel members to review appeal cases. This process will be mapped out and discussed with ProMedical once finalised.

As we recruit more Claims Managers and expand the service, we may need more hours and more Clinical Assessors available so we hope to have ongoing conversations with ProMedical about our changing / expanding service and figure out what can be done to support.

We also have a Clinical Advisor working directly with IBCA and would like to onboard them with ProMedical to ensure that the work is fairly managed and commercially simpler.

**Specific:** Provide written clinical advice on IBCA template within 3 working days of an enquiry from a Claims Manager.

**Measurable:** Complete and submit timesheets weekly by midday on Fridays.

**Achievable:** Participate in organised drop-in sessions with Claims Managers to discuss decision-making forms on a weekly basis.

**Relevant:** Provide expert clinical judgments based on available evidence (including historic and partial evidence) to support Claims Managers in making decisions.

**Time-bound:** Provide one month's advance notice of annual leave to a member of the Operations Senior Leadership Team (SLT).

## GDPR POSITION

Independent Controller

## MAXIMUM LIABILITY

The limitation of liability for this Call-Off Contract is stated in Clause 11.2 of the Core Terms.

## CALL-OFF CHARGES

Total charge per hour: **REDACTED TEXT under FOIA Section 43 (2), Commercial Information**

Total estimated contract value = £46,800.00

## TERMINATION OF SERVICES

Either party may terminate this Agreement at any time and for any reason by providing the other party with no less than ninety (90) days' prior written notice. Such termination shall not affect any rights, obligations, or liabilities of either party that have accrued prior to the effective date of termination.

## PAYMENT METHOD

The payment method for this Call-Off Contract is bank transfer.

## BUYER'S INVOICE ADDRESS:

**REDACTED TEXT under FOIA Section 40, Personal Information**

## BUYER'S AUTHORISED REPRESENTATIVE

**REDACTED TEXT under FOIA Section 40, Personal Information**

## SUPPLIER'S AUTHORISED REPRESENTATIVE

**REDACTED TEXT under FOIA Section 40, Personal Information**

## SUPPLIER'S CONTRACT MANAGER

**REDACTED TEXT under FOIA Section 40, Personal Information**

| For and on behalf of the Supplier: |   | For and on behalf of the Buyer: |   |
|------------------------------------|---|---------------------------------|---|
| Signature:                         | REDACTED TEXT under FOIA Section 40, Personal Information | Signature:                      | REDACTED TEXT under FOIA Section 40, Personal Information |
| Name:                              | REDACTED TEXT under FOIA Section 40, Personal Information | Name:                           | REDACTED TEXT under FOIA Section 40, Personal Information |
| Role:                              | REDACTED TEXT under FOIA Section 40, Personal Information | Role:                           | REDACTED TEXT under FOIA Section 40, Personal Information |
| Date:                              | 12/05/2025  | Date:                           |   |

## Annex 1

# Joint Schedule 1 (Definitions)

- 1.1 In each Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Joint Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In each Contract, unless the context otherwise requires:
- 1.3.1 the singular includes the plural and vice versa;
  - 1.3.2 reference to a gender includes the other gender and the neuter;
  - 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
  - 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
  - 1.3.5 the words **"including"**, **"other"**, **"in particular"**, **"for example"** and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words **"without limitation"**;
  - 1.3.6 references to **"writing"** include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
  - 1.3.7 references to **"representations"** shall be construed as references to present facts, to **"warranties"** as references to present and future facts and to **"undertakings"** as references to obligations under the Contract;
  - 1.3.8 references to **"Clauses"** and **"Schedules"** are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;
  - 1.3.9 references to **"Paragraphs"** are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided;
  - 1.3.10 references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified;
  - 1.3.11 the headings in each Contract are for ease of reference only and shall not affect the interpretation or construction of a Contract;

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NHS North of England Commercial Procurement Collaborative

1.3.12 where the Buyer is a Central Government Body it shall be treated as contracting with the Crown as a whole;

1.3.13 any reference in a Contract which immediately before Exit Day is a reference to (as it has effect from time to time):

- (a) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
- (b) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred; and

1.3.14 unless otherwise provided, references to "**Buyer**" shall be construed as including Exempt Buyers; and

1.3.15 unless otherwise provided, references to "**Call-Off Contract**" and "**Contract**" shall be construed as including Exempt Call-off Contracts.

1.4 In each Contract, unless the context otherwise requires, the following words shall have the following meanings:

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| <b>"Achieve"</b>               | in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and " <b>Achieved</b> ", " <b>Achieving</b> " and " <b>Achievement</b> " shall be construed accordingly;   |
| <b>"Additional Insurances"</b> | insurance requirements relating to a Call-Off Contract specified in the Order Form additional to those outlined in Joint Schedule 3 (Insurance Requirements);   |
| <b>"Admin Fee"</b>             | means the costs incurred by CCS in dealing with MI Failures calculated in accordance with the tariff of administration charges published by the CCS on: <a href="http://CCS.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees">http://CCS.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees</a> ; |
| <b>"Affected Party"</b>        | the Party seeking to claim relief in respect of a Force Majeure Event;  |
| <b>"Affiliates"</b>            | in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;  |
| <b>"Annex"</b>                 | extra information which supports a Schedule;  |



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| <b>"Approval"</b> | the prior written consent of the Buyer and <b>"Approve"</b> and <b>"Approved"</b> shall be construed accordingly;  |
| <b>"Audit"</b>    | <p>the Relevant Authority's right to:</p> <ul style="list-style-type: none"> <li>a) verify the accuracy of the Charges and any other amounts payable by a Buyer under a Call-Off Contract (including proposed or actual variations to them in accordance with the Contract);</li> <li>b) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Deliverables;</li> <li>c) verify the Open Book Data;</li> <li>d) verify the Supplier's and each Subcontractor's compliance with the applicable Law;</li> <li>e) identify or investigate actual or suspected breach of Clauses 27 to 33 and/or Joint Schedule 5 (Corporate Social Responsibility), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Relevant Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;</li> <li>f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Subcontractors or their ability to provide the Deliverables;</li> <li>g) obtain such information as is necessary to fulfil the Relevant Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;</li> <li>h) review any books of account and the internal contract management accounts kept by the Supplier in connection with each Contract;</li> <li>i) carry out the Relevant Authority's internal and statutory audits and to prepare, examine and/or certify the Relevant Authority's annual and interim reports and accounts;</li> <li>j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Relevant Authority has used its resources;</li> <li>k) verify the accuracy and completeness of any: <ul style="list-style-type: none"> <li>(i) Management Information delivered or required by the Framework Contract; or</li> </ul> </li> </ul> |



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|  | (ii) Financial Report and compliance with Financial Transparency Objectives as specified by the Buyer in the Order Form;   |
| <b>"Auditor"</b>                         | <ul style="list-style-type: none"> <li>a) the Buyer's internal and external auditors;</li> <li>b) the Buyer's statutory or regulatory auditors;</li> <li>c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</li> <li>d) HM Treasury or the Cabinet Office;</li> <li>e) any party formally appointed by the Buyer to carry out audit or similar review functions; and</li> <li>f) successors or assigns of any of the above;</li> </ul> |
| <b>"Authority"</b>                       | CCS and each Buyer;  |
| <b>"Authority Cause"</b>                 | any breach of the obligations of the Relevant Authority or any other default, act, omission, negligence or statement of the Relevant Authority, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Relevant Authority is liable to the Supplier;   |
| <b>"BACS"</b>                            | the Bankers' Automated Clearing Services, which is a scheme for the electronic processing of financial transactions within the United Kingdom;   |
| <b>"Beneficiary"</b>                     | a Party having (or claiming to have) the benefit of an indemnity under this Contract;  |
| <b>"Buyer"</b>                           | the relevant public sector purchaser identified as such in the Order Form;   |
| <b>"Buyer Assets"</b>                    | the Buyer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Deliverables which remain the property of the Buyer throughout the term of the Contract;  |
| <b>"Buyer Authorised Representative"</b> | the representative appointed by the Buyer from time to time in relation to the Call-Off Contract initially identified in the Order Form;   |
| <b>"Buyer Premises"</b>                  | premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them);   |
| <b>"Call-Off Contract"</b>               | the contract between the Buyer and the Supplier (entered into pursuant to the provisions of the Framework Contract), which consists of the terms set out and referred to in the Order Form;  |
| <b>"Call-Off Contract Period"</b>        | the Contract Period in respect of the Call-Off Contract;   |

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| <b>"Call-Off Expiry Date"</b>               | the scheduled date of the end of a Call-Off Contract as stated in the Order Form;   |
| <b>"Call-Off Incorporated Terms"</b>        | the contractual terms applicable to the Call-Off Contract specified under the relevant heading in the Order Form;   |
| <b>"Call-Off Initial Period"</b>            | the Initial Period of a Call-Off Contract specified in the Order Form;  |
| <b>"Call-Off Optional Extension Period"</b> | such period or periods beyond which the Call-Off Initial Period may be extended as specified in the Order Form;   |
| <b>"Call-Off Procedure"</b>                 | the process for awarding a Call-Off Contract pursuant to Clause 2 (How the contract works) and Framework Schedule 7 (Call-Off Award Procedure);   |
| <b>"Call-Off Special Terms"</b>             | any additional terms and conditions specified in the Order Form incorporated into the applicable Call-Off Contract;   |
| <b>"Call-Off Start Date"</b>                | the date of start of a Call-Off Contract as stated in the Order Form;   |
| <b>"Call-Off Tender"</b>                    | the tender submitted by the Supplier in response to the Buyer's Statement of Requirements following a Further Competition Procedure and set out at Call-Off Schedule 4 (Call-Off Tender);   |
| <b>"CCS"</b>                                | the Minister for the Cabinet Office as represented by Crown Commercial Service, which is an executive agency and operates as a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;  |
| <b>"CCS Authorised Representative"</b>      | the representative appointed by CCS from time to time in relation to the Framework Contract initially identified in the Framework Award Form;   |
| <b>"Central Government Body"</b>            | a body listed in one of the following subcategories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> <li>a) Government Department;</li> <li>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>c) Non-Ministerial Department; or</li> <li>d) Executive Agency;</li> </ul> |
| <b>"Change in Law"</b>                      | any change in Law which impacts on the supply of the Deliverables and performance of the Contract which comes into force after the Start Date;  |
| <b>"Change of Control"</b>                  | a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;  |

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| <b>"Charges"</b>                            | the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under the Call-Off Contract, as set out in the Order Form, for the full and proper performance by the Supplier of its obligations under the Call-Off Contract less any Deductions;   |
| <b>"Claim"</b>                              | any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;   |
| <b>"Commercially Sensitive Information"</b> | the Confidential Information listed in the Framework Award Form or Order Form (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;  |
| <b>"Comparable Supply"</b>                  | the supply of Deliverables to another Buyer of the Supplier that are the same or similar to the Deliverables;   |
| <b>"Compliance Officer"</b>                 | the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;  |
| <b>"Confidential Information"</b>           | means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of CCS, the Buyer or the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as <b>"confidential"</b> ) or which ought reasonably to be considered to be confidential; |
| <b>"Conflict of Interest"</b>               | a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to CCS or any Buyer under a Contract, in the reasonable opinion of the Buyer or CCS;  |
| <b>"Contract"</b>                           | either the Framework Contract or the Call-Off Contract, as the context requires;  |
| <b>"Contract Period"</b>                    | the term of either a Framework Contract or Call-Off Contract on and from the earlier of the:<br>a) applicable Start Date; or<br>b) the Effective Date<br>up to and including the applicable End Date;   |
| <b>"Contract Value"</b>                     | the higher of the actual or expected total Charges paid or payable under a Contract where all obligations are met by the Supplier;  |
| <b>"Contract Year"</b>                      | a consecutive period of twelve (12) Months commencing on the Start Date or each anniversary thereof;  |
| <b>"Control"</b>                            | control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and <b>"Controlled"</b> shall be construed accordingly;  |
| <b>"Controller"</b>                         | has the meaning given to it in the GDPR;  |

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| <b>"Core Terms"</b> | CCS' standard terms and conditions for common goods and services which govern how Supplier must interact with CCS and Buyers under Framework Contracts and Call-Off Contracts;  |
| <b>"Costs"</b>      | <p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables:</p> <ul style="list-style-type: none"> <li>e) the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Work Day, of engaging the Supplier Staff, including: <ul style="list-style-type: none"> <li>i) base salary paid to the Supplier Staff;</li> <li>ii) employer's National Insurance contributions;</li> <li>iii) pension contributions;</li> <li>iv) car allowances;</li> <li>v) any other contractual employment benefits;</li> <li>vi) staff training;</li> <li>vii) workplace accommodation;</li> <li>viii) workplace IT equipment and tools reasonably necessary to provide the Deliverables (but not including items included within limb (b) below); and</li> <li>ix) reasonable recruitment costs, as agreed with the Buyer;</li> </ul> </li> <li>f) costs incurred in respect of Supplier Assets which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Buyer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;</li> <li>g) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Deliverables; and</li> <li>h) Reimbursable Expenses to the extent these have been specified as allowable in the Order Form and are incurred in delivering any Deliverables; <p>but excluding:</p> <ul style="list-style-type: none"> <li>i) Overhead;</li> <li>j) financing or similar costs;</li> </ul> </li> <li>k) maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Call-Off Contract Period whether in relation to Supplier Assets or otherwise;</li> </ul> |

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|  | <p>l) taxation;</p> <p>m) fines and penalties;</p> <p>n) amounts payable under Call-Off Schedule 16 (Benchmarking) where such Schedule is used; and</p> <p>o) non-cash items (including depreciation, amortisation, impairments and movements in provisions);</p>   |
| <b>"CRTPA"</b>                             | the Contract Rights of Third Parties Act 1999;  |
| <b>"Data Protection Impact Assessment"</b> | an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;   |
| <b>"Data Protection Legislation"</b>       | the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to Processing of personal data and privacy; (iii) all applicable Law about the Processing of personal data and privacy;  |
| <b>"Data Protection Liability Cap"</b>     | the amount specified in the Framework Award Form;   |
| <b>"Data Protection Officer"</b>           | has the meaning given to it in the GDPR;  |
| <b>"Data Subject"</b>                      | has the meaning given to it in the GDPR;  |
| <b>"Data Subject Access Request"</b>       | a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;   |
| <b>"Deductions"</b>                        | all Service Credits, Delay Payments (if applicable), or any other deduction which the Buyer is paid or is payable to the Buyer under a Call-Off Contract;   |
| <b>"Default"</b>                           | any breach of the obligations of the Supplier (including abandonment of a Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of a Contract and in respect of which the Supplier is liable to the Relevant Authority; |
| <b>"Default Management Charge"</b>         | has the meaning given to it in Paragraph 8.1.1 of Framework Schedule 5 (Management Charges and Information);  |
| <b>"Delay Payments"</b>                    | the amounts (if any) payable by the Supplier to the Buyer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;  |
| <b>"Deliverables"</b>                      | Goods and/or Services that may be ordered under the Contract including the Documentation;   |
| <b>"Delivery"</b>                          | delivery of the relevant Deliverable or Milestone in accordance with the terms of a Call-Off Contract as confirmed and accepted by the  |

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|                                       | Buyer by the either (a) confirmation in writing to the Supplier; or (b) where Call-Off Schedule 13 (Implementation Plan and Testing) is used issue by the Buyer of a Satisfaction Certificate. <b>"Deliver"</b> and <b>"Delivered"</b> shall be construed accordingly;  |
| <b>"Disclosing Party"</b>             | the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 15 (What you must keep confidential);  |
| <b>"Dispute"</b>                      | any claim, dispute or difference (whether contractual or non-contractual) arising out of or in connection with the Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;   |
| <b>"Dispute Resolution Procedure"</b> | the dispute resolution procedure set out in Clause 34 (Resolving disputes);   |
| <b>"Documentation"</b>                | descriptions of the Services and Service Levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) is required to be supplied by the Supplier to the Buyer under a Contract as: <ul style="list-style-type: none"> <li>a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables</li> <li>b) is required by the Supplier in order to provide the Deliverables; and/or</li> <li>c) has been or shall be generated for the purpose of providing the Deliverables;</li> </ul> |
| <b>"DOTAS"</b>                        | the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions;  |
| <b>"DPA 2018"</b>                     | the Data Protection Act 2018;   |
| <b>"Due Diligence Information"</b>    | any information supplied to the Supplier by or on behalf of the Authority prior to the Start Date;  |
| <b>"Effective Date"</b>               | the date on which the final Party has signed the Contract;  |



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| <b>"EIR"</b>                                  | the Environmental Information Regulations 2004;   |
| <b>"Electronic Invoice"</b>                   | an invoice which has been issued, transmitted and received in a structured electronic format which allows for its automatic and electronic processing and which complies with (a) the European standard and (b) any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870;                           |
| <b>"Employment Regulations"</b>               | the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC;  |
| <b>"End Date"</b>                             | the earlier of:<br>a) the Expiry Date (as extended by any Extension Period exercised by the Relevant Authority under Clause 10.1.2);<br>or<br>b) if a Contract is terminated before the date specified in (a) above, the date of termination of the Contract;   |
| <b>"Environmental Policy"</b>                 | to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Buyer; |
| <b>"Equality and Human Rights Commission"</b> | the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;   |
| <b>"Estimated Year 1 Charges"</b>             | the anticipated total Charges payable by the Buyer in the first Contract Year specified in the Order Form;  |

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| <b>"Estimated Yearly Charges"</b> | means for the purposes of calculating each Party's annual liability under clause 11.2:<br>i) in the first Contract Year, the Estimated Year 1 Charges; or<br><br>ii) in any subsequent Contract Years, the Charges paid or payable in the previous Call-off Contract Year; or<br><br>iii) after the end of the Call-off Contract, the Charges paid or payable in the last Contract Year during the Call-off Contract Period; |
| <b>"Exempt Buyer"</b>             | a public sector purchaser that is:<br><br>a) eligible to use the Framework Contract; and   |



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|  | <p>b) is entering into an Exempt Call-off Contract that is not subject to (as applicable) any of:</p> <ul style="list-style-type: none"> <li>i) the Regulations;</li> <li>ii) the Concession Contracts Regulations 2016 (SI 2016/273);</li> <li>iii) the Utilities Contracts Regulations 2016 (SI 2016/274);</li> <li>iv) the Defence and Security Public Contracts Regulations 2011 (SI 2011/1848);</li> <li>v) the Remedies Directive (2007/66/EC);</li> <li>vi) Directive 2014/23/EU of the European Parliament and Council;</li> <li>vii) Directive 2014/24/EU of the European Parliament and Council;</li> <li>viii) Directive 2014/25/EU of the European Parliament and Council; or</li> <li>ix) Directive 2009/81/EC of the European Parliament and Council;</li> </ul> |
| <b>"Exempt Call-off Contract"</b>      | the contract between the Exempt Buyer and the Supplier for Deliverables which consists of the terms set out and referred to in the Order Form incorporating and, where necessary, amending, refining or adding to the terms of the Framework Contract;   |
| <b>"Exempt Procurement Amendments"</b> | any amendments, refinements or additions to any of the terms of the Framework Contract made through the Exempt Call-off Contract to reflect the specific needs of an Exempt Buyer to the extent permitted by and in accordance with any legal requirements applicable to that Exempt Buyer;  |

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| <b>"Existing IPR"</b>      | any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise); |
| <b>"Exit Day"</b>          | shall have the meaning in the European Union (Withdrawal) Act 2018;  |
| <b>"Expiry Date"</b>       | the Framework Expiry Date or the Call-Off Expiry Date (as the context dictates);   |
| <b>"Extension Period"</b>  | the Framework Optional Extension Period or the Call-Off Optional Extension Period as the context dictates;   |
| <b>"Financial Reports"</b> | a report by the Supplier to the Buyer that:  |

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|  | <p>(a) provides a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;</p> <p>(b) provides detail a true and fair reflection of the costs and expenses to be incurred by Key Subcontractors (as requested by the Buyer);</p> <p>(c) is in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Buyer to the Supplier on or before the Start Date for the purposes of the Contract; and</p> <p>(d) is certified by the Supplier's Chief Financial Officer or Director of Finance;</p>   |
| <b>"Financial Representative"</b>          | a reasonably skilled and experienced member of the Supplier Staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the records and accounts of everything to do with the Contract (as referred to in Clause 6), Financial Reports and Open Book Data;  |
| <b>"Financial Transparency Objectives"</b> | <p>(a) the Buyer having a clear analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Staff in providing the Services and Supplier Profit Margin so that it can understand any payment sought by the Supplier;</p> <p>(b) the Parties being able to understand Costs forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;</p> <p>(c) the Parties being able to understand the quantitative impact of any Variations that affect ongoing Costs and identifying how these could be mitigated and/or reflected in the Charges;</p> <p>(d) the Parties being able to review, address issues with and re-forecast progress in relation to the provision of the Services;</p> <p>(e) the Parties challenging each other with ideas for efficiency and improvements; and</p> <p>(f) enabling the Buyer to demonstrate that it is achieving value for money for the taxpayer relative to current market prices;</p> |

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| <b>"FOIA"</b>                         | the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;  |
| <b>"Force Majeure Event"</b>          | any event, occurrence, circumstance, matter or cause affecting the performance by either the Relevant Authority or the Supplier of its obligations arising from acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under a Contract and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by the Affected Party, including: <ul style="list-style-type: none"> <li>a) riots, civil commotion, war or armed conflict;</li> <li>b) acts of terrorism;</li> <li>c) acts of a Central Government Body, local government or regulatory bodies;</li> <li>d) fire, flood, storm or earthquake or other natural disaster,</li> </ul> but excluding any industrial dispute relating to the Supplier, the Supplier Staff or any other failure in the Supplier or the Subcontractor's supply chain; |
| <b>"Force Majeure Notice"</b>         | a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;   |
| <b>"Framework Award Form"</b>         | the document outlining the Framework Incorporated Terms and crucial information required for the Framework Contract, to be executed by the Supplier and CCS;   |
| <b>"Framework Contract"</b>           | the framework agreement established between CCS and the Supplier in accordance with Regulation 33 by the Framework Award Form for the provision of the Deliverables to Buyers by the Supplier pursuant to the OJEU Notice;   |
| <b>"Framework Contract Period"</b>    | the period from the Framework Start Date until the End Date of the Framework Contract;   |
| <b>"Framework Expiry Date"</b>        | the scheduled date of the end of the Framework Contract as stated in the Framework Award Form;   |
| <b>"Framework Incorporated Terms"</b> | the contractual terms applicable to the Framework Contract specified in the Framework Award Form;  |
| <b>"Framework Optional"</b>           | such period or periods beyond which the Framework Contract Period may be extended as specified in the Framework Award Form;  |

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| <b>Extension Period"</b>               |   |
| <b>"Framework Price(s)"</b>            | the price(s) applicable to the provision of the Deliverables set out in Framework Schedule 3 (Framework Prices);  |
| <b>"Framework Special Terms"</b>       | any additional terms and conditions specified in the Framework Award Form incorporated into the Framework Contract;   |
| <b>"Framework Start Date"</b>          | the date of start of the Framework Contract as stated in the Framework Award Form;  |
| <b>"Framework Tender Response"</b>     | the tender submitted by the Supplier to CCS and annexed to or referred to in Framework Schedule 2 (Framework Tender);   |
| <b>"Further Competition Procedure"</b> | the further competition procedure described in Framework Schedule 7 (Call-Off Award Procedure);   |
| <b>"GDPR"</b>                          | the General Data Protection Regulation (Regulation (EU) 2016/679);  |
| <b>"General Anti-Abuse Rule"</b>       | e) the legislation in Part 5 of the Finance Act 2013 and; and<br>f) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions;   |
| <b>"General Change in Law"</b>         | a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;   |
| <b>"Goods"</b>                         | goods made available by the Supplier as specified in Framework Schedule 1 (Specification) and in relation to a Call-Off Contract as specified in the Order Form ;   |
| <b>"Good Industry Practice"</b>        | standards, practises, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;                           |
| <b>"Government"</b>                    | the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf; |
| <b>"Government Data"</b>               | the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Authority's Confidential Information, and which:<br><br>i) are supplied to the Supplier by or on behalf of the                  |

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|                                  | <p>Authority; or</p> <p>ii) the Supplier is required to generate, process, store or transmit pursuant to a Contract;</p>   |
| <b>"Guarantor"</b>               | the person (if any) who has entered into a guarantee in the form set out in Joint Schedule 8 (Guarantee) in relation to this Contract;   |
| <b>"Halifax Abuse Principle"</b> | the principle explained in the CJEU Case C-255/02 Halifax and others;  |
| <b>"HMRC"</b>                    | Her Majesty's Revenue and Customs;   |
| <b>"ICT Policy"</b>              | the Buyer's policy in respect of information and communications technology, referred to in the Order Form, which is in force as at the Call-Off Start Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;   |
| <b>"Impact Assessment"</b>       | <p>an assessment of the impact of a Variation request by the Relevant Authority completed in good faith, including:</p> <ul style="list-style-type: none"> <li>a) details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under the Contract;</li> <li>b) details of the cost of implementing the proposed Variation;</li> <li>c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Framework Prices/Charges (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practises of either Party;</li> <li>d) a timetable for the implementation, together with any proposals for the testing of the Variation; and</li> <li>e) such other information as the Relevant Authority may reasonably request in (or in response to) the Variation request;</li> </ul> |
| <b>"Implementation Plan"</b>     | the plan for provision of the Deliverables set out in Call-Off Schedule 13 (Implementation Plan and Testing) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;  |
| <b>"Indemnifier"</b>             | a Party from whom an indemnity is sought under this Contract;  |
| <b>"Independent Control"</b>     | where a Controller has provided Personal Data to another Party which is not a Processor or a Joint Controller because the recipient itself determines the purposes and means of Processing but does  |

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|                                   | so separately from the Controller providing it with Personal Data and <b>"Independent Controller"</b> shall be construed accordingly;  |
| <b>"Indexation"</b>               | the adjustment of an amount or sum in accordance with Framework Schedule 3 (Framework Prices) and the relevant Order Form;   |
| <b>"Information"</b>              | has the meaning given under section 84 of the Freedom of Information Act 2000;   |
| <b>"Information Commissioner"</b> | the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;  |
| <b>"Initial Period"</b>           | the initial term of a Contract specified in the Framework Award Form or the Order Form, as the context requires;   |
| <b>"Insolvency Event"</b>         | <p>with respect to any person, means:</p> <p>(a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:</p> <p>(i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or</p> <p>(ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;</p> <p>(b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;</p> <p>(c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;</p> <p>(d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within 14 days;</p> <p>(e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;</p> <p>(f) where that person is a company, a LLP or a partnership:</p> <p>(i) a petition is presented (which is not dismissed within 14 days of its service), a notice is given, a resolution is passed, or an order is</p> |



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|  | <p>made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;</p> <p>(ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;</p> <p>(iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or</p> <p>(iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or</p> <p>(g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;</p> |
| <b>"Installation Works"</b>                    | all works which the Supplier is to carry out at the beginning of the Call-Off Contract Period to install the Goods in accordance with the Call-Off Contract;   |
| <b>"Intellectual Property Rights" or "IPR"</b> | <p>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>   |
| <b>"Invoicing Address"</b>                     | the address to which the Supplier shall invoice the Buyer as specified in the Order Form;  |
| <b>"IPR Claim"</b>                             | any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Relevant Authority in the fulfilment of its obligations under a Contract;  |



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| <b>"IR35"</b>                       | the off-payroll rules requiring individuals who work through their company pay the same tax and National Insurance contributions as an employee which can be found online at:<br><a href="https://www.gov.uk/guidance/ir35-find-out-if-it-applies">https://www.gov.uk/guidance/ir35-find-out-if-it-applies</a> ;   |
| <b>"Joint Controller Agreement"</b> | the agreement (if any) entered into between the Relevant Authority and the Supplier substantially in the form set out in Annex 2 of Joint Schedule 11 ( <i>Processing Data</i> );  |
| <b>"Joint Controllers"</b>          | where two or more Controllers jointly determine the purposes and means of Processing;  |
| <b>"Key Staff"</b>                  | the individuals (if any) identified as such in the Order Form;   |
| <b>"Key Sub-Contract"</b>           | each Sub-Contract with a Key Subcontractor;  |
| <b>"Key Subcontractor"</b>          | any Subcontractor: <ul style="list-style-type: none"> <li>a) which is relied upon to deliver any work package within the Deliverables in their entirety; and/or</li> <li>b) which, in the opinion of CCS or the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or</li> <li>c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under the Call-Off Contract,</li> </ul> and the Supplier shall list all such Key Subcontractors in section 19 of the Framework Award Form and in the Key Subcontractor Section in Order Form; |
| <b>"Know-How"</b>                   | all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party's possession before the applicable Start Date;   |
| <b>"Law"</b>                        | any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgement of a relevant court of law, or directives or requirements with which the relevant Party is bound to comply;  |
| <b>"LED"</b>                        | Law Enforcement Directive (Directive (EU) 2016/680);   |
| <b>"Losses"</b>                     | all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgement, interest and penalties whether arising in contract, tort   |

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|   | (including negligence), breach of statutory duty, misrepresentation or otherwise and <b>"Loss"</b> shall be interpreted accordingly;   |
| <b>"Lots"</b>                           | the number of lots specified in Framework Schedule 1 (Specification), if applicable;   |
| <b>"Management Charge"</b>              | the sum specified in the Framework Award Form payable by the Supplier to CCS in accordance with Framework Schedule 5 (Management Charges and Information);   |
| <b>"Management Information" or "MI"</b> | the management information specified in Framework Schedule 5 (Management Charges and Information);   |
| <b>"MI Default"</b>                     | means when two (2) MI Reports are not provided in any rolling six (6) month period   |
| <b>"MI Failure"</b>                     | means when an MI report: <ul style="list-style-type: none"> <li>a) contains any material errors or material omissions or a missing mandatory field; or</li> <li>b) is submitted using an incorrect MI reporting Template; or</li> <li>c) is not submitted by the reporting date (including where a declaration of no business should have been filed);</li> </ul>  |
| <b>"MI Report"</b>                      | means a report containing Management Information submitted to the Authority in accordance with Framework Schedule 5 (Management Charges and Information);  |
| <b>"MI Reporting Template"</b>          | means the form of report set out in the Annex to Framework Schedule 5 (Management Charges and Information) setting out the information the Supplier is required to supply to the Authority;  |
| <b>"Milestone"</b>                      | an event or task described in the Implementation Plan;   |
| <b>"Milestone Date"</b>                 | the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;   |
| <b>"Month"</b>                          | a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;  |
| <b>"National Insurance"</b>             | contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);   |
| <b>"New IPR"</b>                        | IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of a Contract and updates and amendments of these items including (but not limited to) database schema; and/or<br><br>IPR in or arising as a result of the performance of the Supplier's obligations under a Contract and all updates and amendments to the same;<br><br>but shall not include the Supplier's Existing IPR; |

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| <p><b>"Occasion of Tax Non-Compliance"</b></p> | <p>where:</p> <ul style="list-style-type: none"> <li>a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> <li>i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> <li>ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or</li> </ul> </li> <li>b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion;</li> </ul>   |
| <p><b>"Open Book Data"</b></p>                 | <p>complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Call-Off Contract, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> <li>a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Deliverables;</li> <li>b) operating expenditure relating to the provision of the Deliverables including an analysis showing: <ul style="list-style-type: none"> <li>iii) the unit costs and quantity of Goods and any other consumables and bought-in Deliverables;</li> <li>iv) staff costs broken down into the number and grade/role of all Supplier Staff (free of any contingency) together with a list of agreed rates against each grade;</li> <li>v) a list of Costs underpinning those rates for each grade, being the agreed rate less the Supplier Profit Margin; and</li> <li>vi) Reimbursable Expenses, if allowed under the Order Form;</li> </ul> </li> <li>c) Overheads;</li> <li>d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the</li> </ul> |

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|  | <p>Deliverables;</p> <p>e) the Supplier Profit achieved over the Framework Contract Period and on an annual basis;</p> <p>f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;</p> <p>g) an explanation of the type and value of risk and contingencies associated with the provision of the Deliverables, including the amount of money attributed to each risk and/or contingency; and</p> <p>h) the actual Costs profile for each Service Period;</p> |
| <b>"Order"</b>                           | means an order for the provision of the Deliverables placed by a Buyer with the Supplier under a Contract;   |
| <b>"Order Form"</b>                      | a completed Order Form Template (or equivalent information issued by the Buyer) used to create a Call-Off Contract;  |
| <b>"Order Form Template"</b>             | the template in Framework Schedule 6 (Order Form Template and Call-Off Schedules);   |
| <b>"Other Contracting Authority"</b>     | any actual or potential Buyer under the Framework Contract;  |
| <b>"Overhead"</b>                        | those amounts which are intended to recover a proportion of the Supplier's or the Key Subcontractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Staff and accordingly included within limb (a) of the definition of "Costs";  |
| <b>"Parliament"</b>                      | takes its natural meaning as interpreted by Law;   |
| <b>"Party"</b>                           | in the context of the Framework Contract, CCS or the Supplier, and in the context of a Call-Off Contract the Buyer or the Supplier. <b>"Parties"</b> shall mean both of them where the context permits;  |
| <b>"Performance Indicators" or "PIs"</b> | the performance measurements and targets in respect of the Supplier's performance of the Framework Contract set out in Framework Schedule 4 (Framework Management);  |

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| <b>"Personal Data"</b>              | has the meaning given to it in the GDPR;  |
| <b>"Personal Data Breach"</b>       | has the meaning given to it in the GDPR;  |
| <b>"Personnel"</b>                  | all directors, officers, employees, agents, consultants and suppliers of a Party and/or of any Subcontractor and/or Subprocessor engaged in the performance of its obligations under a Contract;  |
| <b>"Prescribed Person"</b>          | a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in 'Whistleblowing: list of prescribed people and bodies', 24 November 2016, available online at: <a href="https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies">https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies</a> ;   |
| <b>"Processing"</b>                 | has the meaning given to it in the GDPR;  |
| <b>"Processor"</b>                  | has the meaning given to it in the GDPR;  |
| <b>"Processor Personnel"</b>        | all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under a Contract;   |
| <b>"Progress Meeting"</b>           | a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;   |
| <b>"Progress Meeting Frequency"</b> | the frequency at which the Supplier shall conduct a Progress Meeting in accordance with Clause 6.1 as specified in the Order Form;  |
| <b>"Progress Report"</b>            | a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates;   |
| <b>"Progress Report Frequency"</b>  | the frequency at which the Supplier shall deliver Progress Reports in accordance with Clause 6.1 as specified in the Order Form;  |
| <b>"Prohibited Acts"</b>            | <p>a) to directly or indirectly offer, promise or give any person working for or engaged by a Buyer or any other public body a financial or other advantage to:</p> <p>vii) induce that person to perform improperly a relevant function or activity; or</p> <p>viii) reward that person for improper performance of a relevant function or activity;</p> <p>b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with each Contract; or</p> <p>c) committing any offence:</p> <p>ix) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</p> |

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|                                     | <p>x) under legislation or common law concerning fraudulent acts; or</p> <p>xi) defrauding, attempting to defraud or conspiring to defraud a Buyer or other public body; or</p> <p>d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</p>  |
| <b>"Protective Measures"</b>        | appropriate technical and organisational measures which may include: pseudonymisation and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Framework Schedule 9 (Cyber Essentials Scheme), if applicable, in the case of the Framework Contract or Call-Off Schedule 9 (Security), if applicable, in the case of a Call-Off Contract. |
| <b>"Recall"</b>                     | a request by the Supplier to return Goods to the Supplier or the manufacturer after the discovery of safety issues or defects (including defects in the right IPR rights) that might endanger health or hinder performance;  |
| <b>"Recipient Party"</b>            | the Party which receives or obtains directly or indirectly Confidential Information;   |
| <b>"Rectification Plan"</b>         | <p>a) the Supplier's plan (or revised plan) to rectify it's breach using the template in Joint Schedule 10 (Rectification Plan) which shall include:</p> <p>b) full details of the Default that has occurred, including a root cause analysis;</p> <p>c) the actual or anticipated effect of the Default; and</p> <p>d) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable);</p>  |
| <b>"Rectification Plan Process"</b> | the process set out in Clause 10.3.1 to 10.3.4 (Rectification Plan Process);   |
| <b>"Regulations"</b>                | the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);   |
| <b>"Reimbursable Expenses"</b>      | the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer's expenses policy current from time to time, but not including:   |

NHS Workforce Alliance

Delivered by:

Crown Commercial Service

NHS Commercial Solutions

NHS East of England Collaborative Procurement Hub

NHS London Procurement Partnership

NHS North of England Commercial Procurement Collaborative



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|  | <p>a) travel expenses incurred as a result of Supplier Staff travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agreed in advance in writing; and</p> <p>b) subsistence expenses incurred by Supplier Staff whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;</p>  |
| <b>"Relevant Authority"</b>                            | the Authority which is party to the Contract to which a right or obligation is owed, as the context requires;   |
| <b>"Relevant Authority's Confidential Information"</b> | <p>a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Relevant Authority (including all Relevant Authority Existing IPR and New IPR);</p> <p>b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Relevant Authority's attention or into the Relevant Authority's possession in connection with a Contract; and</p> <p>information derived from any of the above;</p> |
| <b>"Relevant Requirements"</b>                         | all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;   |
| <b>"Relevant Tax Authority"</b>                        | HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;  |
| <b>"Reminder Notice"</b>                               | a notice sent in accordance with Clause 10.5 given by the Supplier to the Buyer providing notification that payment has not been received on time;  |
| <b>"Replacement Deliverables"</b>                      | any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any of the Deliverables following the Call-Off Expiry Date, whether those goods are provided by the Buyer internally and/or by any third party;  |
| <b>"Replacement Subcontractor"</b>                     | a Subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Subcontractor of any such Subcontractor);  |
| <b>"Replacement Supplier"</b>                          | any third party provider of Replacement Deliverables appointed by or at the direction of the Buyer from time to time or where the   |



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|                                   | Buyer is providing Replacement Deliverables for its own account, shall also include the Buyer;  |
| <b>"Request For Information"</b>  | a request for information or an apparent request relating to a Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;   |
| <b>"Required Insurances"</b>      | the insurances required by Joint Schedule 3 (Insurance Requirements) or any additional insurances specified in the Order Form;  |
| <b>"Satisfaction Certificate"</b> | the certificate (materially in the form of the document contained in of Part B of Call-Off Schedule 13 (Implementation Plan and Testing) or as agreed by the Parties where Call-Off Schedule 13 is not used in this Contract) granted by the Buyer when the Supplier has met all of the requirements of an Order, Achieved a Milestone or a Test; |
| <b>"Security Management Plan"</b> | the Supplier's security management plan prepared pursuant to Call-Off Schedule 9 (Security) (if applicable);  |
| <b>"Security Policy"</b>          | the Buyer's security policy, referred to in the Order Form, in force as at the Call-Off Start Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;  |
| <b>"Self Audit Certificate"</b>   | means the certificate in the form as set out in Framework Schedule 8 (Self Audit Certificate);  |
| <b>"Serious Fraud Office"</b>     | the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;   |
| <b>"Service Levels"</b>           | any service levels applicable to the provision of the Deliverables under the Call Off Contract (which, where Call Off Schedule 14 (Service Levels) is used in this Contract, are specified in the Annex to Part A of such Schedule);  |
| <b>"Service Period"</b>           | has the meaning given to it in the Order Form;  |
| <b>"Services"</b>                 | services made available by the Supplier as specified in Framework Schedule 1 (Specification) and in relation to a Call-Off Contract as specified in the Order Form;   |
| <b>"Service Transfer"</b>         | any transfer of the Deliverables (or any part of the Deliverables), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;   |
| <b>"Service Transfer Date"</b>    | the date of a Service Transfer;   |
| <b>"Sites"</b>                    | any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: <ul style="list-style-type: none"> <li>a) the Deliverables are (or are to be) provided; or</li> <li>b) the Supplier manages, organises or otherwise directs the</li> </ul>   |

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|                                    | <p>provision or the use of the Deliverables;</p> <p>c) those premises at which any Supplier Equipment or any part of the Supplier System is located (where any part of the Deliverables provided falls within Call-Off Schedule 6 (ICT Services));</p>  |
| <b>"SME"</b>                       | an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises;   |
| <b>"Special Terms"</b>             | any additional Clauses set out in the Framework Award Form or Order Form which shall form part of the respective Contract;  |
| <b>"Specific Change in Law"</b>    | a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Start Date;  |
| <b>"Specification"</b>             | the specification set out in Framework Schedule 1 (Specification), as may, in relation to a Call-Off Contract, be supplemented by the Order Form;   |
| <b>"Standards"</b>                 | <p>any:</p> <p>a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;</p> <p>b) standards detailed in the specification in Schedule 1 (Specification);</p> <p>c) standards detailed by the Buyer in the Order Form or agreed between the Parties from time to time;</p> <p>d) relevant Government codes of practice and guidance applicable from time to time;</p> |
| <b>"Start Date"</b>                | in the case of the Framework Contract, the date specified on the Framework Award Form, and in the case of a Call-Off Contract, the date specified in the Order Form;  |
| <b>"Statement of Requirements"</b> | a statement issued by the Buyer detailing its requirements in respect of Deliverables issued in accordance with the Call-Off Procedure;   |
| <b>"Storage Media"</b>             | the part of any device that is capable of storing and retrieving data;  |

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| <b>"Sub-Contract"</b>                        | any contract or agreement (or proposed contract or agreement), other than a Call-Off Contract or the Framework Contract, pursuant to which a third party: <ul style="list-style-type: none"> <li>a) provides the Deliverables (or any part of them);</li> <li>b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or</li> <li>c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);</li> </ul>  |
| <b>"Subcontractor"</b>                       | any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;  |
| <b>"Subprocessor"</b>                        | any third Party appointed to process Personal Data on behalf of that Processor related to a Contract;  |
| <b>"Supplier"</b>                            | the person, firm or company identified in the Framework Award Form;  |
| <b>"Supplier Assets"</b>                     | all assets and rights used by the Supplier to provide the Deliverables in accordance with the Call-Off Contract but excluding the Buyer Assets;  |
| <b>"Supplier Authorised Representative"</b>  | the representative appointed by the Supplier named in the Framework Award Form, or later defined in a Call-Off Contract;   |
| <b>"Supplier's Confidential Information"</b> | <ul style="list-style-type: none"> <li>a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier;</li> <li>b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with a Contract;</li> <li>c) Information derived from any of (a) and (b) above;</li> </ul> |
| <b>"Supplier's Contract Manager"</b>         | the person identified in the Order Form appointed by the Supplier to oversee the operation of the Call-Off Contract and any alternative person whom the Supplier intends to appoint to the role, provided that the Supplier informs the Buyer prior to the appointment;  |
| <b>"Supplier Equipment"</b>                  | the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the   |

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|                                     | Buyer) in the performance of its obligations under this Call-Off Contract;   |
| <b>"Supplier Marketing Contact"</b> | shall be the person identified in the Framework Award Form;  |
| <b>"Supplier Non-Performance"</b>   | where the Supplier has failed to: <ul style="list-style-type: none"> <li>a) Achieve a Milestone by its Milestone Date;</li> <li>b) provide the Goods and/or Services in accordance with the Service Levels ; and/or</li> <li>c) comply with an obligation under a Contract;</li> </ul> |
| <b>"Supplier Profit"</b>            | in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions and total Costs (in nominal cash flow terms) in respect of a Call-Off Contract for the relevant period;   |
| <b>"Supplier Profit Margin"</b>     | in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;       |
| <b>"Supplier Staff"</b>             | all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under a Contract;   |
| <b>"Supporting Documentation"</b>   | sufficient information in writing to enable the Buyer to reasonably assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer under the Call-Off Contract detailed in the information are properly payable;  |
| <b>"Termination Notice"</b>         | a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate a Contract on a specified date and setting out the grounds for termination;                                     |
| <b>"Test Issue"</b>                 | any variance or non-conformity of the Deliverables from their requirements as set out in a Call-Off Contract;  |
| <b>"Test Plan"</b>                  | a plan: <ul style="list-style-type: none"> <li>a) for the Testing of the Deliverables; and</li> <li>b) setting out other agreed criteria related to the achievement of Milestones;</li> </ul>  |
| <b>"Tests "</b>                     | any tests required to be carried out pursuant to a Call-Off Contract as set out in the Test Plan or elsewhere in a Call-Off Contract and <b>"Tested"</b> and <b>"Testing"</b> shall be construed accordingly;  |

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| <b>"Third Party IPR"</b>                 | Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;   |
| <b>"Transferring Supplier Employees"</b> | those employees of the Supplier and/or the Supplier's Subcontractors to whom the Employment Regulations will apply on the Service Transfer Date;  |
| <b>"Transparency Information"</b>        | the Transparency Reports and the content of a Contract, including any changes to this Contract agreed from time to time, except for –<br><br>(i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Relevant Authority; and<br><br>(ii) Commercially Sensitive Information;  |
| <b>"Transparency Reports"</b>            | the information relating to the Deliverables and performance of the Contracts which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Call-Off Schedule 1 (Transparency Reports);   |
| <b>"Variation"</b>                       | any change to a Contract;   |
| <b>"Variation Form"</b>                  | the form set out in Joint Schedule 2 (Variation Form);  |
| <b>"Variation Procedure"</b>             | the procedure set out in Clause 24 (Changing the contract);   |
| <b>"VAT"</b>                             | value added tax in accordance with the provisions of the Value Added Tax Act 1994;  |
| <b>"VCSE"</b>                            | a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;   |
| <b>"Worker"</b>                          | any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> ) applies in respect of the Deliverables; |
| <b>"Working Day"</b>                     | any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Order Form;   |
| <b>"Work Day"</b>                        | 8.0 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day; and  |
| <b>"Work Hours"</b>                      | the hours spent by the Supplier Staff properly working on the provision of the Deliverables including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks.   |

## Joint Schedule 2 (Variation Form)

This form is to be used in order to change a contract in accordance with Clause 24  
(Changing the Contract)

| Contract Details                               |   |                           |
|--|---|---------------------------|
| This variation is between:                     | <b>[delete]</b> as applicable: CCS / Buyer] ("CCS" "the Buyer")<br>And<br><b>[insert]</b> name of Supplier] ("the Supplier")  |                           |
| Contract name:                                 | <b>[insert]</b> name of contract to be changed] ("the Contract")  |                           |
| Contract reference number:                     | <b>[insert]</b> contract reference number]  |                           |
| Details of Proposed Variation                  |   |                           |
| Variation initiated by:                        | <b>[delete]</b> as applicable: CCS/Buyer/Supplier]  |                           |
| Variation number:                              | <b>[insert]</b> variation number]   |                           |
| Date variation is raised:                      | <b>[insert]</b> date]   |                           |
| Proposed variation                             |   |                           |
| Reason for the variation:                      | <b>[insert]</b> reason]   |                           |
| An Impact Assessment shall be provided within: | <b>[insert]</b> number] days  |                           |
| Impact of Variation                            |   |                           |
| Likely impact of the proposed variation:       | <b>[Supplier to insert]</b> assessment of impact]   |                           |
| Outcome of Variation                           |   |                           |
| Contract variation:                            | This Contract detailed above is varied as follows: <ul style="list-style-type: none"> <li><b>[CCS/Buyer to insert]</b> original Clauses or Paragraphs to be varied and the changed clause]</li> </ul> |                           |
| Financial variation:                           | Original Contract Value:  | £ <b>[insert]</b> amount] |

|  |                                   |                           |
|--|-----------------------------------|---------------------------|
|  | Additional cost due to variation: | £ <b>[insert]</b> amount] |
|  | New Contract value:               | £ <b>[insert]</b> amount] |

1. This Variation must be agreed and signed by both Parties to the Contract and shall only be effective from the date it is signed by **[delete]** as applicable: CCS / Buyer]
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the **[delete]** as applicable:  
CCS / Buyer]

|                    |  |
|--------------------|--|
| Signature          |  |
| Date               |  |
| Name (in Capitals) |  |
| Address            |  |
|                    |  |

Signed by an authorised signatory to sign for and on behalf of the Supplier

|                    |  |
|--------------------|--|
| Signature          |  |
| Date               |  |
| Name (in Capitals) |  |
| Address            |  |
|                    |  |



# Joint Schedule 3 (Insurance Requirements)

## 1. The insurance you need to have

- 1.1 The Supplier shall take out and maintain, or procure the taking out and maintenance of the insurances as set out in the Annex to this Schedule, any additional insurances required under a Call-Off Contract (specified in the applicable Order Form) ("**Additional Insurances**") and any other insurances as may be required by applicable Law (together the "**Insurances**"). The Supplier shall ensure that each of the Insurances is effective no later than:

1.1.1 the Framework Start Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and

1.1.2 the Call-Off Contract Effective Date in respect of the Additional Insurances.

- 1.2 The Insurances shall be:

1.2.1 maintained in accordance with Good Industry Practice;

1.2.2 (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time;

1.2.3 taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and

1.2.4 maintained for at least six (6) years after the End Date.

- 1.3 The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Relevant Authority shall be indemnified in respect of claims made against the Relevant Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Supplier is legally liable.

## 2. How to manage the insurance

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:

2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to Deliverables as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;

2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and

2.1.3 Hold all policies in respect of the Insurances and cause any

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insurance broker affecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

### **3. What happens if you aren't insured**

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

### **4. Evidence of insurance you must provide**

- 4.1 The Supplier shall upon the Start Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Relevant Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule.

### **5. Making sure you are insured to the required amount**

- 5.1 The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained at all times for the minimum limit of indemnity specified in this Contract and if any claims are made which do not relate to this Contract then the Supplier shall notify the Relevant Authority and provide details of its proposed solution for maintaining the minimum limit of indemnity.

### **6. Cancelled Insurance**

- 6.1 The Supplier shall notify the Relevant Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Relevant Authority (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

### **7. Insurance claims**

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or each Contract for which it may be entitled to claim under

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any of the Insurances. In the event that the Relevant Authority receives a claim relating to or arising out of a Contract or the Deliverables, the Supplier shall cooperate with the Relevant Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

- 7.2 Except where the Relevant Authority is the claimant party, the Supplier shall give the Relevant Authority notice within twenty (20) Working Days after any insurance claim in excess of 10% of the sum required to be insured pursuant to Paragraph 5.1 relating to or arising out of the provision of the Deliverables or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Relevant Authority) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Relevant Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

## **ANNEX: REQUIRED INSURANCES**

- 1.** The Supplier shall hold the following [standard] insurance cover from the Framework Start Date in accordance with this Schedule:
  - 1.1** professional indemnity insurance [with cover (for a single event or a series of related events and in the aggregate) of not less than] five million pounds (£5,000,000);
  - 1.2** public liability insurance [with cover (for a single event or a series of related events and in the aggregate)] of not less than five million pounds (£5,000,000); and
  - 1.3** employers' liability insurance [with cover (for a single event or a series of related events and in the aggregate) of not less than] five million pounds (£5,000,000).

# Joint Schedule 4 (Commercially Sensitive Information)

## 1. What is Commercially Sensitive Information?

- 1.1 In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
- 1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below and in the Order Form (which shall be deemed incorporated into the table below).
- 1.3 Without prejudice to the Relevant Authority's obligation to disclose Information in accordance with FOIA or Clause 16 (When you can share information), the Relevant Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

| No. | Date | Item(s) | Duration of Confidentiality |
|-----|------|---------|-----------------------------|
|     | N/A  | N/A     | N/A                         |

## Joint Schedule 7 (Financial Difficulties)

### 1. Definitions

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|                                   |  |
|-----------------------------------|--|
| <b>"Credit Rating Threshold"</b>  | the minimum credit rating level for the Monitored Company as set out in Annex 2  |
| <b>"Financial Distress Event"</b> | <p>the occurrence or one or more of the following events:</p> <ul style="list-style-type: none"> <li>a) the credit rating of the Monitored Company dropping below the applicable Credit Rating Threshold;</li> <li>b) the Monitored Company issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;</li> <li>c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Monitored Company;</li> <li>d) Monitored Company committing a material breach of covenant to its lenders;</li> <li>e) a Key Subcontractor (where applicable) notifying CCS that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute; or</li> <li>f) any of the following: <ul style="list-style-type: none"> <li>i) commencement of any litigation against the Monitored Company with respect to financial indebtedness or obligations under a contract;</li> <li>ii) non-payment by the Monitored Company of any financial indebtedness;</li> </ul> </li> </ul> |



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|   | <p>iii) any financial indebtedness of the Monitored Company becoming due as a result of an event of default; or</p> <p>iv) the cancellation or suspension of any financial indebtedness in respect of the Monitored Company</p> <p>in each case which CCS reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance of any Contract and delivery of the Deliverables in accordance with any Call-Off Contract;</p> |
| <b>"Financial Distress Service Continuity Plan"</b> | a plan setting out how the Supplier will ensure the continued performance and delivery of the Deliverables in accordance with each Call-Off Contract in the event that a Financial Distress Event occurs;  |
| <b>"Monitored Company"</b>                          | Supplier [the Framework Guarantor/ [and Call-Off Guarantor] or any Key Subcontractor]  |
| <b>"Rating Agencies"</b>                            | the rating agencies listed in Annex 1.   |

## 2. When this Schedule applies

2.1 The Parties shall comply with the provisions of this Schedule in relation to the assessment of the financial standing of the Monitored Companies and the consequences of a change to that financial standing.

2.2 The terms of this Schedule shall survive:

2.2.1 under the Framework Contract until the later of (a) the termination or expiry of the Framework Contract or (b) the latest date of termination or expiry of any Call-Off Contract entered into under the Framework Contract (which might be after the date of termination or expiry of the Framework Contract); and

2.2.2 under the Call-Off Contract until the termination or expiry of the Call-Off-Contract.

## 3. What happens when your credit rating changes

3.1 The Supplier warrants and represents to CCS that as at the Start Date the long term credit ratings issued for the Monitored Companies by each of the Rating Agencies are as set out in Annex 2.

3.2 The Supplier shall promptly (and in any event within five (5) Working Days) notify CCS in writing if there is any downgrade in the credit rating issued by any Rating Agency for a Monitored Company.

3.3 If there is any downgrade credit rating issued by any Rating Agency for the Monitored Company the Supplier shall ensure that the Monitored Company's auditors thereafter provide CCS within 10 Working Days of the end of each Contract Year and within 10 Working Days of written request by CCS (such requests not to exceed 4 in any Contract Year) with written calculations of the quick ratio for the Monitored Company as at the end of each Contract Year or such other date as may be requested by CCS. For these purposes the "quick ratio" on any date means:

$$\frac{A + B + C}{D}$$

where:

|   |  |
|---|--|
| A | is the value at the relevant date of all cash in hand and at the bank of the Monitored Company;  |
| B | is the value of all marketable securities held by the Supplier the Monitored Company determined using closing prices on the Working Day preceding the relevant date; |
| C | is the value at the relevant date of all account receivables of the Monitored; and   |
| D | is the value at the relevant date of the current liabilities of the Monitored Company.   |

3.4 The Supplier shall:

- 3.4.1 regularly monitor the credit ratings of each Monitored Company with the Rating Agencies; and
- 3.4.2 promptly notify (or shall procure that its auditors promptly notify) CCS in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.

3.5 For the purposes of determining whether a Financial Distress Event has occurred the credit rating of the Monitored Company shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Monitored Company at or below the applicable Credit Rating Threshold.

## 4. What happens if there is a financial distress event

4.1 In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if CCS becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and CCS shall have the rights and remedies as set out in Paragraphs 4.2 to 4.6.

4.2 The Supplier shall and shall procure that the other Monitored Companies shall:

4.2.1 at the request of CCS meet CCS as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event) to review the effect of the Financial Distress Event on the continued performance of each Contract and delivery of the Deliverables in accordance each Call-Off Contract; and

4.2.2 where CCS reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3.1) that the Financial Distress Event could impact on the continued performance of each Contract and delivery of the Deliverables in accordance with each Call-Off Contract:

- (a) submit to CCS for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event); and
- (b) provide such financial information relating to the Monitored Company as CCS may reasonably require.

4.3 If CCS does not (acting reasonably) approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to CCS within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is Approved by CCS or referred to the Dispute Resolution Procedure.

4.4 If CCS considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.

4.5 Following Approval of the Financial Distress Service Continuity Plan by CCS, the Supplier shall:

- 4.5.1 on a regular basis (which shall not be less than Monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance of each Contract and delivery of the Deliverables in accordance with each Call-Off Contract;
- 4.5.2 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 4.6.1, submit an updated Financial Distress Service Continuity Plan to CCS for its Approval, and the provisions of Paragraphs 4.5 and 4.6 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and
- 4.5.3 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

4.6 Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify CCS and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 4.7.

4.7 CCS shall be able to share any information it receives from the Buyer in accordance with this Paragraph with any Buyer who has entered into a Call-Off Contract with the Supplier.

## **5. When CCS or the Buyer can terminate for financial distress**

5.1 CCS shall be entitled to terminate this Contract and Buyers shall be entitled to terminate their Call-Off Contracts for material Default if:

- 5.1.1 the Supplier fails to notify CCS of a Financial Distress Event in accordance with Paragraph 3.4;
- 5.1.2 CCS and the Supplier fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 4.3 to 4.5; and/or
- 5.1.3 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 4.6.3.

## **6. What happens If your credit rating is still good**

6.1 Without prejudice to the Supplier's obligations and CCS' and the Buyer's rights and remedies under Paragraph 5, if, following the occurrence of a Financial Distress Event, the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

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- 6.1.1 the Supplier shall be relieved automatically of its obligations under Paragraphs 4.3 to 4.6; and
- 6.1.2 CCS shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 4.3.2(b).

## **ANNEX 1: RATING AGENCIES**

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## ANNEX 2: CREDIT RATINGS & CREDIT RATING THRESHOLDS

### Part 1: Current Rating

| Entity  | Credit rating (long term)                                       |
|---|---|
| REDACTED TEXT under FOIA Section 43 (2), Commercial Information | REDACTED TEXT under FOIA Section 43 (2), Commercial Information |
|   |   |
|   |   |

## Joint Schedule 10 (Rectification Plan)

| Request for <b>[Revised]</b> Rectification Plan                 |   |                  |
|---|---|------------------|
| Details of the Default:   | <b>[Guidance]:</b> Explain the Default, with clear schedule and clause references as appropriate] |                  |
| Deadline for receiving the <b>[Revised]</b> Rectification Plan: | <b>[add]</b> date (minimum 10 days from request)]   |                  |
| Signed by <b>[CCS/Buyer]</b> :                                  |   | Date:            |
| Supplier <b>[Revised]</b> Rectification Plan                    |   |                  |
| Cause of the Default  | <b>[add]</b> cause]   |                  |
| Anticipated impact assessment:                                  | <b>[add]</b> impact]  |                  |
| Actual effect of Default:                                       | <b>[add]</b> effect]  |                  |
| Steps to be taken to rectification:                             | <b>Steps</b>  | <b>Timescale</b> |
|   | 1.  | <b>[date]</b>    |
|   | 2.  | <b>[date]</b>    |
|   | 3.  | <b>[date]</b>    |
|   | 4.  | <b>[date]</b>    |
|   | <b>[...]</b>  | <b>[date]</b>    |
| Timescale for complete Rectification of Default                 | <b>[X]</b> Working Days   |                  |
| Steps taken to prevent recurrence of Default                    | <b>Steps</b>  | <b>Timescale</b> |
|   | 1.  | <b>[date]</b>    |
|   | 2.  | <b>[date]</b>    |

|   |  |        |  |
|---|--|--------|--|
|   | 3.   | [date] |  |
|   | 4.   | [date] |  |
|   | [...]  | [date] |  |
| Signed by the Supplier:                         |  | Date:  |  |
| <b>Review of Rectification Plan [CCS/Buyer]</b> |  |        |  |
| Outcome of review                               | [Plan Accepted] [Plan Rejected] [Revised Plan Requested] |        |  |
| Reasons for Rejection (if applicable)           | [add] reasons]   |        |  |
| Signed by [CCS/Buyer]                           |  | Date:  |  |

# Joint Schedule 11 (Processing Data)

## Definitions

1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

**“Processor Personnel”** all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under a Contract;

## Status of the Controller

2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA 2018. A Party may act as:

- (a) “Controller” in respect of the other Party who is “Processor”;
- (b) “Processor” in respect of the other Party who is “Controller”;
- (c) “Joint Controller” with the other Party;
- (d) “Independent Controller” of the Personal Data where the other Party is also “Controller”,

in respect of certain Personal Data under a Contract and shall specify in Annex 1 (*Processing Personal Data*) which scenario they think shall apply in each situation.

## Where one Party is Controller and the other Party its Processor

3. Where a Party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 (*Processing Personal Data*) by the Controller.
4. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
5. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged Processing and the purpose of the Processing;
  - (b) an assessment of the necessity and proportionality of the Processing in

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relation to the Deliverables;

- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

**6.** The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:

- (a) Process that Personal Data only in accordance with Annex 1 (*Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall notify the Controller before Processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 14.3 of the Core Terms, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Personal Data Breach;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that :
  - (i) the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 (*Processing Personal Data*));
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Processor's duties under this Joint Schedule 11, Clauses 14 (*Data protection*), 15 (*What you must keep confidential*) and 16 (*When you can share information*) of the Core Terms;
    - (B) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Contract; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (d) not transfer Personal Data outside of the UK or EU unless the prior written consent of the Controller has been obtained and the following conditions are

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fulfilled:

- (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or LED Article 37) as determined by the Controller;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
    - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
  - (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
7. Subject to paragraph 8 of this Joint Schedule 11, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Personal Data Breach.
8. The Processor's obligation to notify under paragraph 7 of this Joint Schedule 11 shall include the provision of further information to the Controller, as details become available.
9. Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 7 of this Joint Schedule 11 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately



providing:

- (a) the Controller with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Controller following any Personal Data Breach; and/or
  - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 10.** The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Joint Schedule 11. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the Processing is not occasional;
  - (b) the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
  - (c) the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 11.** The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 12.** The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 13.** Before allowing any Subprocessor to Process any Personal Data related to the Contract, the Processor must:
- (a) notify the Controller in writing of the intended Subprocessor and Processing;
  - (b) obtain the written consent of the Controller;
  - (c) enter into a written agreement with the Subprocessor which give effect to the terms set out in this Joint Schedule 11 such that they apply to the Subprocessor; and
  - (d) provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
- 14.** The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
- 15.** The Relevant Authority may, at any time on not less than thirty (30) Working

Days' notice, revise this Joint Schedule 11 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).

16. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Relevant Authority may on not less than thirty (30) Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## Where the Parties are Joint Controllers of Personal Data

17. In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall implement paragraphs that are necessary to comply with UK GDPR Article 26 based on the terms set out in Annex 2 to this Joint Schedule 11.

## Independent Controllers of Personal Data

18. With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
19. Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
20. Where a Party has provided Personal Data to the other Party in accordance with paragraph 18 of this Joint Schedule 11 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
21. The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of the Contract.
22. The Parties shall only provide Personal Data to each other:
  - (a) to the extent necessary to perform their respective obligations under the Contract;
  - (b) in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the UK GDPR); and
  - (c) where it has recorded it in Annex 1 (*Processing Personal Data*).
23. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying

likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.

24. A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.
25. Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Contract (**“Request Recipient”**):
- (a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
  - (b) where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
    - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
    - (ii) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
26. Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the Contract and shall:
- (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
  - (b) implement any measures necessary to restore the security of any compromised Personal Data;
  - (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data

Protection Legislation (including the timeframes set out therein); and

- (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 27. Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Contract as specified in Annex 1 (*Processing Personal Data*).
- 28. Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under the Contract which is specified in Annex 1 (*Processing Personal Data*).
- 29. Notwithstanding the general application of paragraphs 2 to 16 of this Joint Schedule 11 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with paragraphs 18 to 28 of this Joint Schedule 11.

## Annex 1 - Processing Personal Data

This Annex shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Annex shall be with the Relevant Authority at its absolute discretion.

- 1.1 The contact details of the Relevant Authority's Data Protection Officer are: **REDACTED TEXT under FOIA Section 40, Personal Information**
- 1.2 The contact details of the Supplier's Data Protection Officer are: **REDACTED TEXT under FOIA Section 40, Personal Information**
- 1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
- 1.4 Any such further instructions shall be incorporated into this Annex.
- 1.5 IBCA will not share personal details with ProMedical and will anonymise all data before it is shared.

| Description   | Details  |
|---|--|
| Identity of Controller for each Category of Personal Data | <p><b>The Relevant Authority is Controller and the Supplier is Processor</b></p> <p>The Parties acknowledge that in accordance with paragraph 3 to paragraph 16 and for the purposes of the Data Protection Legislation, the Relevant Authority is the Controller and the Supplier is the Processor of the following Personal Data:</p> <ul style="list-style-type: none"><li>• <b>Type:</b> personal &amp; special category.</li><li>• <b>Special categories include:</b> racial or ethnic origin, health data (including disability and dietary requirements), data concerning sex life or sexual orientation.</li></ul> |
| Duration of the Processing                                | <p>Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under the Contract. The Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data. This will be till end of the contract 11<sup>th</sup> May 2028.</p>  |
| Nature and purposes of the Processing                     | <p>The Authority may request, under the terms of this Framework Contract, access to files containing Personal Data if applicable of Temporary Workers deployed to Buyers in the Cabinet Office in order to perform its duties.</p>   |

|   |   |
|---|---|
|   | The Parties may retain business contacts for Supplier and Authority personnel for the purposes of the routine management of the Framework Contract.   |
| Type of Personal Data   | No personal data will be shared only anonymised.  |
| Categories of Data Subject  | Claimant data will be anonymised and no personal data will be shared.   |
| Plan for return and destruction of the data once the Processing is complete<br><br>UNLESS requirement under Union or Member State law to preserve that type of data | <p>Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under the Contract. The Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data.</p> <p>The Parties will have and maintain privacy policies for the management of Personal Data under the applicable Data Protection Legislation and, plans for destruction of data once the Processing is complete.</p> <p>The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained, and to destroy any physical copies of Personal Data, as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by the Party for statutory compliance purposes or as otherwise required by the Contract), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.</p> |



## Annex 2 - Joint Controller Agreement

### 1. Joint Controller Status and Allocation of Responsibilities

1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (Joint Controller Agreement) in replacement of paragraphs 3-16 of Joint Schedule 11 (Where one Party is Controller and the other Party is Processor) and paragraphs 18-28 of Joint Schedule 11 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.

1.2 The Parties agree that the Promedical Personnel Limited

is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;

- (a) shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
- (b) is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;
- (c) is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Deliverables where consent is the relevant legal basis for that Processing; and
- (d) shall make available to Data Subjects the essence of this Annex (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the [Supplier's/Relevant Authority's] privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).

1.3 Notwithstanding the terms of clause 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Controller.

### 2. Undertakings of both Parties

2.1 The Supplier and the Relevant Authority each undertake that they shall:

- (a) report to the other Party every three months on:
  - (i) the volume of Data Subject Access Request (or purported Data

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Subject Access Requests) from Data Subjects (or third parties on their behalf);

- (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
- (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
- (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
- (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law,

that it has received in relation to the subject matter of the Contract during that period;

- (b) notify each other immediately if it receives any request, complaint or communication made as referred to in Clauses 2.1(a)(i) to (v);
- (c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Clauses 2.1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
- (d) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Deliverables and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under the Contract or is required by Law) ensure consent has been obtained from the Data Subject prior to disclosing or transferring the Personal Data to the third party. For the avoidance of doubt, the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;
- (e) request from the Data Subject only the minimum information necessary to provide the Deliverables and treat such extracted information as Confidential Information;
- (f) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;
- (g) take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its

## Personnel:

- (i) are aware of and comply with their duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information;
    - (ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so; and
    - (iii) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
  - (h) ensure that it has in place Protective Measures as appropriate to protect against a Personal Data Breach having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Personal Data Breach;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (i) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that it holds; and
  - (j) ensure that it notifies the other Party as soon as it becomes aware of a Personal Data Breach.
- 2.2 Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

### 3. Data Protection Breach

- 3.1 Without prejudice to clause 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:

- (a) sufficient information and in a timescale which allows the other Party to meet

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any obligations to report a Personal Data Breach under the Data Protection Legislation; and

- (b) all reasonable assistance, including:
  - (i) cooperation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
  - (ii) cooperation with the other Party including taking such reasonable steps as are directed by the other Party to assist in the investigation, mitigation and remediation of a Personal Data Breach;
  - (iii) coordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach; and/or
  - (iv) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Clause 3.2.

3.2 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

- (a) the nature of the Personal Data Breach;
- (b) the nature of Personal Data affected;
- (c) the categories and number of Data Subjects concerned;
- (d) the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;
- (e) measures taken or proposed to be taken to address the Personal Data Breach; and
- (f) describe the likely consequences of the Personal Data Breach.

## 4. Audit

4.1 The Supplier shall permit:

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- (a) the Relevant Authority, or a third-party auditor acting under the Relevant Authority's direction, to conduct, at the Relevant Authority's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Legislation; and/or
- (b) the Relevant Authority, or a third-party auditor acting under the Relevant Authority's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 UK GDPR by the Supplier so far as relevant to the Contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Deliverables.

4.2 The Relevant Authority may, in its sole discretion, require the Supplier to provide evidence of the Supplier's compliance with Clause 4.1 in lieu of conducting such an audit, assessment or inspection.

## 5. Impact Assessments

5.1 The Parties shall:

- (a) provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures); and
- (b) maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with the Contract, in accordance with the terms of Article 30 UK GDPR.

## 6. ICO Guidance

The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. The Relevant Authority may on not less than thirty (30) Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.

## 7. Liabilities for Data Protection Breach

7.1 If financial penalties are imposed by the Information Commissioner on either the Relevant Authority or the Supplier for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:

- (a) if in the view of the Information Commissioner, the Relevant Authority is

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responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Relevant Authority, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Relevant Authority, then the Relevant Authority shall be responsible for the payment of such Financial Penalties. In this case, the Relevant Authority will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Personal Data Breach. The Supplier shall provide to the Relevant Authority and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;

- (b) if in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the Relevant Authority is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Relevant Authority and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or
- (c) if no view as to responsibility is expressed by the Information Commissioner, then the Relevant Authority and the Supplier shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree to such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Clause 34 of the Core Terms (Resolving disputes).

7.2 If either the Relevant Authority or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction ("Court") by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such Personal Data Breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.

7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the "Claim Losses"):

- (a) if the Relevant Authority is responsible for the relevant Personal Data Breach, then the Relevant Authority shall be responsible for the Claim Losses;
- (b) if the Supplier is responsible for the relevant Personal Data Breach, then the Supplier shall be responsible for the Claim Losses: and
- (c) if responsibility for the relevant Personal Data Breach is unclear, then the Relevant Authority and the Supplier shall be responsible for the Claim Losses equally.



- 7.4 Nothing in either clause 7.2 or clause 7.3 shall preclude the Relevant Authority and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the Personal Data Breach and the legal and financial obligations of the Relevant Authority.

## 8. Termination

If the Supplier is in material Default under any of its obligations under this Annex 2 (*Joint Controller Agreement*), the Relevant Authority shall be entitled to terminate the Contract by issuing a Termination Notice to the Supplier in accordance with Clause 10 of the Core Terms (*Ending the contract*).

## 9. Sub-Processing

- 9.1 In respect of any Processing of Personal Data performed by a third party on behalf of a Party, that Party shall:
- (a) carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by the Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and
  - (b) ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

## 10. Data Retention

The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by the a Party for statutory compliance purposes or as otherwise required by the Contract), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.



## Call-Off Schedule 1 (Transparency Reports)

- 1.1 The Supplier recognises that the Buyer is subject to PPN 01/17 (Updates to transparency principles v1.1 (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>)). The Supplier shall comply with the provisions of this Schedule in order to assist the Buyer with its compliance with its obligations under that PPN.
- 1.2 Without prejudice to the Supplier's reporting requirements set out in the Framework Contract, within three (3) Months of the Start Date the Supplier shall submit to the Buyer for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in the Annex of this Schedule.
- 1.3 If the Buyer rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval within five (5) Working Days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Buyer. If the Parties fail to agree on a draft Transparency Report the Buyer shall determine what should be included. Any other disagreement in connection with Transparency Reports shall be treated as a Dispute.
- 1.4 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Buyer at the frequency referred to in the Annex of this Schedule.

## Annex A: List of Transparency Reports

| Title                 | Content  | Format        | Frequency |
|-----------------------|--|---------------|-----------|
| Monthly output update | Number of hours provided by clinical advisors, which clinical advisors and output of work (i.e. call, email, teach-in) | Word document | Monthly   |

## **Call-Off Schedule 2 (Staff Transfer) NOT USED**

Buyers will need to ensure that appropriate provisions are included to deal with staff transfer on both entry and exit, and, irrespective of whether TUPE does apply on entry if there are employees eligible for New Fair Deal pension protection then the appropriate pensions provisions will also need to be selected.

If there is a staff transfer from the Buyer on entry (1st generation) then Part A shall apply.

If there is a staff transfer from former/incumbent supplier on entry (2nd generation), Part B shall apply.

If there is both a 1st and 2nd generation staff transfer on entry, then both Part A and Part B shall apply.

If either Part A and/or Part B apply, then consider whether Part D (Pensions) shall apply and the Buyer shall indicate on the Order Form which Annex shall apply (either D1 (CSPS), D2 (NHSPS), D3 (LGPS) or D4 (Other Schemes)). Part D pensions may also apply where there is not a TUPE transfer for example where the incumbent provider is successful.

If there is no staff transfer (either 1st generation or 2nd generation) at the Start Date then Part C shall apply and Part D pensions may also apply where there is not a TUPE transfer for example where the incumbent provider is successful.

If the position on staff transfers is not known at the bid stage, include Parts A, B, C and D at the bid stage and then update the Buyer Contract Details before signing to specify whether Parts A and/or B, or C and D apply to the Contract.

Part E (dealing with staff transfer on exit) shall apply to every Contract.

For further guidance on this Schedule contact Government Legal Department's Employment Law Group]

## 1. Definitions

1.1 In this Schedule, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

**"Acquired Rights Directive"**

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

**"Employee Liability"**

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 employment debts and unlawful deduction of wages including any PAYE and National Insurance Contributions;

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- f) employment claims whether in tort, contract or statute or otherwise;
- g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

**"Former Supplier"**

a supplier supplying services to the Buyer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Subcontractor of such supplier (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:

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

**"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;

**"Partial Termination"**

the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 10.4 (When **LPP** or the Buyer can end this contract) or 10.6 (When the Supplier can end the contract);

**"Relevant Transfer"**

a transfer of employment to which the Employment Regulations applies;

**"Relevant  
Transfer Date"**

in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. For the purposes of Part D: Pensions and its Annexes, where the Supplier or a Subcontractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Subcontractor), references to the Relevant Transfer Date shall become references to the Start Date;

**"Staffing  
Information"**

in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Buyer may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement, gender and place of work;
- (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit-sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long-term absence;

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- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

**"Supplier's Final Supplier Personnel List"** a list provided by the Supplier of all Supplier Staff whose will transfer under the Employment Regulations on the Service Transfer Date;

**"Supplier's Provisional Supplier Personnel List"** a list prepared and updated by the Supplier of all Supplier Staff who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

**"Term"** the period commencing on the Start Date and ending on the expiry of the Initial Period or any Extension Period or on earlier termination of the relevant Contract;

**"Transferring Buyer Employees"** those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date;

**"Transferring Former Supplier Employees"** in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date.

## 2. INTERPRETATION

- 2.1 Where a provision in this Schedule imposes any obligation on the Supplier including (without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Subcontractors shall comply with such obligation and provide such indemnity, undertaking or warranty to **LPP**, the Buyer, Former Supplier, Replacement Supplier or Replacement Subcontractor, as the case may be and where the Subcontractor fails to satisfy any claims under such indemnities the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.
- 2.2 The provisions of Paragraphs 2.1 and 2.6 of Part A, Paragraph 3.1 of Part B, Paragraphs 1.5, 1.7 and 1.9 of Part C, Part D and Paragraphs 1.4, 2.3 and 2.8 of Part E of this Schedule (together "Third Party Provisions") confer benefits on third parties (each such person a "Third Party Beneficiary") and are intended to be enforceable by Third Party Beneficiaries by virtue of the CRTPA.

- 2.3 Subject to Paragraph 2.2 above, a person who is not a Party to this Call-Off Contract has no right under the CRTPA to enforce any term of this Call-Off Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 2.4 No Third-Party Beneficiary may enforce, or take any step to enforce, any Third-Party Provision without the prior written consent of the Buyer, which may, if given, be given on and subject to such terms as the Buyer may determine.
- 2.5 Any amendments or modifications to this Call-Off Contract may be made, and any rights created under Paragraph 2.2 above may be altered or extinguished, by the Parties without the consent of any Third-Party Beneficiary.

### 3. Which parts of this Schedule apply

Only the following parts of this Schedule shall apply to this Call Off Contract:

**[Delete]** if not applicable to the Call Off Contract]

- *[Part A (Staff Transfer at the Start Date – Outsourcing from the Buyer)]*
- *[Part B (Staff Transfer at the Start Date – Transfer from a Former Supplier)]*
- *[Part C (No Staff Transfer on the Start Date)]*
- *[Part D (Pensions) ]*
  - *[ - Annex D1 (CSPS) ]*
  - *[ - Annex D2 (NHSPS) ]*
  - *[ - Annex D3 (LGPS) ]*
  - *[ - Annex D4 (Other Schemes) ]*
- *Part E (Staff Transfer on Exit)*



## Part A: Staff Transfer at the Start Date

# OUTSOURCING FROM THE BUYER

## 1. What is a relevant transfer

### 1.1 The Buyer and the Supplier agree that:

- 1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Buyer Employees; and
- 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Buyer and the Transferring Buyer 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 Supplier and/or any Sub-contractor and each such Transferring Buyer Employee.

### 1.2 The Buyer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including (without limit) 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 Buyer; and (ii) the Supplier and/or any Subcontractor (as appropriate).

## 2. Indemnities the Buyer must give

### 2.1 Subject to Paragraph 2.2, the Buyer shall indemnify the Supplier and any Subcontractor against any Employee Liabilities arising from or as a result of:

- 2.1.1 any act or omission by the Buyer in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee occurring before the Relevant Transfer Date;
- 2.1.2 the breach or non-observance by the Buyer before the Relevant Transfer Date of:
  - (a) any collective agreement applicable to the Transferring Buyer Employees; and/or
  - (b) any custom or practice in respect of any Transferring Buyer Employees which the Buyer is contractually bound to honour;
- 2.1.3 any claim by any trade union or other body or person representing the Transferring Buyer Employees arising from or

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connected with any failure by the Buyer 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 Buyer 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 Buyer 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 Buyer to the Supplier and/or any 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 Buyer 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 Buyer 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 Buyer other than a Transferring Buyer Employee for whom it is alleged the Supplier and/or any 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 Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee relating to any act or omission of the Buyer in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Subcontractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any 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 Buyer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by

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- the Supplier 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 Supplier or any Subcontractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Buyer as a Transferring Buyer Employee claims, or it is determined in relation to any person who is not identified by the Buyer as a Transferring Buyer Employee, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Supplier shall, or shall procure that the Subcontractor shall, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing; and
- 2.3.2 the Buyer may offer (or may procure that a third party may offer) employment to such person, or take such other reasonable steps as the Buyer considers appropriate to deal with the matter provided always that such steps are in compliance with Law, within 15 Working Days of receipt of notice from the Supplier and/or any Subcontractor.
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Buyer, the Supplier shall, or shall procure that a Subcontractor shall, immediately release the person from his/her employment or alleged employment;
- 2.5 If by the end of the 15 Working Day period referred to in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
- 2.5.2 such offer has been made but not accepted; or
- 2.5.3 the situation has not otherwise been resolved,
- the Supplier and/or any Subcontractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Subcontractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law and subject also to Paragraph 2.7, the Buyer will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
- (a) any claim for:

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- (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 Supplier and/or any Subcontractor;  
or

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

2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Subcontractor (as appropriate) to the Buyer within 6 months of the Start Date

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

### 3. Indemnities the Supplier must give and its obligations

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

3.1.1 any act or omission by the Supplier or any Subcontractor in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee whether occurring before, on or after the Relevant Transfer Date;

3.1.2 the breach or non-observance by the Supplier or any Subcontractor on or after the Relevant Transfer Date of:

- (a) any collective agreement applicable to the Transferring Buyer Employees; and/or
- (b) any custom or practice in respect of any Transferring Buyer Employees which the Supplier 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 Buyer Employees arising from or connected with any failure by the Supplier or any Subcontractor

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- 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 Supplier or a Subcontractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Buyer Employees to their material detriment on or after their transfer to the Supplier 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 Buyer 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 Supplier or any Subcontractor to, or in respect of, any Transferring Buyer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Buyer 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 Buyer 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 Buyer 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 Buyer to the Supplier 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 Supplier 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 Author Buyer its 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 Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee relating to any act or omission of the Supplier 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 Buyer's failure to comply with its obligations under regulation 13 of the Employment Regulations; and

- 3.1.9 a failure by the Supplier or any Sub-contractor to comply with its obligations under paragraph 2.8 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier 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 Buyer Employees, from (and including) the Relevant Transfer Date (including (without limit) 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 from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Buyer and the Supplier.
- 4. Information the Supplier must provide**
- 4.1 The Supplier shall, and shall procure that each Subcontractor shall, promptly provide to the Buyer in writing such information as is necessary to enable the Buyer to carry out its duties under regulation 13 of the Employment Regulations. The Buyer shall promptly provide to the Supplier and any Subcontractor in writing such information as is necessary to enable the Supplier and any Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 5. Cabinet Office requirements**
- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Subcontractor shall, comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Buyer 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.

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

## 6. Pensions

- 6.1 The Supplier shall, and/or shall procure that each of its Subcontractors shall, comply with:
  - 6.1.1 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
  - 6.1.2 Part D: Pensions (and its Annexes) to this Schedule.



## Part B: Staff transfer at the Start Date

# TRANSFER FROM A FORMER SUPPLIER

## 1. What is a relevant transfer

### 1.1 The Buyer and the Supplier agree that:

- 1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
- 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Subcontractor and each such Transferring Former Supplier Employee.

### 1.2 The Buyer shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including (without limit) the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Buyer shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

## 2. Indemnities given by the Former Supplier

### 2.1 Subject to Paragraph 2.2, the Buyer shall procure that each Former Supplier shall indemnify the Supplier and any Subcontractor against any Employee Liabilities arising from or as a result of:

- 2.1.1 any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
- 2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
  - (a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or

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- (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier 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 Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
    - (b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any 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 Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
  - 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Subcontractor as appropriate may be liable by virtue of the relevant 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 Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Subcontractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

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- 2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Subcontractor to occur in the period from (and including) the Relevant Transfer Date; or
  - 2.2.2 arising from the failure by the Supplier and/or any Subcontractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Former Supplier as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Former Supplier as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
  - 2.3.1 the Supplier shall, or shall procure that the Subcontractor shall, within 5 Working Days of becoming aware of that fact, notify the Buyer and in writing and, where required by the Buyer, notify the relevant Former Supplier in writing; and
  - 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person, or take such other steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law, within 15 Working Days of receipt of notice from the Supplier and/or the Subcontractor (as appropriate).
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, , or if the situation has otherwise been resolved by the Former Supplier and/or the Buyer, the Supplier shall, or shall procure that the Subcontractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period referred to in Paragraph 2.3.2:
  - 2.5.1 no such offer of employment has been made;
  - 2.5.2 such offer has been made but not accepted; or
  - 2.5.3 the situation has not otherwise been resolved,the Supplier and/or any Subcontractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person;
- 2.6 Subject to the Supplier and/or any Subcontractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law and subject also to Paragraph 2.7, the Buyer shall procure that the Former Supplier will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
  - 2.7.1 shall not apply to:

(a) any claim for:

- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees;

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

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

2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Subcontractor (as appropriate) to the Buyer and, if applicable, the Former Supplier, within 6 months of the Start Date.

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

### **3. Indemnities the Supplier must give and its obligations**

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

3.1.1 any act or omission by the Supplier or any Subcontractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;

3.1.2 the breach or non-observance by the Supplier or any Subcontractor on or after the Relevant Transfer Date of:

- (a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
- (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier 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 Supplier Employees

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arising from or connected with any failure by the Supplier 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 Supplier or a Subcontractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier 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 Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Supplier or a Subcontractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Buyer and/or the Former Supplier 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 Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a 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 Supplier 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 Supplier 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 Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Subcontractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
  - 3.1.9 a failure by the Supplier or any Subcontractor to comply with its obligations under Paragraph 2.8 above
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each 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 all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including (without limit) 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 under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

#### **4. Information the Supplier must give**

The Supplier shall, and shall procure that each Subcontractor shall, promptly provide to the Buyer and/or at the Buyer's direction, the Former Supplier, in writing such information as is necessary to enable the Buyer and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Former Supplier shall promptly provide to the Supplier and any Subcontractor in writing such information as is necessary to enable the Supplier and any Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

#### **5. Cabinet Office requirements**

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

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- 5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - 5.1.2 Old Fair Deal; and/or
  - 5.1.3 The New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.

## **6. Limits on the Former Supplier's obligations**

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

## **7. Pensions**

- 7.1 The Supplier shall, and shall procure that each 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 Annexes) to this Schedule.



## Part C: No Staff Transfer on the Start Date

### 1. What happens if there is a staff transfer

- 1.1 The Buyer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Buyer and/or any Former Supplier.
- 1.2 If any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
  - 1.2.1 the Supplier shall, and shall procure that the relevant Subcontractor shall, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing and, where required by the Buyer, notify the Former Supplier in writing; and
  - 1.2.2 the Buyer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification from the Supplier or the Subcontractor (as appropriate) or take such other reasonable steps as the Buyer or Former Supplier (as the case may be) it considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Buyer and/or the Former Supplier), the Supplier 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 15 Working Day period referred to 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 Supplier may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 1.5 Subject to the Supplier and/or the relevant Subcontractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 1.8 the Buyer shall:
  - 1.5.1 indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities; and

- 1.5.2 procure that the Former Supplier indemnifies the Supplier and/or any Subcontractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 1.6 If any such person as is described in Paragraph 1.2 is neither re employed by the Buyer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Subcontractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Subcontractor (as appropriate) and the Supplier shall, or shall procure that the Subcontractor shall, comply with such obligations as may be imposed upon it under Law.
- 1.7 Where any person remains employed by the Supplier and/or any Subcontractor pursuant to Paragraph 1.6, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Subcontractor and the Supplier shall indemnify the Buyer and any Former Supplier, and shall procure that the Subcontractor shall indemnify the Buyer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Subcontractor.
- 1.8 The indemnities in Paragraph 1.5:
- 1.8.1 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 Supplier and/or Subcontractor; or
- (b) any claim that the termination of employment was unfair because the Supplier and/or any Subcontractor neglected to follow a fair dismissal procedure; and
- 1.8.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Subcontractor to the Buyer and, if applicable, Former Supplier within 6 months of the Start Date.
- 1.9 If the Supplier and/or the Subcontractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Subcontractor and the Supplier shall (i) comply with the

provisions of Part D: Pensions of this Schedule, and (ii) indemnify the Buyer and any Former Supplier against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Subcontractor.

## 2. Limits on the Former Supplier's obligations

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

## Part D: Pensions

**[Guidance: You should take specific legal advice on this Part D. Please also note that this Part D is drafted to reflect the requirements of New Fair Deal. Accordingly, where a contracting authority is a best value authority it will be subject to the requirements of the Best Value Authorities Staff Transfers (Pensions) Direction 2007 (or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 if appropriate) and should take further specific legal advice to ensure compliance with those Directions.]**

### 1. Definitions

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

|                               |  |
|-------------------------------|--|
| <b>"Actuary"</b>              | a Fellow of the Institute and Faculty of Actuaries;  |
| <b>"Admission Agreement"</b>  | either or both of the CSPA Admission Agreement (as defined in Annex D1: CSPA) or the LGPS Admission Agreement (as defined in Annex D3: LGPS), as the context requires;   |
| <b>"Best Value Direction"</b> | the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate);  |
| <b>"Broadly Comparable"</b>   | (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 |

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- (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;

**"CSPS"**

the schemes as defined in Annex D1 to this Part D;

**"Direction Letter/Determination"**

has the meaning in Annex D2 to this Part D;

**"Fair Deal Eligible Employees"**

each of the CSPS Eligible Employees, the NHSPS Eligible Employees and/or the LGPS Eligible Employees (as applicable) (and shall include any such employee who has been admitted to and/or remains eligible to join a Broadly Comparable pension scheme at the relevant time in accordance with paragraph 10 or 11 of this Part D);

**"Fair Deal Employees"**

any of:

- (a) Transferring Buyer Employees;
- (b) Transferring Former Supplier Employees;
- (c) employees who are not Transferring Buyer Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Subcontractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.5 of Parts A or B or Paragraph 1.4 of Part C;

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- (d) where the Supplier or a Subcontractor was the Former Supplier, the employees of the Supplier (or Subcontractor);

who at the Relevant Transfer Date are or become entitled to New Fair Deal or Best Value Direction protection in respect of any of the Statutory Schemes or a Broadly Comparable pension scheme provided in accordance with paragraph 10 of this Part D as notified by the Buyer;

**"Fund Actuary"** a Fund Actuary as defined in Annex D3 to this Part D;

**"LGPS"** the scheme as defined in Annex D3 to this Part D;

**"NHSPS"** the schemes as defined in Annex D2 to this Part D;

(a)

(b)

**"Statutory Schemes"** means the CSPA, NHSPS or LGPS.

## 2. Supplier obligations to participate in the pension schemes

- 2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPA, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.
- 2.2 The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter/Determination, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 2.3 The Supplier undertakes:
- 2.3.1 to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter/Determination or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
  - 2.3.2 subject to paragraph 5 of Annex D3: LGPS to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of

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providing any bond, indemnity or guarantee required in relation to such participation.

- 2.4 Where the Supplier is the Former Supplier (or a Subcontractor is a Subcontractor of the Former Supplier) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Subcontractor) at the Start Date, this Part D and its Annexes shall be modified accordingly so that the Supplier (or Subcontractor) shall comply with its requirements from the Start Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The Supplier (or Subcontractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the Buyer<sup>1</sup>.

### 3. Supplier obligation to provide information

- 3.1 The Supplier undertakes to the Buyer:

- 3.1.1 to provide all information which the Buyer may reasonably request concerning matters referred to in this Part D as expeditiously as possible; and
- 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 Buyer (such consent not to be unreasonably withheld or delayed);
- 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 the relevant Contract.

### 4. Indemnities the Supplier must give

- 4.1 The Supplier shall indemnify and keep indemnified LPP, [NHS Pensions], the Buyer and/or any Replacement Supplier 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 arising in respect of service on or after the Relevant Transfer Date which arise from any breach by the Supplier of this Part D, and/or the CSPA Admission Agreement and/or the Direction Letter/Determination and/or the LGPS 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 Supplier or a Subcontractor on and after the

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<sup>1</sup> We recommend that you seek specific legal advice on this clause.



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Relevant Transfer Date until the date of termination or expiry of the relevant Contract, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with paragraphs 10 or 11 of this Part D;

- 4.1.3 relate to claims by Fair Deal Employees of the Supplier 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:

Subcontractor:

- (a) 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 the relevant Contract; or
- (b) arise out of the failure of the Supplier and/or any relevant Subcontractor to comply with the provisions of this Part D before the date of termination or expiry of the relevant Contract; and/or

- 4.1.4 arise out of or in connection with the Supplier (or its Subcontractor) allowing anyone who is not an NHSPS Fair Deal Employee to join or claim membership of the NHSPS at any time during the Term.

### 4.2 The indemnities in this Part D and its Annexes:

- 4.2.1 shall survive termination of the relevant Contract; and
- 4.2.2 shall not be affected by the caps on liability contained in Clause 11 (How much you can be held responsible for).

## 5. What happens if there is a dispute

- 5.1 The Dispute Resolution Procedure will not apply to any dispute (i) between the **LPP** and/or the Buyer and/or the Supplier or (ii) between their respective actuaries and/or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the **LPP** and/or the Buyer and/or the Supplier 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 **LPP** and/or the Buyer and/or the Supplier; and
- 5.1.3 whose expenses shall be borne equally by the **LPP** and/or the Buyer and/or the Supplier unless the independent Actuary shall otherwise direct.

The independent Actuary shall be agreed by the Parties or, failing such agreement the independent Actuary shall be appointed by the President for the

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time being of the Institute and Faculty of Actuaries on the application by the Parties.

## 6. Other people's rights

- 6.1 The Parties agree Clause 19 (Other people's rights in this contract) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her or it by the Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.
- 6.2 Further, the Supplier must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Subcontractor in his or her or its own right under section 1(1) of the CRTPA.

## 7. What happens if there is a breach of this Part D

- 7.1 The Supplier agrees to notify the Buyer should it breach any obligations it has under this Part D and agrees that the Buyer shall be entitled to terminate its Contract for material Default in the event that the Supplier:
- 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 28 days of the date of a notice from the Buyer giving particulars of the breach and requiring the Supplier to remedy it.

## 8. Transferring Fair Deal Employees

- 8.1 Save on expiry or termination of the relevant 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 Supplier shall or shall procure that any relevant Sub-contractor shall:
- 8.1.1 notify the Buyer as far as reasonably practicable in advance of the transfer to allow the Buyer to make the necessary arrangements for participation with the relevant Statutory Scheme(s);
  - 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 Annexes provided that references to the "Supplier" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to

the Fair Deal Eligible Employees so transferred to the New Employer.

## 9. What happens to pensions if this Contract ends

- 9.1 The provisions of Part E: Staff Transfer on Exit (Mandatory) apply in relation to pension issues on expiry or termination of the relevant Contract.
- 9.2 The Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of the relevant Contract provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme's Actuary) as the Replacement Supplier and/or NHS Pension and/or CSPA and/or the relevant Administering Buyer and/or the Buyer may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection following a Service Transfer.

## 10. Broadly Comparable Pension Schemes on the Relevant Transfer Date

- 10.1 If the terms of any of paragraphs 4 of Annex D2: NHSPS or 3.1 of Annex D3: LGPS applies, the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.
- 10.2 Such Broadly Comparable pension scheme must be:
- 10.2.1 established by the Relevant Transfer Date<sup>2</sup>;
  - 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 Statutory Scheme or from a Former Supplier's Broadly Comparable pension scheme (unless otherwise instructed by the Buyer);
  - 10.2.4 capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and
  - 10.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).

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<sup>2</sup>We recommend that you seek specific legal advice on this clause.

- 10.3 Where the Supplier has set up a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Subcontractors shall):
- 10.3.1 supply to the Buyer 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 Relevant Transfer Date) covering all relevant Fair Deal Employees, as soon as it is able to do so before the Relevant Transfer Date (where possible) and in any event no later than 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 instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing bulk transfer process with the Actuary to the Former Supplier's Broadly Comparable pension scheme or the Actuary to the relevant Statutory Scheme (as appropriate) and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable). This will be with a view to the bulk transfer terms providing day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme in respect of any Fair Deal Eligible Employee who consents to such a transfer<sup>3</sup>; 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 Supplier and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Subcontractor's Broadly Comparable pension scheme is terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).
- 10.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 10, the Supplier shall (and shall

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<sup>3</sup> We recommend that you seek specific legal advice on this clause.

procure that any of its Subcontractors shall) prior to the termination of the relevant Contract:

- 10.4.1 allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be on a past service reserve basis which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits). The actuarial basis for this past service reserve basis should be aligned to the funding requirements of the Broadly Comparable pension scheme in place at the time the bulk transfer terms are offered. The bulk transfer terms shall be subject to an underpin in relation to any service credits awarded in the Broadly Comparable pension scheme in accordance with paragraph 10.3.3 such that the element of the past service reserve amount which relates to such service credits shall be no lower than that required by the bulk transfer terms that were agreed in accordance with paragraph 10.3.3 but using the last day of the Fair Deal Eligible Employees' employment with the Supplier or Subcontractor (as appropriate) as the date used to determine the actuarial assumptions; and
- 10.4.2 if the transfer payment paid by the trustees of the Broadly Comparable pension scheme is less (in the opinion of the Actuary to the Replacement Supplier's Broadly Comparable pension scheme (or to the relevant Statutory Scheme if applicable)) than the transfer payment which would have been paid had paragraph 10.4.1 been complied with, the Supplier shall (or shall procure that the Subcontractor shall) pay the amount of the difference to the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the Buyer shall otherwise direct. The Supplier shall indemnify the Buyer or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Buyer directs) for any failure to pay the difference as required under this paragraph.

## 11. Broadly Comparable Pension Scheme in Other Circumstances

- 11.1 If the terms of any of paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and/or 3.2 of Annex D3: LGPS apply, the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are

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Broadly Comparable to those provided under the relevant Statutory Scheme at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.

- 11.2 Such Broadly Comparable pension scheme must be:
- 11.2.1 established by the date of cessation of participation in the Statutory Scheme<sup>4</sup>;
  - 11.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
  - 11.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Buyer);
  - 11.2.4 capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and
  - 11.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).
- 11.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 11, the Supplier shall (and shall procure that any of its Subcontractors shall):
- 11.3.1 supply to the Buyer 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 Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than seven (7) days after receipt of the certificate;
  - 11.3.2 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;
  - 11.3.3 where required to do so by the Buyer, instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with the Actuary to the relevant Statutory Scheme and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable). The Supplier must ensure that day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable

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<sup>4</sup> We recommend that you seek specific legal advice on this clause.

pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the Statutory Scheme and the Supplier shall be fully responsible for any costs of providing those credits in excess of the bulk transfer payment received by the Broadly Comparable pension scheme<sup>5</sup>; and

11.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this paragraph 11 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Supplier 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).

11.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 11, the Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of the relevant 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 Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits ("**the Shortfall**"), the Supplier or the Subcontractor (as agreed between them) must pay the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the Supplier and any Subcontractor, the Shortfall shall be paid by the Supplier. The Supplier shall indemnify the Buyer or the Replacement Supplier's Broadly Comparable pension scheme (or

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<sup>5</sup> We recommend that you seek specific legal advice on this clause.



the relevant Statutory Scheme if applicable) (as the Buyer directs) for any failure to pay the Shortfall under this paragraph.

## 12. Right of Set-off

12.1 The Buyer shall have a right to set off against any payments due to the Supplier under the relevant Contract an amount equal to:

- 12.1.1 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 Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;
- 12.1.2 any unpaid employer's contributions or employee's contributions or any other financial obligations under the NHSPA or any Direction Letter/Determination in respect of the NHSPA Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee; or
- 12.1.3 any unpaid employer's contributions or employee's contributions or any other financial obligations under the LGPS or any LGPS Admission Agreement in respect of the LGPS Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;

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

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

## Annex D1: Civil Service Pensions Schemes (CSPS)

### 1. Definitions

In this Annex D1: CSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|                                   |   |
|-----------------------------------|---|
| <b>"CSPS Admission Agreement"</b> | an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the Services;  |
| <b>"CSPS Eligible Employee"</b>   | any CSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the CSPS under a CSPS Admission Agreement;   |
| <b>"CSPS Fair Deal Employee"</b>  | a Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the CSPS in accordance with the provisions of New Fair Deal;  |
| <b>"CSPS"</b>                     | the 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. Access to equivalent pension schemes after transfer

- 2.1 In accordance with New Fair Deal, the Supplier 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 the relevant 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 Supplier 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 Supplier and/or any of its Subcontractors enters into a CSPA Admission Agreement in accordance with paragraph 2.1 but the CSPA Admission Agreement is terminated during the term of the relevant Contract for any reason at a time when the Supplier or Subcontractor still employs any CSPA Eligible Employees, the Supplier shall (and procure that its Subcontractors shall) at no extra cost to the Buyer, offer the remaining CSPA 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 11 of Part D.

## Annex D2: NHS Pension Schemes

### 1. Definitions

In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|   |  |
|---|--|
| <b>"Direction<br/>Letter/Determination"</b> | an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Subcontractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Subcontractor in the NHSPS in respect of the NHSPS Fair Deal Employees; |
|---|--|

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### **“NHS Broadly Comparable Employees”**

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

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

but who is now ineligible to participate in the NHSPS under the rules of the NHSPS and in respect of whom the Buyer has agreed are to be provided with a Broadly Comparable pension scheme to provide Pension Benefits that are Broadly Comparable to those provided under the NHSPS.

### **“NHSPS Eligible Employees”**

any NHSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the NHSPS under a Direction Letter/Determination Letter.

## **"NHSPS Fair Deal Employees"**

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

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

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

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

## **"NHS Body"**

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

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|  |  |
|--|--|
| <b>"NHS Pensions"</b>                    | NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS;   |
| <b>"NHSPS"</b>                           | the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and the Public Service Pensions Act 2013 governed by subsequent regulations under those Acts including the NHS Pension Scheme Regulations;   |
| <b>"NHS Pension Scheme Regulations"</b>  | as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;  |
| <b>"NHS Premature Retirement Rights"</b> | rights to which any NHS Fair Deal Employee (had they remained in the employment of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS) would have been or is entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time; |
| <b>"Pension Benefits"</b>                | any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme.  |



## 2. Membership of the NHS Pension Scheme

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Subcontractors to which the employment of any NHSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an NHS Body or other employer which participates automatically in the NHSPS, shall each secure a Direction Letter/Determination to enable the NHSPS Fair Deal Employees to retain either continuous active membership of or eligibility for the NHSPS for so long as they remain employed in connection with the delivery of the Services under the relevant Contract.
- 2.2 Where it is not possible for the Supplier and/or any of its Subcontractors to secure a Direction Letter/Determination on or before the Relevant Transfer Date, the Supplier must secure a Direction Letter/Determination as soon as possible after the Relevant Transfer Date, and in the period between the Relevant Transfer Date and the date the Direction Letter/Determination is secure, the Supplier must ensure that:
- (a) all employer's and NHSPS Fair Deal Employees' contributions intended to go to the NHSPS are kept in a separate bank account; and**
  - (b) the Pension Benefits and Premature Retirement Rights of NHSPS Fair Deal Employees are not adversely affected.**
- 2.3 The Supplier must supply to the Buyer a complete copy of each Direction Letter/Determination within 5 Working Days of receipt of the Direction Letter/Determination.
- 2.4 The Supplier must ensure (and procure that each of its Sub-Contracts (if any) ensures) that all of its NHSPS Fair Deal Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter/Determination.
- 2.5 The Supplier will (and will procure that its Subcontractors (if any) will) comply with the terms of the Direction Letter/Determination, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health and Social Care in respect of the NHSPS Fair Deal Employees for so long as it remains bound by the terms of any such Direction Letter/Determination.
- 2.6 Where any employee omitted from the Direction Letter/Determination supplied in accordance with Paragraph 2 of this Annex are subsequently found to be an NHSPS Fair Deal Employee, the Supplier will (and will procure that its Subcontractors (if any) will) treat that person as if they had been an NHSPS Fair Deal Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.

- 2.7 The Supplier will (and will procure that its Subcontractors (if any) will) Subcontractor provide any guarantee, bond or indemnity required by NHS Pensions in relation to a Direction Letter/Determination.

### **3. Continuation of early retirement rights after transfer**

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

### **4. NHS Broadly Comparable Employees**

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

### **5. What the buyer can do if the Supplier breaches its pension obligations**

- 5.1 The Supplier agrees that the Buyer is entitled to make arrangements with NHS Pensions for the Buyer to be notified if the Supplier (or its Subcontractor) breaches the terms of its Direction Letter/Determination. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Buyer in the event that it (or its Subcontractor) breaches the terms of its Direction Letter/Determination.
- 5.2 If the Supplier (or its Subcontractors, if relevant) ceases to participate in the NHSPS for whatever reason, the Supplier (or any such Subcontractor, as appropriate) shall offer to offer the NHSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the NHSPS on the date the NHSPS Eligible Employees ceased to participate in the NHSPS in accordance with the provisions of paragraph 11 of Part D. Subcontractor.

### **6. Compensation when pension scheme access can't be provided**

- 6.1 If the Supplier (or its Subcontractor, if relevant) is unable to provide the NHSPS Fair Deal Employees with either membership of:
- 6.1.1 the NHSPS (having used its best endeavours to secure a Direction Letter/Determination); or
  - 6.1.2 a Broadly Comparable pension scheme,
- the Buyer may in its sole discretion permit the Supplier (or any of its Subcontractors) to compensate the NHSPS Fair Deal Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier (or Subcontractor as relevant) having consulted with a view to

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reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Fair Deal Employees. The Supplier must meet (or must procure that the relevant Subcontractor meets) the costs of the Buyer determining whether the level of compensation offered is reasonable in the circumstances.

- 6.2 This flexibility for the Buyer to allow compensation in place of Pension Benefits is in addition to and not instead of the Buyer's right to terminate the Contract.

## **7. Indemnities that a Supplier must give**

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

## Annex D3: Local Government Pension Schemes (LGPS)

**[Guidance: You should take specific legal advice on this Annex D3 and in particular the risk apportionment provisions contained herein.]**

**Please note that this Part D is drafted to reflect the requirements of New Fair Deal. Accordingly, where a contracting authority is a local authority (or other type of best value authority) then it will be subject to the requirements of the Best Value Authorities Staff Transfers (Pensions) Direction 2007 (or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 if appropriate) and should take further specific legal advice to ensure compliance with those Directions.**

Note the LGPS unlike the CSPA & NHSPA is a funded scheme which has associated cost implications as follows:

There is not 1 LGPS but approx. 90 different Funds, each with their own separate Scheme Employer and Administering Buyer, it is important to identify the correct one(s) and amend the definition of "Fund" accordingly.

It is important to check whether **LPP** and or the Buyer can actually participate in the LGPS. Where a government department is taking on services which were formerly the responsibility of a Local Authority it may be necessary to obtain secretary of state approval for participation in the LGPS, this is because the services are being provided to Gov. Dept. and not to a Local Authority.

Unlike New Fair Deal the 2007 Best Value pension direction does not provide a right to bulk transfer past service. Whilst typically before the 2007 direction LA did provide such a right, it is a significant additional cost and therefore bulk transfer wording has been excluded. If required take legal advice due to the exceptionally high costs which can result from a requirement to provide bulk transfers.]

### 1. Definitions

In this Annex D3: LGPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|                              |  |
|------------------------------|--|
| <b>"2013 Regulations"</b>    | the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) (as amended from time to time);                                    |
| <b>"Administering Buyer"</b> | in relation to <b>the Fund [insert name]</b> , the relevant Administering Buyer of that Fund for the purposes of the 2013 Regulations; |
| <b>"Fund Actuary"</b>        | the actuary to a Fund appointed by the Administering Buyer of that Fund;   |

|  |   |
|--|---|
| <b>"Fund"</b>                                    | <b>[insert name], a pension fund within the LGPS;</b>   |
| <b>["Initial Contribution Rate"<sup>6</sup>]</b> | [XX %] of pensionable pay (as defined in the 2013 Regulations);]  |
| <b>"LGPS"</b>                                    | the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;   |
| <b>"LGPS Admission Agreement"</b>                | an admission agreement within the meaning in Schedule 1 of the 2013 Regulations;  |
| <b>"LGPS Admission Body"</b>                     | an admission body (within the meaning of Part 3 of Schedule 2 of the 2013 Regulations);   |
| <b>"LGPS Eligible Employees"</b>                 | any LGPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the LGPS under an LGPS Admission Agreement;  |
| <b>"LGPS Fair Deal Employees"</b>                | any Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the LGPS or a pension scheme that is Broadly Comparable to the LGPS in accordance with the provisions in accordance with the provisions of New Fair Deal and/or the Best Value Direction; |
| <b>"LGPS Regulations"</b>                        | the 2013 Regulations and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI 2014/525), and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS.                               |

## 2. Supplier to become an LGPS Admission Body

- 2.1 In accordance with the principles of New Fair Deal and/or the Best Value Direction, the Supplier and/or any of its Subcontractors to which the employment of any LGPS Fair Deal Employee compulsorily transfers as a result

<sup>6</sup> We recommend that you seek specific legal advice on this definition.

of either the award of the relevant Contract or a Relevant Transfer, if not a scheme employer which participates automatically in the LGPS, shall each become an LGPS Admission Body by entering into an LGPS Admission Agreement on or before the Relevant Transfer Date to enable the LGPS Fair Deal Employees to retain either continuous active membership of or eligibility for the LGPS on and from the Relevant Transfer Date for so long as they remain employed in connection with the delivery of the Services under the relevant Contract.

## OPTION 1<sup>7</sup>

### 2.2 [Any LGPS Fair Deal Employees who:

2.2.1 were active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall be admitted to the LGPS with effect on and from the Relevant Transfer Date; and

2.2.2 were eligible to join the LGPS (or a Broadly Comparable pension scheme) but were not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall retain the ability to join the LGPS on or after the Relevant Transfer Date if they wish to do so.]

## OPTION 2

### [Any LGPS Fair Deal Employees whether:

2.2.3 active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date; or

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

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

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

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<sup>7</sup> We recommend that you seek specific legal advice on this clause.



### 3. Broadly Comparable Scheme

- 3.1 If the Supplier and/or any of its Subcontractors is unable to obtain an LGPS Admission Agreement in accordance with paragraph 2.1 because the Administering Buyer will not allow it to participate in the Fund, the Supplier shall (and procure that its Subcontractors shall), with effect from the Relevant Transfer Date, offer the LGPS Fair Deal Employees membership of a pension scheme which is Broadly Comparable to LGPS on the Relevant Transfer Date in accordance with the provisions of paragraph 10 of Part D.**
- 3.2 If the Supplier and/or any of its Subcontractors becomes an LGPS Admission Body in accordance with paragraph 2.1 but the LGPS Admission Agreement is terminated during the term of the relevant Contract for any reason at a time when the Supplier or Subcontractors still employs any LGPS Eligible Employees, the Supplier shall (and procure that its Subcontractors shall) at no extra cost to the Buyer, offer the remaining LGPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the LGPS on the date the LGPS Eligible Employees ceased to participate in the LGPS in accordance with the provisions of paragraph 11 of Part D.**

### 4. Discretionary Benefits

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

### 5. LGPS RISK SHARING<sup>8</sup>

- 5.1 Subject to paragraphs 5.4 to 5.10, if at any time during the term of the relevant Contract the Administering Buyer, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Subcontractor to pay employer contributions or other payments to the Fund in aggregate in excess of the Initial Contribution Rate, the excess of employer contributions above the Initial Contribution Rate for a Contract Year (the “Excess Amount”) shall be paid by the Supplier or the Subcontractor, as the case may be, and the Supplier shall be reimbursed by the Buyer.**
- 5.2 Subject to paragraphs 5.4 to 5.9 and 5.11, if at any time during the term of the relevant Contract, the Administering Buyer, pursuant to the LGPS Admission**

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<sup>8</sup> We recommend that you seek specific legal advice on this clause.



Agreement or the LGPS Regulations, requires the Supplier or any Subcontractor to pay employer contributions or payments to the Fund in aggregate below the Initial Contribution Rate for a Contract Year, the Supplier shall reimburse the Buyer an amount equal to A–B (the “Refund Amount”) where:

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

**B = the amount of contributions or payments actually paid by the Supplier or Subcontractor for that Contract Year, as the case may be, to the Fund.**

- 5.3 Subject to paragraphs 5.4 to 5.10, where the Administering Buyer obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Supplier or any Subcontractor is required to pay any exit payment under Regulation 64(2) of the 2013 Regulations (the “**Exit Payment**”), such Exit Payment shall be paid by the Supplier or any Subcontractor (as the case may be) and the Supplier shall be reimbursed by the Buyer.
- 5.4 The Supplier and any Subcontractors shall at all times be responsible for the following costs:
- 5.4.1 any employer contributions relating to the costs of early retirement benefits arising on redundancy or as a result of business efficiency under Regulation 30(7) of the 2013 Regulations or otherwise;
  - 5.4.2 any payment of Fund benefits to active members on the grounds of ill health or infirmity of mind or body under Regulation 35 of the 2013 Regulations or otherwise<sup>9</sup>;
  - 5.4.3 any payment of Fund benefits to deferred or deferred pensioner members on the grounds of ill health or infirmity of mind or body under Regulation 38 of the 2013 Regulations or otherwise;
  - 5.4.4 any employer contributions relating to the costs of early or flexible retirement where the actuarial reduction is waived in whole or in part or a cost neutral reduction is not applied with the consent of the Supplier or any relevant Subcontractor including without limitation any decision made under Regulation 30(8) of the 2013 Regulations or Schedule 2 of The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014;
  - 5.4.5 any employer contributions relating to the costs of enhanced benefits made at the discretion of the Supplier or any relevant

<sup>9</sup> We recommend that you seek specific legal advice on this clause.

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- Subcontractors including without limitation additional pension awarded under Regulation 31 of the 2013 Regulations or otherwise;
- 5.4.6 any increase to the employer contribution rate resulting from the award of pay increases by the Supplier or relevant Subcontractors in respect of all or any of the LGPS Eligible Employees in excess of the pay increases assumed in the Fund's most recent actuarial valuation (unless the Supplier and/or any Subcontractor is contractually bound to provide such increases on the Relevant Transfer Date);
  - 5.4.7 to the extent not covered above, any other costs arising out of or in connection with the exercise of any discretion or the grant of any consent under the LGPS Regulations by the Supplier or any relevant Subcontractors where a member does not have an absolute entitlement to that benefit under the LGPS;
  - 5.4.8 any cost of the administration of the Fund that are not met through the Supplier's or Subcontractor's employer contribution rate, including without limitation an amount specified in a notice given by the Administering Buyer under Regulation 70 of the 2013 Regulations;
  - 5.4.9 the costs of any reports and advice requested by or arising from an instruction given by the Supplier or a Subcontractor from the Fund Actuary; and/or
  - 5.4.10 any interest payable under the 2013 Regulations or LGPS Administration Agreement.
- 5.5 For the purposes of calculating any Exit Payment, Excess Amount or Refund Amount, any part of such an amount which is attributable to any costs which the Supplier or Subcontractors are responsible for in accordance with paragraph 5.4 above shall be disregarded and excluded from the calculation. In the event of any dispute as to level of any cost that should be excluded from the calculation, the opinion of the Fund Actuary shall be final and binding.
- 5.6 Where the Administering Buyer obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Supplier or any Subcontractor receives payment of an exit credit payment under Regulation 64(2) of the 2013 Regulations (the "**Exit Credit**"), the Supplier shall (or procure that any Subcontractor shall) reimburse the Buyer an amount equal to the Exit Credit within twenty (20) Working Days of receipt of the Exit Credit.
- 5.7 The Supplier shall (or procure that the Subcontractor shall) notify the Buyer in writing within twenty (20) Working Days:
- 5.7.1 of the end of each Contract Year of any Excess Amount or Refund Amount due in respect of the Contract Year that has just ended and provide a reasonable summary of how the Excess Amount or Refund Amount was calculated; and

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- 5.7.2 of being informed by the Administering Buyer of any Exit Payment or Exit Credit that is determined by as being due from or to the Supplier or a Subcontractor and provide a copy of any revised rates and adjustments certificate detailing the Exit Payment or Exit Credit and its calculation.
- 5.8 Within twenty (20) Working Days of receiving the notification under paragraph 5.7 above, the Buyer shall either:
  - 5.8.1 notify the Supplier in writing of its acceptance of the Excess Amount, Refund Amount or Exit Payment;
  - 5.8.2 request further information or evidence about the Excess Amount, Refund Amount or Exit Payment from the Supplier; and/or
  - 5.8.3 request a meeting with the Supplier to discuss or clarify the information or evidence provided.
- 5.9 Where the Excess Amount, Refund Amount or Exit Payment is agreed following the receipt of further information or evidence or following a meeting in accordance with paragraph 5.8 above, the Buyer shall notify the Supplier in writing. In the event that the Supplier and the Buyer are unable to agree the amount of the Excess Amount, Refund Amount or Exit Payment then they shall follow the Dispute Resolution Procedure.
- 5.10 Any Excess Amount or Exit Payment agreed by the Buyer or in accordance with the Dispute Resolution Procedure shall be paid by the Buyer within timescales as agreed between Buyer and Supplier. The amount to be paid by the Buyer shall be an amount equal to the Excess Amount or Exit Payment less an amount equal to any corporation tax relief which has been claimed in respect of the Excess Amount or Exit Payment by the Supplier or a Subcontractor.
- 5.11 Any Refund Amount agreed by the Buyer or in accordance with the Dispute Resolution Procedure as payable by the Supplier or any Subcontractor to the Buyer, shall be paid by the Supplier or any Subcontractor forthwith as the liability has been agreed. In the event the Supplier or any Subcontractor fails to pay any agreed Refund Amount, the Buyer shall demand in writing the immediate payment of the agreed Refund Amount by the Supplier and the Supplier shall make payment within seven (7) Working Days of such demand.
- 5.12 This paragraph 5 shall survive termination of the relevant Contract.

## Annex D4: Other Schemes

**[Guidance:** Placeholder for Pension Schemes other than LGPS, CSPA & NHSPA]

## Part E: Staff Transfer on Exit

### 1. Obligations before a Staff Transfer

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

- 1.1.1 receipt of a notification from the Buyer 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 the relevant Contract;
- 1.1.3 the date which is 12 Months before the end of the Term; and
- 1.1.4 receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any 6 Month period),

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

1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Subcontractor (i) the Supplier's Final Supplier Personnel List, which shall identify the basis upon which they are Transferring Supplier Employees and (ii) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

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

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

1.5 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees that it shall not, and agrees to procure that each Subcontractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Buyer (not to be unreasonably withheld or delayed):

:

- 1.5.1 replace or re-deploy any Supplier Staff listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces

- 1.5.2 make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Staff (including pensions and any payments connected with the termination of employment);
- 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier 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 Supplier's Provisional Supplier Personnel List;
- 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services);
- 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process;

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

- 1.6 On or around each anniversary of the Start Date and up to four times during the last 12 Months of the Term, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within 20 Working Days of receipt of a written request the Supplier shall provide, and shall procure that each Subcontractor shall provide, to the Buyer such information as the Buyer may reasonably require relating to the manner in which the Services are organised, which shall include:
  - 1.6.1 the numbers of employees engaged in providing the Services;
  - 1.6.2 the percentage of time spent by each employee engaged in providing the Services;
  - 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) (as appropriate); and
  - 1.6.4 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier shall provide, and shall procure that each Subcontractor shall provide, all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Subcontractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer



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Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Subcontractor shall provide, to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Subcontractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

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

## 2. Staff Transfer when the contract ends

- 2.1 The Buyer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of the relevant Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Subcontractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Buyer and the Supplier agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Subcontractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Subcontractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Subcontractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including (without limit) 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

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periodic payments shall be made between: (i) the Supplier and/or the Subcontractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Subcontractor.

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

2.3.1 any act or omission of the Supplier or any Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;

2.3.2 the breach or non-observance by the Supplier or any Subcontractor occurring on or before the Service Transfer Date of:

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

(b) **any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier 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 Supplier Employees arising from or connected with any failure by the Supplier 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 Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and**



- 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Subcontractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Supplier's Final Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- 2.5.1 the Buyer shall procure that the Replacement Supplier and/or Replacement Subcontractor will, within 5 Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing; and
- 2.5.2 the Supplier may offer (or may procure that a Subcontractor may offer) employment to such person, or take such other reasonable steps as it considered appropriate to deal the matter provided always that such steps are in compliance with Law, within 15 Working Days of receipt of notice from the Replacement Supplier and/or Replacement Subcontractor.
- 2.6 If such offer of is accepted, or if the situation has otherwise been resolved by the Supplier or a Subcontractor, Buyer shall procure that the Replacement Supplier shall, or procure that the and/or Replacement Subcontractor shall, immediately release or procure the release the person from his/her employment or alleged employment;
- 2.7 If after the 15 Working Day period specified in Paragraph 2.5.2 has elapsed:
- 2.7.1 no such offer 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 Buyer shall advise the Replacement Supplier and/or Replacement Subcontractor (as appropriate) that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person;
- 2.8 Subject to the Replacement Supplier's and/or Replacement Subcontractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7 and in accordance with all applicable proper employment procedures set out in applicable Law and subject to Paragraph 2.9 below, the Supplier will indemnify the Replacement Supplier and/or Replacement Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
- 2.9.1 shall not apply to:

- (a) any claim for:
  - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
  - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

In any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Subcontractor, or

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

2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Subcontractor to the Supplier within 6 months of the Service Transfer Date.

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

2.11 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

**(c) the Supplier and/or any Subcontractor; and**

**(d) the Replacement Supplier and/or the Replacement Subcontractor.**

- 2.12 The Supplier shall, and shall procure that each Subcontractor shall, promptly provide the Buyer and any Replacement Supplier and/or Replacement Subcontractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Replacement Supplier and/or Replacement Subcontractor, shall promptly provide to the Supplier and each Subcontractor in writing such information as is necessary to enable the Supplier and each Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14, the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Subcontractor and its Subcontractors against any Employee Liabilities arising from or as a result of:
- 2.13.1 any act or omission of the Replacement Supplier and/or Replacement Subcontractor in respect of any Transferring Supplier Employee in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
  - 2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Subcontractor on or after the Service Transfer Date of:
    - (a) **any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or**
    - (b) **any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Subcontractor is contractually bound to honour;**
  - 2.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
  - 2.13.4 any proposal by the Replacement Supplier and/or Replacement Subcontractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Subcontractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or

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- working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- 2.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Subcontractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 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 Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and**
  - (b) **in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Subcontractor, to the Replacement Supplier 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 Supplier 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 Supplier Employees identified in the Supplier's Final Supplier 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 Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier

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Employee relating to any act or omission of the Replacement Supplier or Replacement Subcontractor in relation to obligations under regulation 13 of the Employment Regulations.

- 2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Subcontractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Subcontractor (as applicable) to comply with its obligations under the Employment Regulations.



## Call-Off Schedule 3 (Continuous Improvement)

### 1. Buyer's Rights

- 1.1 The Buyer and the Supplier recognise that, where specified in Framework Schedule 4 (Framework Management), the Buyer may give CCS the right to enforce the Buyer's rights under this Schedule.

### 2. Supplier's Obligations

- 2.1 The Supplier must, throughout the Contract Period, identify new or potential improvements to the provision of the Deliverables with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables and their supply to the Buyer.
- 2.2 The Supplier must adopt a policy of continuous improvement in relation to the Deliverables, which must include regular reviews with the Buyer of the Deliverables and the way it provides them, with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables. The Supplier and the Buyer must provide each other with any information relevant to meeting this objective.
- 2.3 In addition to Paragraph 2.1, the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Deliverables and/or reducing the Charges (without adversely affecting the performance of this Contract) during that Contract Year ("**Continuous Improvement Plan**") for the Buyer's Approval. The Continuous Improvement Plan must include, as a minimum, proposals:
- 2.3.1 identifying the emergence of relevant new and evolving technologies;
  - 2.3.2 changes in business processes of the Supplier or the Buyer and ways of working that would provide cost savings and/or enhanced benefits to the Buyer (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
  - 2.3.3 new or potential improvements to the provision of the Deliverables including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Deliverables; and
  - 2.3.4 measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the Deliverables, and identifying opportunities to assist the Buyer in meeting their sustainability objectives.
- 2.4 The initial Continuous Improvement Plan for the first (1<sup>st</sup>) Contract Year shall be submitted by the Supplier to the Buyer for Approval within one hundred (100) Working Days of the first Order or six (6) Months following the Start Date, whichever is earlier.

- 2.5 The Buyer shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. If it is rejected then the Supplier shall, within ten (10) Working Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required. Once Approved, it becomes the Continuous Improvement Plan for the purposes of this Contract.
- 2.6 The Supplier must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested.
- 2.7 If the Buyer wishes to incorporate any improvement into this Contract, it must request a Variation in accordance with the Variation Procedure and the Supplier must implement such Variation at no additional cost to the Buyer or CCS.
- 2.8 Once the first Continuous Improvement Plan has been Approved in accordance with Paragraph 2.5:
- 2.8.1 the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
  - 2.8.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Supplier's progress against the Continuous Improvement Plan.
- 2.9 The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1<sup>st</sup>) Contract Year) in accordance with the procedure and timescales set out in Paragraph 2.3.
- 2.10 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.
- 2.11 Should the Supplier's costs in providing the Deliverables to the Buyer be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Buyer by way of a consequential and immediate reduction in the Charges for the Deliverables.
- 2.12 At any time during the Contract Period of the Call-Off Contract, the Supplier may make a proposal for gainshare. If the Buyer deems gainshare to be applicable then the Supplier shall update the Continuous Improvement Plan so as to include details of the way in which the proposal shall be implemented in accordance with an agreed gainshare ratio.

# Joint Schedule 5 (Corporate Social Responsibility)

## 1. What we expect from our Suppliers

- 1.1 In February 2019, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government  
([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779660/20190220-Supplier\\_Code\\_of\\_Conduct.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf))
- 1.2 CCS expects its Suppliers and Subcontractors to meet the standards set out in that Code. In addition, CCS expects its Suppliers and Subcontractors to comply with the Standards set out in this Schedule.
- 1.3 The Supplier acknowledges that the Buyer may have additional requirements in relation to corporate social responsibility. The Buyer expects that the Supplier and its Subcontractors will comply with such corporate social responsibility requirements as the Buyer may notify the Supplier from time to time.

## 2. Equality and Accessibility

- 2.1 In addition to legal obligations, the Supplier shall support CCS and the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under each Contract in a way that seeks to:
  - 2.1.1 eliminate discrimination, harassment or victimisation of any kind; and
  - 2.1.2 advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

## 3. Modern Slavery, Child Labour and Inhumane Treatment

**"Modern Slavery Helpline"** means the mechanism for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.

- 3.1 The Supplier:
  - 3.1.1 shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;
  - 3.1.2 shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identify papers with the Employer and shall be free to

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- leave their employer after reasonable notice;
- 3.1.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.
  - 3.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world.
  - 3.1.5 shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offenses anywhere around the world.
  - 3.1.6 shall have and maintain throughout the term of each Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
  - 3.1.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract;
  - 3.1.8 shall prepare and deliver to CCS, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with Paragraph 3;
  - 3.1.9 shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
  - 3.1.10 shall not use or allow child or slave labour to be used by its Subcontractors;
  - 3.1.11 shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to CCS, the Buyer and Modern Slavery Helpline.

## 4. Income Security

### 4.1 The Supplier shall:

- 4.1.1 ensure that that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;
- 4.1.2 ensure that all Supplier Staff are provided with written and understandable Information about their employment conditions in respect of wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid;

- 4.1.3 not make deductions from wages:
  - (a) as a disciplinary measure
  - (b) except where permitted by law; or
  - (c) without expressed permission of the worker concerned;
- 4.1.4 record all disciplinary measures taken against Supplier Staff;  
and
- 4.1.5 ensure that Supplier Staff are engaged under a recognised  
employment relationship established through national law and  
practice.

## 5. Working Hours

### 5.1 The Supplier shall:

- 5.1.1 ensure that the working hours of Supplier Staff comply with  
national laws, and any collective agreements;
- 5.1.2 that the working hours of Supplier Staff, excluding overtime,  
shall be defined by contract, and shall not exceed 48 hours  
per week unless the individual has agreed in writing;
- 5.1.3 ensure that use of overtime used responsibly, taking into  
account:
  - (a) the extent;
  - (b) frequency; and
  - (c) hours worked;

by individuals and by the Supplier Staff as a whole;

5.2 The total hours worked in any seven day period shall not exceed 60 hours,  
except where covered by Paragraph 5.3 below.

5.3 Working hours may exceed 60 hours in any seven day period only in  
exceptional circumstances where all of the following are met:

- 5.3.1 this is allowed by national law;
- 5.3.2 this is allowed by a collective agreement freely negotiated with  
a workers' organisation representing a significant portion of the  
workforce;
- 5.3.3 appropriate safeguards are taken to protect the workers' health  
and safety; and
- 5.3.4 the employer can demonstrate that exceptional circumstances  
apply such as unexpected production peaks, accidents or  
emergencies.

5.4 All Supplier Staff shall be provided with at least one (1) day off in every  
seven (7) day period or, where allowed by national law, two (2) days off in  
every fourteen (14) day period.

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## 6. Sustainability

6.1 The supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>