

Schedule 2

Tender Minimum Performance Levels (tMPLs, Required Number of Outcomes (RNOs)) and Customer Service Standards (CSS)

1 Tender Minimum Performance Levels (tMPLs)

TENDER MINIMUM PERFORMANCE LEVELS (tMPLs)

CPA Disability tMPL: [REDACTED]

CPA Early Access tMPL: [REDACTED]

CPA LTU tMPL: [REDACTED]

CPA tMPL: [REDACTED]

DDA tMPL: [REDACTED]

- 1.1 The tMPLs are based on a predicted number of Participant Starts. The Contracting Body shall calculate the RNOs at the Performance Measurement Point by applying the tMPLs set out in this Schedule 2 to each Start Cohort of actual Participant Starts in the Performance Measurement Period.
- 1.2 The CPA RNO shall be calculated by the Contracting Body at the Performance Measurement Point by applying the CPA tMPL set out in this Schedule 2 to Start Cohorts of actual Participant Starts in the CPA in the Performance Measurement Period.
- 1.3 The CPA Disability RNO shall be calculated by the Contracting Body at the Performance Measurement Point by applying the CPA Disability tMPL set out in this Schedule 2 to Start Cohorts of actual Disability Participant Starts in the CPA in the Performance Measurement Period.
- 1.4 The CPA Early Access RNO shall be calculated by the Contracting Body at the Performance Measurement Point by applying the CPA Early Access tMPL set out in this Schedule 2 to Start Cohorts of actual Early Access Participant Starts in the CPA in the Performance Measurement Period.
- 1.5 The CPA LTU RNO shall be calculated by the Contracting Body at the Performance Measurement Point by applying the CPA LTU tMPL set out in this Schedule 2 to Start Cohorts of actual LTU Participant Starts in the CPA in the Performance Measurement Period.
- 1.6 The DDA RNO shall be calculated by the Contracting Body at the Performance Measurement Point by applying the DDA tMPL set out in this Schedule 2 to Start Cohorts of actual Participant Starts in the DDA in the Performance Measurement Period.
- 1.7 Without prejudice to the Contracting Body's right to undertake check(s) pursuant to clause C4, for performance management purposes only, the Contracting Body may measure the Contractor's performance against each tMPL at any time based on the assumption that each Outcome in the period for which the Contracting Body is measuring the Contractor's

performance against such tMPL would satisfy all of the relevant qualifying criteria and requirements (in respect of that Outcome). For the avoidance of doubt, this includes any Performance Improvement Notice issued by the Contracting Body in relation to a Service Failure pursuant to clause B16.

2 Customer Service Standards

CUSTOMER SERVICE STANDARDS
<p>WHP Specification CSS</p> <p>CSS 1: (a) 100% of 'Referrals' will result in a Participant Start or failure to attend within 10 Working Days of the Referral being made.</p> <p>(b) The Participant Start or failure to attend referred to in CSS 1 (a) will be recorded in PRaP within 15 Working Days of the Referral of the relevant Participant being made.</p> <p>CSS 2 The Contractor must acknowledge a 'Referral' on PRAP, within 2 Working Days of the Referral being made.</p> <p>CSS 3 No more than 4% of Referrals will be in Backlog. Backlog means as an accumulation of uncompleted work or matters needing to be dealt with in relation to CSS 1 and CSS 2.</p> <p>CSS 4 No single Referral will be in Backlog for more than 25 Working Days from the date of the Referral being made.</p> <p>CSS 5 The Contractor must ensure that for all 'Participant Starts', an agreed Action Plan is in place within 20 Working Days of the Referral of the relevant Participant being made.</p> <p>CSS 6 The supplier must send copy of the ESF Form to an agreed address specified by the Contracting Body, by electronic means or otherwise, within 5 Working Days of date of Participant signature of the ESF Form.</p>

tCSSs

[REDACTED]

Schedule 3

Contract Performance Reviews & Contractor Systems Assurance & Performance Indicators

1. Contract Performance Reviews

- 1.1 The Contracting Body will conduct regular formal contract performance review meetings ("CPRs") at a frequency determined by the Contracting Body from time to time to monitor, measure and review the Contractor's performance, utilising the Contracting Body's Performance Management and Intervention Regime ("PMIR"), which is described in the Provider Guidance. CPRs will encourage an open and regular dialogue between the Contracting Body and the Contractor with the purpose of ensuring that the Services are being supplied in accordance with the Tender Minimum Performance Levels (tMPLs) and the Customer Service Standards and that the RNOs are being achieved. CPRs will be formally conducted and documented.
- 1.2 The Contractor undertakes to:
- (a) co-operate fully with the Contracting Body; and
 - (b) supply all information requested by the Contracting Body; and
 - (c) arrange all access to Premises requested by the Contracting Body,
- for the purposes of conducting the CPRs.

2. Contractor Systems Assurance

- 2.1 The Contractor must comply with the Contracting Body's requirements for Contractor Systems Assurance as described in this paragraph 2 of Schedule 3 and notified to the Contractor by the Contracting Body from time to time.
- 2.2 The primary purpose of the Contractor Systems Assurance is to provide the Contracting Body with an assurance that payments to Contractors are in accordance with the Contracting Body and HM Treasury policies, that public funds and Contracting Body Data are protected and that value for money has been obtained.
- 2.3 Review(s) ("PAT Reviews") will be carried out of the Contractors' internal control systems to assess the Contractors' ability to manage risk across four key areas:
- a) Governance Arrangements – covering the Contractor's governance arrangements, systems for tracking and reporting performance and their anti-fraud measures;
 - b) Service Delivery – includes the Contractor's systems for starting, ending and moving Participants through the WHP Services and generally looks to ensure that the Contracting Body is getting the services for which it is paying. This section also covers management of the supply chain;
 - c) Claim Procedures and Payments – looks to ensure that Contractors have in place effective systems to support their claims for payment, including appropriate segregation of duties; and

- d) Data Security – looks to ensure that Providers have in place adequate systems to safeguard Contracting Body Data whilst it is being stored and/or transmitted around their organisations.
- 2.4 On completion of each review by the Contracting Body, the Contractor will be awarded an assurance rating in one of the following four categories – (i) weak; (ii) limited; (iii) reasonable; or (iv) strong (each a “**Contractor Assurance Rating**”), and will also receive an assurance rating from the Contracting Body regarding data security (“**Data Security Rating**”). The Contracting Body shall also send a formal report to the Contractor which details the PAT Review findings including key strengths and areas for improvement; where weaknesses have been identified the Contractor will be asked to complete an action plan setting out appropriate steps for improvement (a “**PAT Action Plan**”) and this is followed up at an agreed point.
- 2.5 The timescale for a subsequent review is determined at the sole discretion of the Contracting Body.
- 2.6 If the Contractor is attributed a “Weak” or “Limited” Contractor Assurance Rating and/or an equivalent Data Security Rating, as notified to the Contractor by the Contracting Body from time to time, the Contractor shall deploy all additional resources and take all remedial action that is necessary to remedy the “Weak” or “Limited” Contractor Assurance Rating or to prevent the “Weak” or “Limited” Contractor Assurance Rating or Data Security Rating from recurring by a date specified by the Contracting Body.
- 2.7 If in the opinion of the Contracting Body, the Contractor has failed to deploy the additional resources and to take the remedial action in accordance with the PAT Action Plan by the date specified by the Contracting Body, the Contracting Body may treat such failure as a Non Service Failure Default and issue a Formal Warning Notice in accordance with Clause B21.
- 2.8 The Contracting Body shall be entitled to terminate the WHP Contract by issuing a Termination Notice to the Contractor in the following circumstances:
- (a) where the Contractor has been awarded a Contractor Assurance Rating of “Weak” or “Limited” and/or an equivalent Data Security Rating, as notified to the Contractor by the Contracting Body from time to time, in two (2) separate consecutive PAT Reviews for reasons which the Contracting Body regards, at its sole discretion, as similar reasons; or
 - (b) where the Contractor has been awarded a Contractor Assurance Rating of “Weak” or “Limited” and/or an equivalent Data Security Rating as notified to the Contractor by the Contracting Body from time to time, in three (3) separate consecutive PAT Reviews regardless of the reasons for such award; or
 - (c) on-going or repeated failures on the part of the Contractor to comply with and implement a PAT Action Plan.
- 2.9 Notwithstanding any other term of this WHP Contract the Contractor hereby gives its consent for the Contracting Body to publish from time to time any of the Contractor’s Contractor Assurance Ratings and/or Data Security Ratings to the general public and to provide the Contractor’s Contractor Assurance Ratings and/or Data Security Ratings to any person as the Contracting Body deems appropriate. The Contractor shall assist and cooperate with the Contracting Body to enable the Contracting Body to publish and provide the Contractor’s

Contractor Assurance Ratings and/or Data Security Ratings to any person the Contracting Body deems appropriate in accordance with this paragraph.

2.10 The Contracting Body will from time to time publish the Contractor's Contractor Assurance levels and will identify the Contractor by name and the Contractor hereby consents to such publication.

2.11 Further information regarding to the PAT Reviews can be found in the Provider Guidance:

Generic guidance for DWP providers - GOV.UK

3. Performance Indicators

3.1 The Contracting Body shall carry out regular Performance Indicator Reviews at a frequency determined by the Contracting Body from time to time to review the Contractor's performance against the Performance Indicators. The Contractor shall co-operate fully with such Performance Indicator Reviews and shall promptly provide the Contracting Body with all Management Information the Contracting Body requires for the purpose of carrying out such Performance Indicator Reviews.

3.2 Where as a result of the Performance Indicator Review the Contracting Body believes that:

- (a) the Performance Indicators fall below the required standard; or
- (b) the Contracting Body, acting reasonably, believes that without intervention the Performance Indicators will fall below the required standard,

then, without prejudice to any other right or remedy it may have under this WHP Contract, the Contracting Body may issue a Performance Indicator Course of Action Notice requiring the Contractor to implement a Performance Indicator Course of Action in accordance with this Schedule 3, paragraph 3.

3.3 A Performance Indicator Course of Action Notice given, in accordance with this Schedule 3 Part B, to the Contractor by the Contracting Body may include:

- (a) confirmation as to how the Performance Indicators fall below or are anticipated to fall below the required standard;
- (b) the actions the Contracting Body in its absolute discretion requires the Contractor to take to satisfy the Contracting Body that the Contractor can ensure compliance with its contractual obligations in relation to Performance Indicators; and
- (c) the time period during which the Contractor is expected to follow the Performance Indicator Course of Action to achieve improvement of the Performance Indicators.

3.4 For the avoidance of doubt, the Contracting Body may initiate the Performance Indicator Course of Action at any time after a Performance Indicator Review and any delay in exercising its right to initiate the Performance Indicator Course of Action shall not constitute a waiver or cause of diminution of the Contracting Body's right to do so.

- 3.5 For the avoidance of doubt, the Contracting Body shall be under no obligation to initiate the Performance Indicator Course of Action and it may choose in its absolute discretion to exercise any other right or remedy available to it under this WHP Contract instead of or running in parallel with such right.
- 3.6 The Contractor shall have the right to respond in relation to the Performance Indicator Course of Action within ten (10) Working Days following notification under paragraph 3.2 and either confirm its acceptance or following discussions with the Contracting Body submit its revised plan. If such revised plan is agreed by the Contracting Body it shall be the revised Performance Indicator Course of Action.
- 3.7 Once agreed the Contractor shall immediately implement the Performance Indicator Course of Action. For the avoidance of doubt, any agreement between the Parties in relation to the Performance Indicator Course of Action shall not relieve the Contractor of any of its liabilities and obligations under this WHP Contract.
- 3.8 If a revised Performance Indicator Course of Action cannot be agreed within the period of ten (10) Working Days (or such other period as notified by the Contracting Body to the Contractor) then the Contracting Body may elect to refer the matter for resolution by the dispute resolution procedure set out in clause 12.
- 3.9 Performance Indicators

PERFORMANCE INDICATORS

- (a) DDA Disability PI: [REDACTED]
- (b) DDA Early Access PI: [REDACTED]
- (c) DDA LTU PI: [REDACTED]
- (d) The Earnings PI shall be calculated by the Contracting Body in accordance with the HMRC PAYE Data.

Schedule 4

Fees and Payment

1 Fees

- 1.1 The Contracting Body shall pay to the Contractor the Fees for the WHP Services in accordance with the amounts set out in this Schedule 4 (Fees and Payment).
- 1.2 The Contractor acknowledges and agrees that it shall have no entitlement to remuneration in respect of the WHP Services whatsoever other than the Fees.
- 1.3 The Fees shall comprise a Delivery Fee and Outcome Payments which shall be paid in respect of both an Employed Outcomes and a Self Employed Outcomes.
- 1.4 The payment rates set out in this Schedule 4 (Fees and Payment). will not be amended or adjusted if volumes change.

2 Value Added Tax

- 2.1 Payment from the Contracting Body to the Contractor shall be by a HMRC approved self-billing process. The Contractor hereby agrees that for the duration of the WHP Contract the Contracting Body will be self-billing producing the invoices on the Contractors behalf. The Contracting Body will issue VAT invoices and the Contractor shall confirm, on an annual basis, the rate of VAT that should be applied to self-billing invoices. It remains the responsibility of the Contractor to accurately account for and pay any VAT included in the payments received from the Contracting Body to HMRC.
- 2.2 If the VAT status of the Contractor changes at any time during the delivery of the WHP Services the Contractor shall notify the Contracting Body immediately and in any case within twenty-four (24) hours. If the Contractor intends to outsource the self-billing process to any third party it shall not do so without first having obtained the Contracting Body's prior approval, such approval not to be unreasonably withheld or delayed.
- 2.3 The Parties acknowledge and agree that an appropriate self-billing agreement is required to be in place and signed by the Parties throughout the WHP Contract Period to reflect the required self-billing treatment.

3 Additional Costs

- 3.1 Subject to the provisions of this WHP Contract (including without limitation this Schedule 4 (Fees and Payment)), the Fees are fixed and unless otherwise agreed between the Parties in accordance with clause F3 (Changes to the WHP Contract) and Schedule 13 (Change Control Procedure) any additional or unforeseen costs incurred by the Contractor in delivering the WHP Services shall be borne solely by the Contractor.

4 Types of Payment

4.1 Outcome Payments

- (a) Outcome Payments will be paid on a unit price basis at the rate set out in the table below based on the price in force at the date of the Participant Start, in accordance with the accelerator model more particularly described in paragraphs 5.7 to 5.12 inclusive of the WHP Specification:

	Amount per Outcome exc. VAT
Standard Rate Outcome Payment (payable first for each Outcome achieved from a Start Cohort up to the number of Outcomes equal to 75% of the CPA tMPL level applied to the number of Participant Starts in that Start Cohort)	[REDACTED]
Higher Rate Outcome Payment (payable after all Standard Rate Outcome Payments have been earned in respect of a Start Cohort for each Outcome achieved from a Start Cohort beyond the number of Outcomes equal to 75% of the CPA tMPL level applied to the number of Participant Starts in that Start Cohort)	[REDACTED]

- (b) For the avoidance of doubt the Contractor shall only be eligible to receive one Outcome Payment in respect of each Participant and, for the avoidance of doubt no Outcomes can be achieved in respect of Non-Qualifying Participants.

4.2 Delivery Fee

- (a) Subject to paragraph 4.2(b) below, a total Delivery Fee of [REDACTED] where due, will be payable in equal Delivery Fee Periodic Payments of [REDACTED] from the end of the first full Month after the Referral Period Start Date to the initial Referral Period End Date.
- (b) Notwithstanding paragraph 4.2(a), where the Referral Period Start Date is not the first day of a Month, the Delivery Fee Periodic Payment for that Month shall accrue on a day-to-day basis starting on the Referral Period Start Date, calculated according to the number of days elapsed and a month of 30 days.
- (c) Where due, the Contracting Body will pay each Delivery Fee Periodic Payment monthly in arrears.
- (d) The Contracting Body may defer payment of 50% of the Delivery Fee in accordance with Clause C6.
- (e) Should the Contracting Body choose to unilaterally extend the Referral Period in accordance with clause F3.4, it will be at the absolute discretion of the Contracting Body

to determine whether a Delivery Fee will be payable for any such period of extension and the amount of any Delivery Fee during such period of extension.

5 Methods of payment

- 5.1 The Contracting Body and the Contractor shall make payments using PRaP and/or other electronic methods.
- 5.2 The Contracting Body may issue a Purchase Order to the Contractor prior to commencement of the WHP Services.
- 5.3 All invoices payable outside of PRaP, must include the appropriate purchase order number sent to the following address:

SSCL Accounts Payable Team
Room 6124
Tomlinson House
Norcross
Blackpool FY5 3TA
Shared Services Helpline: [REDACTED]

- 5.4 The Contracting Body reserves the right to set and / or alter, at its absolute discretion, the method of payment and will use reasonable endeavours to give 30 days Notice to the Contractor of any change to the method of payment.

6 Payment rates

- 6.1 For the performance of the WHP Services by the Contractor the Fees shall be paid at the prices and rates entered in this Schedule. These rates are fixed and not subject to amendment or alteration over the WHP Contract Period, save where an amendment or alteration is made in accordance with the Change Control Procedure.
- 6.2 All payments will be subject to the provisions of the Schedule 4 and clause C (Payment and Fees). The payment of any Delivery Fee or Outcome Payments shall not constitute acceptance and the Contracting Body reserves the right to validate claims at any time in accordance with clause C4 Validation and Extrapolation.

Appendix 1.

VAT Confirmation

The format of appendix is subject to change from time to time at the Contracting Body's absolute discretion

Company Name: **Remploy Ltd**

VAT Registration Number: **207281428**

Registered Office Address: **18c Meridian East,
Meridian Business Park,
Leicester,
LE19 1WZ**

Company Registration Number: **09457025**

Please mark an X in the box that identifies the VAT rate to be applied to each Payment Type:

Supply	Zero	Reduced	Standard	Exempt Supply	Outside the scope of VAT
Delivery Fee	[REDACTED]				
Standard Rate Outcome Payment					
Higher Rate Outcome Payment					

The Contractor hereby confirms that the VAT rates indicated in the above table are the correct VAT rates in respect of the supply of WHP Services under the WHP Contract for CPA 6 Contract Reference Number: DWP_19023-6 dated

For and on behalf of the Contractor

Signature of Director [REDACTED]

Name [REDACTED]

Date [REDACTED]

Appendix 2

Self-Billing Agreement

The format of appendix is subject to change from time to time at the Contracting Body's absolute discretion

Contracting Body: The Secretary of State for the Department of Work and Pensions

VAT Number: 8888 15554

and

Contractor: Remploy Ltd

VAT Number: 207281428

The Contracting Body agrees:

1. to issue self-billed invoices for all supplies made to them by the Contractor until 31/12/2024;
2. to complete self-billed invoices showing the Contractor's name, address and VAT registration number, together with all the other details which constitute a full VAT Invoice;
3. to make a new self-billing agreement in the event that its VAT registration number changes; and
4. to inform the Contractor if the issue of self-billed invoices will be outsourced to a third party.

The Contractor agrees:

1. to accept invoices raised by the Contracting Body until 31/12/2024;
2. not to raise sales invoices for the transactions covered by this Self-Billing Agreement;
3. to notify the Contracting Body immediately if it
 - changes its VAT registration number,
 - ceases to be VAT registered; or
 - sells its business, or part of its business.

Contracting Body Signature: **[REDACTED]**

For and on behalf of: The Secretary of State for the Department of Work and Pensions

Date: **[REDACTED]**

Contractor Signature: **[REDACTED]**

For and on behalf of: Remploy Limited

Date: **[REDACTED]**

Schedule 5

WHP Commercially Sensitive Information

- 1 The Contracting Body acknowledges that the Contractor has requested that the following information be treated as WHP Commercially Sensitive Information:

Clause/paragraph numbered (or other identification)	Explanation of harm which may result from disclosure, indicating the relevant FoI Act exemption applied and time period applicable to any sensitivity
[REDACTED]	

- 2 The Contracting Body will consult with the Contractor on any request for information, identified as Commercially Sensitive, under the FOIA.
- 3 The Contracting Body reserves the right to disclose any WHP Commercially Sensitive Information held within this WHP Contract in response to a request under the FOIA as set out at clause E5 of this WHP Contract.
- 4 The Contracting Body will automatically publish all information provided by the Contractor not identified in this Schedule as constituting WHP Commercially Sensitive Information provided that it satisfies the requirements of the FOIA.
- 5 The Contracting Body reserves the right to determine whether any information provided in this Schedule does constitute WHP Commercially Sensitive Information prior to publication.

Schedule 6

Security Requirements and Plan

1 Introduction

1.1 This Schedule covers:

- (a) Principles of security for the Contractor ICT System, derived from the Security Policy, including without limitation principles of physical and information security;
- (b) The creation of the Security Plan;
- (c) Audit and testing of the Security Plan;
- (d) Conformance to ISO/IEC:27002 (Information Security Code of Practice) and ISO/IEC 27001 (Information Security Requirements Specification) (Standard Specification); and
- (e) Breaches of Security.
- (f) Security provisions with which the Contractor shall comply in providing the services relevant to this WHP Contract.

2 Principles of Security

2.1 The Contractor acknowledges that the Contracting Body places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Contractor System. The Contractor also acknowledges the confidentiality of the Contracting Body's Data.

2.2 The Contractor shall be responsible for the security of the Contractor System and shall at all times provide a level of security which;

- (a) is in accordance with Good Industry Practice and Law;
- (b) complies with the Security Policy;
- (c) meets any specific security threats to the Contractor System;
- (d) complies with ISO/IEC27002 and ISO/IEC27001 in accordance with paragraph 5 of this Schedule; and
- (e) meets the requirements of the Cyber Essentials Scheme, unless deemed out of scope for this requirement.

2.3 Without limiting paragraph 2.2, the Contractor shall at all times ensure that the level of security employed in the provision of the Services is appropriate to minimise the following risks:

- (a) loss of integrity of Contracting Body Data;
- (b) loss of confidentiality of Contracting Body Data;
- (c) unauthorised access to, use of, or interference with Contracting Body Data by any person or organisation;
- (d) unauthorised access to network elements and buildings;

- (e) use of the Contractor System or Services by any third party in order to gain unauthorised access to any computer resource or Contracting Body Data;
- (f) loss of availability of Contracting Body Data due to any failure or compromise of the Services; and
- (g) loss of confidentiality, integrity and availability of Contracting Body Data through Cyber/internet threats

3 Security Plan

Introduction

- 3.1 The Contractor shall develop, implement and maintain a Security Plan to apply during the Contract Period and after the end of the Contract Period in accordance with the Exit Management Strategy, which will be approved by the Contracting Body, tested, periodically updated and audited in accordance with this Schedule.
- 3.2 A draft Security Plan provided by the Contractor as part of its bid is set out in Appendix B.

Development

- 3.3 Within twenty (20) Working Days after the WHP Commencement Date and in accordance with paragraphs 3.10 to 3.12 (Amendment and Revision), the Contractor will prepare and deliver to the Contracting Body for approval the full and final Security Plan which will be based on the draft Security Plan set out in Appendix B.
- 3.4 If the Security Plan is approved by the Contracting Body it will be adopted immediately. If the Security Plan is not approved by the Contracting Body the Contractor shall amend it within 10 Working Days of a notice of non-approval from the Contracting Body and re-submit to the Contracting Body for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Contracting Body. If the Contracting Body does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with clause 12 Dispute Resolution. No approval to be given by the Contracting Body pursuant to this paragraph 3.4 of this schedule may be unreasonably withheld or delayed. However any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 3.1 to 3.9 shall be deemed to be reasonable.

Content

- 3.5 The Security Plan will set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with:
 - (a) the provisions of this WHP Contract; this Schedule (including the principles set out in paragraph 2);
 - (b) the provisions of Schedule 1 relating to security;
 - (c) ISO/IEC27002 and ISO/IEC27001;
 - (d) the data protection compliance guidance produced by the Contracting Body.
- 3.6 The references to standards, guidance and policies set out in paragraph 3.5 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.

- 3.7 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Contractor should notify the Contracting Body's Representative of such inconsistency immediately upon becoming aware of the same, and the Contracting Body's Representative shall, as soon as practicable, advise the Contractor which provision the Contractor shall be required to comply with.
- 3.8 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001.
- 3.9 Where the Security Plan references any document which is not in the possession of the Contracting Body, a copy of the document will be made available to the Contracting Body upon request. The Security Plan shall be written in plain English in language which is readily comprehensible to the staff of the Contractor and the Contracting Body engaged in the Services and shall not reference any other documents which are not either in the possession of the Contracting Body or otherwise specified in this Schedule.

Amendment and Revision

- 3.10 The Security Plan will be fully reviewed and updated by the Contractor annually, or from time to time to reflect:
- (a) emerging changes in Good Industry Practice;
 - (b) any change or proposed change to the Contractor ICT System, the Services and/or associated processes;
 - (c) any new perceived or changed threats to the Contractor ICT System; and
 - (d) a reasonable request by the Contracting Body.
- 3.11 The Contractor will provide the Contracting Body with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Contracting Body.
- 3.12 Any change or amendment which the Contractor proposes to make to the Security Plan as a result of an Contracting Body request or change to Schedule 1 or otherwise shall be subject to the change control procedure and shall not be implemented until approved in writing by the Contracting Body.

4 Audit and Testing

- 4.1 The Contractor shall conduct tests of the processes and countermeasures contained in the Security Plan ("Security Tests") on an annual basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Contracting Body.
- 4.2 The Contracting Body shall be entitled to send a representative to witness the conduct of the Security Tests. The Contractor shall provide the Contracting Body with the results of such tests (in a form approved by the Contracting Body in advance) as soon as practicable after completion of each Security Test.
- 4.3 Without prejudice to any other right of audit or access granted to the Contracting Body pursuant to this WHP Contract, the Contracting Body shall be entitled at any time and without giving notice to the Contractor to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Contractor's compliance with and implementation of the Security Plan. The Contracting Body may notify the Contractor of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery Services. If such tests impact adversely on its ability to deliver the Services to the agreed Service Levels, the Contractor shall be granted relief against any resultant under-performance for the period of the tests.
- 4.4 Where any Security Test carried out pursuant to paragraphs 4.2 or 4.3 above reveals any actual or potential security failure or weaknesses, the Contractor shall promptly notify the Contracting Body of any

changes to the Security Plan (and the implementation thereof) which the Contractor proposes to make in order to correct such failure or weakness. Subject to the Contracting Body's approval in accordance with paragraph 3.12, the Contractor shall implement such changes to the Security Plan in accordance with the timetable agreed with the Contracting Body or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan to address a non-compliance with the Security Policy or security requirements, the change to the Security Plan shall be at no additional cost to the Contracting Body. For the purposes of this paragraph 4, a weakness means vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

5 Compliance with ISO/IEC 27001

- 5.1 The Contractor shall carry out such regular security audits as may be required by the British Standards Institute in order to maintain delivery of the Services in compliance with security aspects of ISO 27001 and shall promptly provide to the Contracting Body any associated security audit reports and shall otherwise notify the Contracting Body of the results of such security audits.
- 5.2 If it is the Contracting Body's reasonable opinion that compliance with the principles and practices of ISO 27001 is not being achieved by the Contractor, then the Contracting Body shall notify the Contractor of the same and give the Contractor a reasonable time (having regard to the extent of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO 27001. If the Contractor does not become compliant within the required time then the Contracting Body has the right to obtain an independent audit against these standards in whole or in part.
- 5.3 If, as a result of any such independent audit as described in paragraph 5.2 the Contractor is found to be non-compliant with the principles and practices of ISO 27001 then the Contractor shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Contracting Body in obtaining such audit.

6 Breach of Security

- 6.1 Either party shall notify the other immediately upon becoming aware of any Breach of Security including, but not limited to an actual, potential or attempted breach, or threat to, the Security Plan.
- 6.2 Upon becoming aware of any of the circumstances referred to in paragraph 6.1, the Contractor shall:
 - (a) immediately take all reasonable steps necessary to:
 - (i) remedy such breach or protect the Contractor ICT System against any such potential or attempted breach or threat; and
 - (ii) prevent an equivalent breach in the future.

Such steps shall include any action or changes reasonably required by the Contracting Body. In the event that such action is taken in response to a breach that is determined by the Contracting Body acting reasonably not to be covered by the obligations of the Contractor under this WHP Contract, then the Contractor shall be entitled to refer the matter to the change control procedure in clause F3 (Variation).

 - (b) as soon as reasonably practicable provide to the Contracting Body full details (using such reporting mechanism as may be specified by the Contracting Body from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

7 Contracting Body Data relevant to the WHP Contract

- 7.1 The WHP Specification will outline the WHP Services to be provided by the Contractor, including the type of Contracting Body Data involved.

- 7.2 The majority of information that is created or processed by the public sector is described as 'Official'. This includes routine business operations and services, some of which could have damaging consequences if lost, stolen or published in the media.

Appendix A – DWP Security Policies and Standards

- 1 The Department for Work and Pensions (DWP) treats information as a valuable asset and considers that it is essential that information must be protected, together with the systems, equipment and processes which support its use. These information assets may include data, text, drawings, diagrams, images or sounds in electronic, magnetic, optical or tangible media, together with any Personal Data for which DWP is the Data Controller.
- 2 In order to protect DWP information appropriately, our Contractors must provide the security measures and safeguards appropriate to the nature and use of the information. All Contractors of services to DWP must comply, and be able to demonstrate compliance, with the relevant DWP policies and standards.
- 3 The main DWP policies include:
 - Information Security Policy
 - Physical Security Policy
 - Acceptable Use Policy

The above policies are attached as Appendices C, D and E to this Schedule.

- 4 Each Contractor must appoint a named officer who will act as a first point of contact with the Department for security issues. In addition all staff working for the Contractor and where relevant Sub-contractors, with access to DWP IT Systems, Services, DWP information or DWP sites must be made aware of these requirements and must comply with them.
- 5 The policies and requirements are based on and follow ISO27001 and Cyber Essentials, but with specific reference to DWP use.
- 6 Whilst Departmental policies are written for internal Departmental requirements all Contractors must implement appropriate arrangements which ensure that the Department's information and any other Departmental assets are protected in accordance with prevailing statutory and government requirements. These arrangements will clearly vary according to the size of the organisation so should be applied proportionately.
- 7 It is the Contractor's responsibility to monitor compliance of any Sub-contractors and provide assurance to DWP as requested.
- 8 Failure to comply with any of these Policies and Standards could result in termination of current contract.
- 9 The following are some key basic requirements that all Contractors must apply:

(a) **Personnel Security**

- (i) Staff recruitment in accordance with government requirements for pre-employment checks; including Baseline Personnel Security Standard.
- (ii) Staff training and awareness of DWP security and any specific contract requirements.

(b) **Secure Information Handling and Transfers**

Physical and electronic handling, processing and transferring of DWP Data, including secure access to systems and the use of encryption where appropriate.

(c) **Portable Media**

The use of only encrypted laptops, encrypted storage devices and other protected removable media when handling DWP information.

(d) **Offshoring**

DWP data must not be processed outside the United Kingdom without the prior written consent of DWP and must at all times comply with the Data Protection Act 1998.

(e) **Physical Security**

Security of premises and control of access.

(f) **Security Incidents**

Includes identification, managing and agreed reporting procedures for actual or suspected security breaches.

Appendix B -- Draft Security Plan

[REDACTED]

Schedule 7

Sustainable Development Requirements

This Schedule sets out the Sustainable Development Requirements which are applicable to the provision of the WHP Services.

1 General

- 1.1 The Contractor acknowledges that the Contracting Body must at all times be seen to be actively promoting Sustainable Development through its environmental, social and economic responsibilities.
- 1.2 In delivering the WHP Services, the Contractor shall and shall ensure that its Sub-contractors assist and cooperate with the Contracting Body, by fully complying with the requirements of this Schedule.

2 Compliance

- 2.1 The Contractor shall produce a Sustainable Development Policy Statement and Sustainable Development Plan in accordance with paragraphs 2.2 and 2.3 of this Schedule, within three (3) Months of the WHP Commencement Date and every 12 Months thereafter. The Sustainable Development Policy Statement and Sustainable Development Plan must be specific to the WHP Contract and include all Sub-contractors involved in delivery of the WHP Contract. The Contractor must obtain the required information from Sub-contractors and then collate and submit as stated above.
- 2.2 In delivering the WHP Services, the Contractor shall prepare a Sustainable Development Policy Statement giving, for each organisation involved in delivery of the WHP Contract an overarching commitment to:
 - (a) dispose of contract waste in a legal manner (i.e. waste is disposed of via a registered waste collector, the Waste Electrical and Electronic Equipment (WEEE) regulations are adhered to where relevant);
 - (b) reduce energy consumption;
 - (c) promote waste management including recycling;
 - (d) promote green or public transport;
 - (e) promote Corporate Social Responsibility (CSR); and
 - (f) the Sustainable Development Policy and that of continuous improvement which should be signed and dated by senior management.
- 2.3 In delivering the WHP Services, the Contractor shall prepare and deliver a Sustainable Development Plan which should be used to turn the commitment shown in the Sustainable Development Policy into action and which as a minimum, detail how each organisation involved in delivery of the WHP Contract will:
 - (a) reduce their **Environmental** footprint of this WHP Contract through:

- (i) minimising the use of energy, water and materials;
 - (ii) minimising waste and increasing recycling levels;
 - (iii) utilising recycled goods within operations;
 - (iv) providing efficient low carbon delivery methods; and
 - (v) promoting the use of green or public transport.
- (b) contribute to **Social** sustainability of this WHP Contract through compliance with "Schedule 17 – Life Chances" where requested by the Contracting Body.
- (c) drive **Economic** sustainability of this WHP Contract through:
 - (i) supporting job creation both locally and nationally; and
 - (ii) facilitating opportunities for Minority Owned Businesses and Small and Medium-sized Enterprises.

2.4 To aid the department in monitoring the progress of each organisation the following information should also be included in your plan:

- (a) a baseline assessment of current position in terms of waste minimisation, recycling and energy consumption (energy consumption only required if current energy usage is available to organisations);
- (b) annual estimates of the progress of Sustainable Development actions; and
- (c) details of how Staff awareness of Sustainability will be increased in line with the Sustainable Development Plan.

Schedule 8

Welsh Language Scheme

This Schedule sets out the Contractor's obligations which are applicable to the provision of the WHP Services in Wales.

1 General

- 1.1 The Contractor acknowledges that in relation to the operation of its WHP Services which are delivered in Wales, the Contracting Body must at all times be seen to be actively promoting the equality of the English and Welsh languages, in accordance with the Welsh Language Act 1993.
- 1.2 In the performance of the WHP Contract, the Contractor shall ensure that it cooperates with the Contracting Body in satisfying this duty, by fully complying with the requirements of this Schedule.

2 The DWP Welsh Language Scheme

- 2.1 The DWP Welsh Language Scheme can be found at:

<https://www.gov.uk/government/organisations/departments/about/welsh-language-scheme>

- 2.2 The Contractor shall, in the delivery of the WHP Services, ensure that it complies with the Department for Work and Pensions Welsh Language Scheme and such instructions as the Contracting Body may issue from time to time in respect of promoting the equality of the English and Welsh languages.

3 Delivery of WHP Services Through the Medium of Welsh

- 3.1 The Contractor undertakes that those who have dealings with them are able to do so in English or Welsh, whichever is their preference.
- 3.2 The Contractor will ensure that:
 - (a) those who want, or are required, to correspond with the Contractor will be able to do so in English or Welsh;
 - (b) those who are known to prefer corresponding through the medium of Welsh will have correspondence initiated in Welsh;
 - (c) any correspondence received in Welsh will be answered in Welsh within the same timescales and standards as those written in English;
 - (d) staff who are in Wales will greet any telephone callers in English and Welsh until the caller's preferred language can be ascertained;
 - (e) any help lines set up to deliver the service must offer a Welsh or English option and sufficient Welsh language speakers must be available to deal with callers through the medium of Welsh, if they select the Welsh option;

- (f) any answer phones in the Contractor's offices in Wales will have a pre-recorded bilingual message;
- (g) all people who participate in the WHP Services are able to contribute through the medium of English or Welsh;
- (h) all material published and printed for use in Wales shall be available in English and Welsh, and available for use within the same timescales. The standard of bilingual or Welsh material shall be of equal quality to those produced solely in English;
- (i) all forms and explanatory material be available in both English and Welsh and available for use within the same timescales; and
- (j) any complaints or grievance procedure should be provided in both English and Welsh.
- (k) any websites, including any interactive pages, set up to support the delivery of the service must be available in both Welsh and English;
- (l) where DWP has notified the contractor or the participant has identified that Welsh is their preferred language this should be recorded, ensuring all future dealings with that participant will be in Welsh.

Schedule 9

Parent Company Guarantee

DATED

PARENT COMPANY GUARANTEE

between

THE SECRETARY OF STATE FOR WORK AND PENSIONS

and

MAXIMUS COMPANIES LTD

THIS DEED is dated

[REDACTED]

PARTIES

- (1) **THE SECRETARY OF STATE FOR WORK AND PENSIONS** whose address is Caxton House, Tothill Street, Greater London, SW1H 9NA ("the **Contracting Body**"); and
- (2) **MAXIMUS COMPANIES LTD** incorporated and registered in United Kingdom with company number **09188364** whose registered office is at WINSTON & STRAWN LONDON LLP, Citypoint, 1n Ropemaker Street, London, EC2Y 9AW ("the **Guarantor**").

BACKGROUND

- (1) By an agreement dated on or about the date of this guarantee ("the **WHP Contract**", which term includes all amendments to, variations of, or supplements to such agreement, from time to time in force), the Contracting Body has agreed to engage **Remploy Limited** ("the **Contractor**") to deliver **Work and Health Programme CPA 6 Wales**.
- (2) It is a condition of the WHP Contract **being awarded to the Contractor** that the Contractor ensures the execution and delivery to the Contracting Body of a parent company guarantee substantially in the form of this guarantee.
- (3) The Guarantor has agreed to guarantee the due performance of the WHP Contract by the Contractor.
- (4) It is the intention of the Parties that this document be executed as a deed.

AGREED TERMS

1 Interpretation

- 1.1 Unless the context requires otherwise, the definitions and rules of interpretation in the WHP Contract shall apply in this guarantee.
- 1.2 A reference in this deed to this guarantee shall be construed as a reference to this deed of guarantee.

2 Obligations of The Guarantor

- 2.1 In consideration of the Contracting Body entering into the WHP Contract with the Contractor, the Guarantor agrees:
 - 2.1.1 as primary obligor, to guarantee to the Contracting Body the due and punctual performance by the Contractor of each and all of the obligations, representations, warranties, duties and undertakings of the Contractor under and pursuant to the WHP Contract when and if such obligations, representations, warranties, duties and undertakings shall become due and performable according to the terms of the WHP Contract;
 - 2.1.2 in addition to its obligations set out in clause 2.1.1, to indemnify the Contracting Body against all losses which may be awarded against the Contracting Body or which the Contracting Body may otherwise incur arising out of, under or otherwise in connection with the WHP Contract whether arising under statute, contract or at common law

including without limitation by reason of any default by the Contractor of its obligations, representations, warranties, duties and undertakings under and/or pursuant to the WHP Contract save that, subject to the other provisions of this guarantee (including without limitation clause 2.1.3), this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are imposed on the Contractor under the WHP Contract; and

- 2.1.3 to indemnify the Contracting Body against all losses whether arising under statute, contract or at common law which may be awarded against the Contracting Body or which the Contracting Body may otherwise incur if any obligation guaranteed by the Guarantor is or becomes totally or partially unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Contractor's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3 Liability

- 3.1 The Guarantor agrees that it shall not in any way be released from liability under this guarantee by any act, omission, matter or other thing whereby (in absence of this provision) the Guarantor would or might be released in whole or in part from liability under this guarantee including, without limitation and whether or not known to the Guarantor:

- 3.1.1 any arrangement made between the Contractor and the Contracting Body;
- 3.1.2 any alteration in the obligations undertaken by the Contractor whether by way of any addendum or variation referred to in clause 4 or otherwise;
- 3.1.3 any waiver or forbearance by the Contracting Body whether as to payment, time, performance or otherwise;
- 3.1.4 the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Contractor or any other person;
- 3.1.5 any unenforceability, illegality or invalidity of any of the provisions of the WHP Contract or any of the Contractor's obligations under the WHP Contract, so that this guarantee shall be construed as if there were no such unenforceability, illegality or invalidity;
- 3.1.6 any legal limitation, disability, incapacity or other circumstances relating to the Contractor, or any other person; or
- 3.1.7 the dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, Liquidation or the appointment of an administrator or receiver of the Contractor or any other person.

4 Addendum Or Variation

The Guarantor by this guarantee authorises the Contractor and the Contracting Body to make any addendum or variation to the WHP Contract, the due and punctual performance of which addendum and variation shall be likewise guaranteed by the Guarantor in accordance with the terms of this guarantee.

5 Guarantee

- 5.1 This guarantee shall be a primary obligation of the Guarantor and accordingly the Contracting Body shall not be obliged before enforcing this guarantee to take any action in any court or arbitral proceedings against the Contractor, to make any claim against or any demand of the Contractor, to enforce any other security held by it in respect of the obligations of the Contractor under the WHP Contract or to exercise, levy or enforce any distress, diligence or other process of execution against the Contractor. In the event that the Contracting Body brings proceedings against the Contractor, the Guarantor shall be bound by any findings of fact, interim or final award or judgment made by an arbitrator or the court in such proceedings.

- 5.2 This guarantee is a continuing guarantee and accordingly shall remain in full force and effect (notwithstanding any intermediate satisfaction by the Contractor, the Guarantor or any other person) until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Contractor under the WHP Contract have been satisfied or performed in full and is not revocable and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Contracting Body may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security.

6 Outstanding Payments

- 6.1 Until all amounts which may be or become payable under the WHP Contract or this guarantee have been irrevocably paid in full, the Guarantor shall not as a result of this guarantee or any payment or performance under this guarantee be subrogated to any right or security of the Contracting Body or claim or prove in competition with the Contracting Body against the Contractor or any other person or demand or accept repayment of any monies or claim any right of contribution, set-off or indemnity and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in default of this provision shall be held by the Guarantor in trust for and shall be promptly paid to the Contracting Body.
- 6.2 The Guarantor shall not hold any security from the Contractor in respect of this guarantee and any such security which is held in default of this provision shall be held by the Guarantor in trust for and shall promptly be transferred to the Contracting Body.
- 6.3 Until all amounts which may be or become payable under the WHP Contract or this guarantee have been irrevocably paid in full, if (notwithstanding the provisions of clause 6.1 and clause 6.2) the Guarantor has any rights of subrogation against the Contractor or any rights to prove in a Liquidation of the Contractor, the Guarantor agrees to exercise such rights in accordance with the directions of the Contracting Body.

7 Change of Control

The Guarantor shall not be discharged of its obligations under this Guarantee in the event there is a change of control of the Contractor within the meaning of section 1124 of the Corporation Tax Act 2010, save unless the Contracting Body gives its prior written consent to an assignment of the guarantee by the Guarantor to another entity of comparable financial standing.

8 Payment And Expenses

- 8.1 Each payment to be made by the Guarantor under this guarantee shall be made in pounds sterling, free and clear of all deductions or withholdings of any kind, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor shall pay that additional amount which is necessary to ensure that the Contracting Body receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 8.2 The Guarantor shall pay interest on any amount due under this guarantee from the day after the date on which payment was due up to and including the date of payment in full (whether before or after judgment) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.3 The Guarantor shall reimburse the Contracting Body for all legal and other costs (including VAT) incurred by the Contracting Body in connection with the enforcement of this guarantee.

9 Settlement

Any settlement or discharge between the Contracting Body and the Contractor and/or the Guarantor shall be conditional upon no settlement with security or payment to the Contracting Body by the Contractor or the Guarantor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or law relating to bankruptcy, insolvency or Liquidation for the time being in force and accordingly (but without limiting the Contracting Body's

other rights hereunder) the Contracting Body shall be entitled to recover from the Guarantor, as if such settlement or discharge had not occurred, the value which the Contracting Body has placed upon such settlement or security or the amount of any such payment.

10 Warranties

10.1 The Guarantor warrants and confirms to the Contracting Body that:

- 10.1.1 it is duly incorporated with limited liability and validly existing under the laws of its jurisdiction of incorporation;
- 10.1.2 it has full power under its memorandum and articles of association or equivalent constitutional documents in the jurisdiction in which it is established to enter into this guarantee;
- 10.1.3 it has full power to perform the obligations expressed to be assumed by it or contemplated by this guarantee;
- 10.1.4 it has been duly authorised to enter into this guarantee;
- 10.1.5 it has taken all necessary corporate action to authorise the execution, delivery and performance of this guarantee;
- 10.1.6 this guarantee when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;
- 10.1.7 all necessary consents and authorisations for the giving and implementation of this guarantee have been obtained; and
- 10.1.8 it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which may affect its ability to perform under this guarantee.

10.2 The Guarantor warrants and undertakes to the Contracting Body that it will take all necessary action directly or indirectly to perform the obligations expressed to be assumed by it or contemplated by this guarantee and to implement the provisions of this guarantee.

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

11 Assignment

The Contracting Body shall be entitled by notice in writing to the Guarantor to assign the benefit of this guarantee at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this guarantee.

12 Notices

12.1 Any notice to or demand on the Guarantor to be served under this guarantee may be by letter (sent by hand, post, registered post or by the recorded delivery service) or by facsimile transmission or electronic mail (confirmed in either case by letter) to the Guarantor at its address appearing in this guarantee or at such other address as it may have notified to the Contracting Body in accordance with this clause 12.

12.2 Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

13 Waiver

- 13.1 No delay or omission of the Contracting Body in exercising any right, power or privilege under this guarantee shall impair or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of such right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies of the Contracting Body provided for in this guarantee are cumulative and not exclusive of any rights or remedies provided by law.
- 13.2 A waiver given or consent granted by the Contracting Body under this guarantee will be effective only if given in writing and then only in the instance and for the purpose for which it is given.
- 13.3 A waiver by the Contracting Body shall not constitute a continuing waiver and shall not prevent the Contracting Body from subsequently enforcing any of the provisions of this guarantee.

14 Severability

The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this guarantee.

15 Contracts (Rights of Third Parties) Act 1999

It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this guarantee is not intended to, and does not, give to any person who is not a party to this guarantee any rights to enforce any provisions contained in this guarantee except for any person to whom the benefit of this guarantee is assigned or transferred in accordance with clause 11.

16 Governing Law

- 16.1 This guarantee and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) is governed by and shall be construed in accordance with English law.
- 16.2 The Guarantor submits to the exclusive jurisdiction of the English courts for all purposes relating to this guarantee and any disputes or claims arising out of, or in connection with, its subject matter or formation (including non-contractual disputes or claims) [and the Guarantor irrevocably appoints [INSERT NAME] as its agent for service of process.

17 Entire Agreement

- 17.1 This guarantee contains the whole agreement between the Parties relating to the transactions contemplated by this guarantee and supersedes all previous agreements between the Parties relating to the transactions.
- 17.2 Each party acknowledges that in entering into this guarantee it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this guarantee and the documents referred to in it) made by or on behalf of any other party before the date of this guarantee. Each party waives all rights and remedies which, but for this clause 17.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.
- 17.3 Nothing in clause 17.2 limits or excludes any liability for Fraud.

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

EXECUTED as a deed by **MAXIMUS COMPANIES LTD** acting by two directors or by one director and the secretary or one director and a witness:

Director	[REDACTED]
Signature
	[REDACTED]
Name

Director/Secretary/Witness
(delete as appropriate)

Signature	[REDACTED]

	[REDACTED]
Name

AND

EXECUTED as a Deed by affixing the Common
Seal of the Secretary of State for Work and
Pensions acting as part of the Crown in the
presence of:

Name of Authorised Officer: **[REDACTED]**

Signature **[REDACTED]**

Schedule 10

Exit Management

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Emergency Exit" means any termination of this WHP Contract which is a:

- (a) termination of the whole or part of this WHP Contract in accordance with Section H (Termination Rights and Disruption), except where the period of notice given under that Clause is greater than or equal to 6 months;
- (b) termination of the provision of the WHP Services for any reason prior to the expiry of any period of notice of termination served pursuant to Section H (Termination Rights and Disruption); or
- (c) wrongful termination or repudiation of this WHP Contract by either Party;

"Exit Information" has the meaning given in Paragraph 3.1;

"Exit Information Delay Payment" has the meaning given in Paragraph 3.4;

"Exit Manager" means the person appointed by each Party pursuant to either Paragraph 2.2 or Paragraph 2.3 for managing the Parties' respective obligations under this Schedule;

"Ordinary Exit" means any termination of this WHP Contract which occurs:

- (a) pursuant to Section H (Termination Rights and Disruption) other than an Emergency Exit;
- (b) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or
- (c) as a result of the expiry of the WHP Contract Period;

"Registers" means the registers referred to in Paragraphs 2.1(a) and 2.1(b);

"Termination Assistance Notice" has the meaning given in Paragraph 5.1 of this Schedule;

"Termination Assistance Period" in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Contractor is required to provide the Termination Services as such period may be extended pursuant to Paragraph 5.2 of this Schedule;

"Termination Payment" means the commitments, liabilities and expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of termination of the Contract pursuant to the occurrence of a Termination Payment Event which shall be calculated as and be exclusively equal to:

- (a) Breakage Costs and Unrecovered Costs, if termination occurs in the period from the Commencement Date up to and including the date which is forty (40) Months after the Commencement Date; or
- (b) Unrecovered Costs, if termination occurs after the date which is forty (40) Months after the Commencement Date

"Termination Payment Event" means termination of the Contract pursuant to one of the grounds referred to in Clauses H1.1(a) or H1.1(d)

"Termination Services" means any of the WHP Services, which may include all of the WHP Services, to be performed by the Contractor during the Termination Assistance Period and any other actions required pursuant to the Termination Assistance Notice;

"Transferable Contracts" means the Sub-contracts or other agreements which are necessary to enable the Contracting Body or any Replacement Contractor to perform the WHP Services or the Replacement Services; and

"Transferring Contracts" has the meaning given in Paragraph 6.2(c).

2 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

2.1 During the WHP Contract Period, the Contractor shall:

- (a) create and maintain a register of all:
 - (i) Sub-contracts and other relevant agreements required for the performance of the WHP Services; and
 - (ii) personnel engaged on the WHP Services under this WHP Contract by the Contractor, its Sub-contractors or elsewhere within its supply chain, denoting those that are employees or otherwise, including any individuals that are agency staff and/or self-employed ("**the Personnel List**"). The Contractor shall provide the Contracting Body with an updated register of the Personnel List annually or at any point during the WHP Contract Period within 10 days of a written request by the Contracting Body;
- (b) create and maintain a database detailing the infrastructure and operating procedures through which the Contractor provides the WHP Services, which shall contain sufficient detail to permit the Contracting Body and/or Replacement Contractor to understand how the Contractor provides the WHP Services and to enable the smooth transition of the WHP Services with the minimum of disruption;
- (c) agree the format of the Registers with the Contracting Body as part of the process of agreeing the Exit Plan; and
- (d) at all times keep the Registers up to date, in particular in the event that Sub-contracts or other relevant agreements are added to or removed from the WHP Services.

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

2.3 Either Party may appoint a replacement Exit Manager by providing prior written notification of such appointment to the other Party.

2.4 The Contractor undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Contracting Body (i) to ensure an orderly transfer of responsibility for the supply of the WHP Services (or their equivalent) to any Replacement Contractor or (ii) to discontinue the supply of all or part of the WHP Services.

2.5 The Contractor shall bear its own costs and expenses incurred in respect of compliance with its obligations under this Schedule 10.

3 OBLIGATIONS TO ASSIST ON RE-TENDERING OR REPLACEMENT OF WHP SERVICES

3.1 In order to facilitate a smooth and orderly transfer of responsibility on the expiry, termination or re-tendering, in full or in part, of the WHP Contract the Contractor shall:-

- (a) act fairly and in good faith at all times in connection with any re-tender process for supply of the WHP Services (or their equivalent) conducted by the Contracting Body;

- (b) comply with the Contracting Body's reasonable requests in connection with any tender process so as to enable the Contracting Body to facilitate a fair and open competitive tender of the supply of the WHP Services (or their equivalent);
- (c) do or perform such other acts and things and execute all documents as may reasonably be required in order to facilitate the re-tender or transition process;
- (d) save for any Commercially Sensitive Information deliver any documents, information and data (in any form whatsoever but for the avoidance of doubt, any machine readable or electronic data shall be provided in a readily readable form) in the possession or control of the Contractor which relate to:
 - (i) the performance, monitoring, management and reporting of the WHP Services; and
 - (ii) the terms and conditions of employment and the employment records of those of the Transferring Contractor Employees or those employees who may be affected by the TUPE Regulations upon any transfer of responsibility for the supply of the WHP Services (or their equivalent).

3.2 On reasonable notice at any point during the WHP Contract Period, the Contractor shall provide to the Contracting Body and/or its potential Replacement Contractors (subject to the potential Replacement Contractors entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Contracting Body of any invitation to tender and/or to facilitate any potential Replacement Contractors undertaking due diligence:

- (a) details of the WHP Service(s);
- (b) a copy of the Registers, updated by the Contractor up to the date of delivery of such Registers;
- (c) an inventory of Contracting Body Data in the Contractor's possession or control;
- (d) details of any key terms of any third party contracts, particularly as regards charges, termination, assignment and novation;
- (e) a list of on-going and/or threatened disputes in relation to the provision of the WHP Services;
- (f) within 20 days of a written request from the Contracting Body, to the extent permitted by applicable Law, all information relating to Transferring Contractor Employees or those who may be Transferring Contractor Employees required to be provided by the Contractor under this WHP Contract, such information to include the Staffing Information (as defined in Schedule 19 (Employee Provisions and TUPE) and the information contained within Paragraph 1.6 of Part D of Schedule 19 (Employee Provisions and TUPE); and
- (g) such other material and information as the Contracting Body shall reasonably require, (together, the "**Exit Information**").

3.3 The Contractor represents and warrants that the Exit Information is full, accurate and complete as at the date of provision to the Contracting Body. If the Contractor fails to provide the Information set out in Paragraph 3.2(f) within the 20 days, the Contractor shall pay an Exit Information Delay Payment to the Contracting Body.

3.4 The Exit Information Delay Payment shall accrue:

- (a) at a daily rate of an amount equal to 10 per cent. of the Delivery Fee Periodic Payment for each Working Day's delay (exclusive of VAT);

- (b) from (but excluding) the date the Contracting Body requested the information in Paragraph 3.2(f) to (and including) the date on which the Contractor provides the Exit Information under Paragraph 3.2(f) to the Contracting Body to the Contracting Body's satisfaction; and
 - (c) on a daily basis, with any part day counting as a day.
- 3.5 The Contractor acknowledges that the Contracting Body may disclose the Contractor's Confidential Information to an actual or prospective Replacement Contractor or any third party whom the Contracting Body is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Contracting Body may not under this Paragraph 3.3 disclose any Contractor's Confidential Information which is information relating to the Contractor's or its Sub-contractors' prices or costs).
- 3.6 The Contractor shall:
 - (a) notify the Contracting Body within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any WHP Services and shall consult with the Contracting Body regarding such proposed material changes; and
 - (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Contracting Body.
- 3.7 The Contractor may charge the Contracting Body for its reasonable additional costs to the extent the Contracting Body requests more than 4 updates in any 6 month period.
- 3.8 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Contractor shall be such as would be reasonably necessary to enable a third party to:
 - (a) prepare an informed offer for those WHP Services; and
 - (b) not be disadvantaged in any subsequent procurement process compared to the Contractor (if the Contractor is invited to participate).

4 EXIT PLAN

- 4.1 The Contractor shall, within 3 months after the WHP Commencement Date, deliver to the Contracting Body an Exit Plan which:
 - (a) sets out the Contractor's proposed methodology for achieving an orderly transition of the WHP Services from the Contractor to the Contracting Body and/or its Replacement Contractor on the expiry or termination of this WHP Contract;
 - (b) complies with the requirements set out in Paragraph 4.2; and
 - (c) is otherwise reasonably satisfactory to the Contracting Body.
- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.3 The Exit Plan shall set out, as a minimum:
 - (a) how the Exit Information is obtained;
 - (b) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Contractor may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the

Contractor of all such reasonable assistance as the Contracting Body shall require to enable the Contracting Body or its Sub-contractors to provide the WHP Services;

- (c) the management structure to be employed during both transfer and cessation of the WHP Services in an Ordinary Exit and an Emergency Exit;
 - (d) the management structure to be employed during the Termination Assistance Period;
 - (e) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit, including (without limitation) exit from Contracting Body Premises, returning the Contracting Body Data to the Contracting Body and maintenance of security;
 - (f) how the WHP Services will transfer to the Replacement Contractor and/or the Contracting Body;
 - (g) the duties and responsibilities of the Contractor and the Contracting Body leading up to and covering the expiry or termination of the WHP Contract and the transition process for the transfer of the supply of the WHP Services (or their equivalent);
 - (h) how the Contractor shall co-operate and liaise with any Replacement Contractor appointed by the Contracting Body to supply the WHP Services (or their equivalent);
 - (i) procedures to deal with requests made by the Contracting Body and/or a Replacement Contractor for Staffing Information pursuant to Schedule 19 (Employee Provisions and TUPE) to determine (i) which employees are or are likely to become Transferring Contractor Employees and (ii) to identify or develop any measures for the purposes of the TUPE Regulations envisaged in respect of Transferring Contractor Employees); and
 - (j) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the WHP Services from the Contractor to the Replacement Contractor and/or the Contracting Body with the aim of ensuring that there is no disruption to or degradation of the WHP Services during the Termination Assistance Period.
- 4.4 The Parties acknowledge that the migration of the WHP Services from the Contractor to the Contracting Body and/or its Replacement Contractor may be phased, such that certain of the WHP Services are handed over before others.
- 4.5 The Contractor shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) to reflect any changes in the WHP Services that have occurred since the Exit Plan was last agreed. Following such update the Contractor shall submit the revised Exit Plan to the Contracting Body for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

Finalisation of the Exit Plan

- 4.6 Within 20 Working Days after service of a Termination Notice by either Party or 6 months prior to the expiry of this WHP Contract, the Contractor will submit for the Contracting Body's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the WHP Services that have occurred since the Exit Plan was last agreed.
- 4.7 If the Contractor fails to submit an Exit Plan for the Contracting Body's approval pursuant to in Paragraph 4.6, the Contractor shall pay an Exit Plan Delay Payment to the Contracting Body.
- 4.8 The Exit Plan Delay Payment shall accrue:

- (a) at a daily rate of an amount equal to 10 per cent. of the Delivery Fee Periodic Payment for each Working Day's delay (exclusive of VAT);
 - (b) from (but excluding) the date the Contracting Body served the Termination Notice or the date 6 months prior to the expiry of this WHP Contract, as applicable, to (and including) the date on which the Contractor submits the Exit Plan under Paragraph 4.6 to the Contracting Body for the Contracting Body's approval; and
 - (c) on a daily basis, with any part day counting as a day.
- 4.9 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days following its delivery to the Contracting Body then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Contractor shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

5 TERMINATION SERVICES

Notification of Requirements for Termination Services

- 5.1 The Contractor shall provide the Termination Services at any time during the WHP Contract Period on receipt of written notice from the Contracting Body (a "**Termination Assistance Notice**"), such notice to be given as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- (a) the date from which Termination Services are required;
 - (b) the nature of the Termination Services required; and
 - (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the date that the Contractor ceases to provide the WHP Services.
- 5.2 The Contracting Body shall have an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than 6 months after the date the Contractor ceases to provide the WHP Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Contractor to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire. The Contracting Body shall have the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Contractor to such effect.

Termination Assistance Period

- 5.3 Throughout the Termination Assistance Period, or such shorter period as the Contracting Body may require, the Contractor shall:
- (a) provide the Termination Services;
 - (b) in addition to providing the Termination Services, provide to the Contracting Body any reasonable assistance requested by the Contracting Body to allow the WHP Services to continue without interruption following the termination or expiry of this WHP Contract and to facilitate the orderly transfer of responsibility for and conduct of the WHP Services to the Contracting Body and/or its Replacement Contractor;
 - (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 5.3(b) without additional costs to the Contracting Body;

- (d) provide the Termination Services at no detriment to the Contracting Body Requirements, save to the extent that the Parties agree otherwise in accordance with Paragraph 5.5;
 - (e) at the Contracting Body's request and on reasonable notice, deliver up-to-date Registers to the Contracting Body; and
 - (f) conduct itself during the Termination Assistance Period in a way that does not result in the Contracting Body suffering reputational damage that would affect the level of trust the public places in the Contracting Body.
- 5.4 Without prejudice to the Contractor's obligations under Paragraph 5.3(c), if it is not possible for the Contractor to reallocate resources to provide such assistance as is referred to in Paragraph 5.3(b) without additional costs to the Contracting Body, any additional costs incurred by the Contractor in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.
- 5.5 If the Contractor demonstrates to the Contracting Body's reasonable satisfaction that transition of the WHP Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Contractor's ability to meet the Contracting Body Requirements, the Parties shall vary the Contracting Body Requirements to take account of such adverse effect.

Obligations on Termination or Expiry

- 5.6 The Contractor acknowledges that on termination (for any reason) or expiry of the WHP Contract or on change or variation of the WHP Contract pursuant to F3 (Changes to the WHP Contract) which constitutes a cessation of all (or part) of the WHP Services, the continuity of the WHP Services is of paramount importance. Accordingly the Contractor acknowledges that the Contracting Body may, amongst other reasonable actions, suspend referral of Participants to the WHP Services within the stated notice period given to terminate the WHP Contract or, in the case of Variation of the WHP Contract pursuant to F3 which constitutes a cessation of all (or part) of the WHP Services, upon the Contracting Body confirming in writing that it wishes to proceed with the Variation pursuant to clause F3. In relation to any Participants referred to the Contractor prior to the stated notice period or the effective date of the Variation whose participation in the relevant part of the WHP Services has not completed on or prior to the date of termination or expiry, the Contractor will comply with its obligations pursuant to paragraph 5.7.
- 5.7 Both before and for a reasonable time after termination or expiry of the WHP Contract the Contractor shall promptly provide assistance at no extra cost to the Contracting Body save that in the event of termination by the Contracting Body pursuant to clause H1.1(a), H1.1(d) or a change or variation of the WHP Contract pursuant to F3 (Changes to the WHP Contract) which constitutes a cessation of all (or part) of the WHP Services, such reasonable costs shall, subject to the Approval of any such costs, be for the account of the Contracting Body; for the avoidance of doubt, such Approval shall not be unreasonably withheld or delayed. The Contractor shall do its utmost to minimise disruption caused to Participants and assist with the implementation of any contingency plan proposed by the Contracting Body to deal with the effects of such termination or expiry in so far as it is practicable to do so. At the option of the Contracting Body, the Contractor may, pursuant to this paragraph 5.7, be required:
- (a) to continue to deliver or procure the supply of the WHP Services until Participants have completed their participation on the WHP Services in accordance with the WHP Specification, including, for the avoidance of doubt, any in work support, and where relevant the Contracting Body shall continue to pay the Fees in accordance with the WHP Contract; or
 - (b) to transfer the Contractor's obligations in respect of Participants whose participation on the WHP Services has not been or will not be completed in accordance with the WHP Specification to an alternative contractor designated by the Contracting Authority.

- 5.8 The Contractor shall comply with all of its obligations contained in the Exit Plan and shall comply with such timetable as the Contracting Body may reasonably require, for the purpose of ensuring an orderly transfer of responsibility for supply of the WHP Services (or their equivalent) or remaining WHP Services (or their equivalent) upon the expiry or other termination of the WHP Contract or the variation of the WHP Contract pursuant to clause F3 which constitutes a cessation of all (or part) of the WHP Services. The Contractor shall ensure that the Staff and its Sub-contractors are under a similar obligation.
- 5.9 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Contractor's performance of the WHP Services and the Termination Services and its compliance with the other provisions of this Schedule), the Contractor shall:
- (a) cease to use the Contracting Body Data except insofar as it reasonably needs to use the Contracting Body Data in order to comply with its continuing obligations under Clause E14 (Records Relating to WHP Services);
 - (b) provide the Contracting Body and/or the Replacement Contractor with a complete and uncorrupted version of the Contracting Body Data in electronic form (or such other format as reasonably required by the Contracting Body);
 - (c) return to the Contracting Body such of the following as is in the Contractor's possession or control:
 - (i) all copies of the Contracting Body Software and any other software licensed by the Contracting Body to the Contractor under this WHP Contract;
 - (ii) all Property (including materials, documents, information and access keys) provided to the Contractor by the Contracting Body. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear); and
 - (iii) any items that have been on-charged to the Contracting Body, such as consumables;
 - (d) vacate any Contracting Body Premises;
 - (e) provide access during normal working hours to the Contracting Body and/or the Replacement Contractor for up to 12 months after expiry or termination to:
 - (i) such information relating to the WHP Services as remains in the possession or control of the Contractor; and
 - (ii) such members of the Staff as have been involved in the design, development and provision of the WHP Services and who are still employed by the Contractor, provided that the Contracting Body and/or the Replacement Contractor shall pay the reasonable costs of the Contractor actually incurred in responding to requests for access under this Paragraph 5.7(e)(ii).
- 5.10 If the Contractor fails to comply with paragraph 5.9, the Contracting Body may recover possession thereof and the Contractor grants a licence to the Contracting Body or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or Sub-contractors where any such items may be held.
- 5.11 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Contractor's performance of the WHP Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any WHP

Services, especially without limitation the Contractor's obligations under Clause E14 (Records Relating to WHP Services), or Termination Services or for statutory compliance purposes.

- 5.12 Except where this WHP Contract provides otherwise, all licences, leases and authorisations granted by the Contracting Body to the Contractor in relation to the WHP Services shall be terminated with effect from the end of the later of the Termination Assistance Period the termination or expiry (as the case may be) of this WHP Contract.
- 5.13 On the expiry or termination of the WHP Contract for any reason (or in advance if stated as such), the Contractor shall:
- (a) assist and co-operate with the Contracting Body to ensure an orderly transition of the provision of the WHP Services to the Replacement Contractor and/or the completion of any work in progress in accordance with the provisions of this Schedule;
 - (b) no later than either:
 - (i) six (6) Month(s) in advance of expiry; or
 - (ii) upon notice of termination of this WHP Contract,without prejudice to its other obligations under the WHP Contract, promptly provide all information concerning the supply of the WHP Services which may reasonably be requested by the Contracting Body for the purposes of adequately understanding the manner in which the WHP Services have been supplied or for the purpose of allowing the Contracting Body or the Replacement Contractor to conduct due diligence in accordance with the provisions of this Schedule 10;
 - (a) if requested by the Contracting Body, use all reasonable endeavours to promptly procure the transfer of any licences, or the granting of an appropriate licence or sub-licence, to the Contracting Body or the Replacement Contractor of any third party Intellectual Property Rights that are necessary for the continued supply of the WHP Services following termination or expiry of the WHP Contract. Where the owner of the third party Intellectual Property Rights requires payment in consideration for transferring or granting such licence or sub-licence (the "Transfer Fee") the Contractor shall first notify the Contracting Body. If the Contracting Body informs the Contractor that the transfer/granting of a licence should proceed, the Contracting Body shall (unless the end of the WHP Contract Period arises due to the Contractor's Default) be responsible for paying the Transfer Fee. For the avoidance of doubt, the Contracting Body shall have no liability for any Transfer Fee that the Contractor has incurred without obtaining Approval; and
 - (d) repay to the Contracting Body the Fees (or any part(s) thereof) the Contractor has been paid in advance in respect of WHP Services not provided by the Contractor as at the date of expiry or termination.

5.14 Where the Contracting Body has issued a Termination Notice to the Contractor pursuant to Clause H1.1 (b), the Contractor shall provide all assistance under Paragraphs 5.13(a) and (b) free of charge. Otherwise, the Contracting Body shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

5.15 When complying with its obligations under this Schedule, the Contractor shall do so in a manner which is compliant with its obligations to comply with the ESF Requirements.

6 SUB-CONTRACTS

6.1 Following notice of termination of this WHP Contract and during the Termination Assistance Period, the Contractor shall not, without the Contracting Body's prior written consent, terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of WHP Services or the Fees.

- 6.2 Within 20 Working Days of receipt of the up-to-date Registers provided by the Contractor pursuant to Paragraph 5.3(e), the Contracting Body shall provide written notice to the Contractor setting out which, if any, of Transferable Contracts the Contracting Body requires to be assigned or novated to the Contracting Body and/or the Replacement Contractor (the "**Transferring Contracts**"), in order for the Contracting Body and/or its Replacement Contractor to provide the WHP Services from the expiry of the Termination Assistance Period. Where requested by the Contracting Body and/or its Replacement Contractor, the Contractor shall provide all reasonable assistance to the Contracting Body and/or its Replacement Contractor to enable it to determine which Transferable Contracts the Contracting Body and/or its Replacement Contractor requires to provide the WHP Services or Replacement Services.
- 6.3 The Contractor shall as soon as reasonably practicable assign or procure the novation to the Contracting Body and/or the Replacement Contractor of the Transferring Contracts. The Contractor shall execute such documents and provide such other assistance as the Contracting Body reasonably requires to effect this novation or assignment.
- 6.7 The Contracting Body shall:
- (a) accept assignments from the Contractor or join with the Contractor in procuring a novation of each Transferring Contract; and
 - (b) once a Transferring Contract is novated or assigned to the Contracting Body and/or the Replacement Contractor, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Contractor does the same.
- 6.8 The Contractor shall hold any Transferring Contracts on trust for the Contracting Body until such time as the transfer of the relevant Transferring Contract to the Contracting Body and/or the Replacement Contractor has been effected.
- 6.9 The Contractor shall within three (3) Working Days of demand, indemnify fully, keep the Contracting Body (and/or the Replacement Contractor, as applicable) indemnified and hold harmless the Contracting Body (and/or the Replacement Contractor, as applicable) at all times from and against all claims, proceedings, actions, damages, costs and expenses (including, but not limited to, legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities caused to the Contracting Body (and/or the Replacement Contractor, as applicable) whether directly or indirectly in whole or in part by reason of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Contracting Body (and/or Replacement Contractor) pursuant to Paragraph 6.6 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract.
- 6.10 All outgoings and expenses (including any remuneration due) and all periodical payments receivable in respect of the Transferring Contracts shall be apportioned between the Contracting Body and the Contractor and/or the Replacement Contractor and the Contractor (as applicable) as follows:
- (a) the amounts shall be annualised and divided by 365 to reach a daily rate;
 - (b) the Contracting Body shall be responsible for (or shall procure that the Replacement Contractor shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
 - (c) the Contractor shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 6.11 Each Party shall pay (and/or the Contracting Body shall procure that the Replacement Contractor shall pay) any monies due under Paragraph 6.10 as soon as reasonably practicable.

7 STAFF

- 7.1 The Contracting Body and Contractor agree and acknowledge that in the event of the Contractor ceasing to provide the WHP Services or part of them for any reason, Schedule 19 (Employee Provisions and TUPE) shall apply.
- 7.2 The Contractor shall not and shall procure that any relevant Sub-contractor shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) without the prior written consent of the Contracting body to dissuade or discourage any employees engaged in the provision of the WHP Services from transferring their employment to the Contracting Body and/or the Replacement Contractor and/or a Replacement Sub-contractor.
- 7.3 During the Termination Assistance Period, the Contractor shall and shall procure that any relevant Sub-contractor shall:
- (a) give the Contracting Body and/or the Replacement Contractor and/or a Replacement Sub-contractor reasonable access to the Contractor's personnel and/or their consultation representatives to present the case for transferring their employment to the Contracting Body and/or the Replacement Contractor and/or a Replacement Sub-contractor; and
 - (b) co-operate with the Contracting Body and/or a Replacement Contractor and/or a Replacement Sub-contractor to ensure an effective consultation process and smooth transfer in respect of Transferring Contractor Employees in line with good employee relations and the effective continuity of the WHP Services.
- 7.4 The Contractor shall immediately notify the Contracting Body or, at the direction of the Contracting Body, the Replacement Contractor of any period of notice given by the Contractor or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 7.5 The Contractor shall not and shall procure that any relevant Sub-contractor shall not for a period of 12 months from the date of transfer reemploy or re-engage or entice any employees, Contractors or Sub-contractors whose employment or engagement is transferred to the Contracting Body and/or the Replacement Contractor and/or a Replacement Sub-contractor, except that this paragraph shall not apply where the employee, Contractor or Sub-contractor applies in response to a public advertisement of a vacancy or where such an offer is made pursuant to an express right to make such an offer under Schedule 19 (Employee Provisions and TUPE).

8 FEES

- 8.1 During the Termination Assistance Period (or for such shorter period as the Contracting Body may require the Contractor to provide the Termination Services), the Contracting Body shall pay the Fees to the Contractor in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.
- 8.2 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 8.3 Except as otherwise expressly specified in this WHP Contract, the Contractor shall not make any charges for the WHP Services provided by the Contractor pursuant to, and the Contracting Body shall not be obliged to pay for costs incurred by the Contractor in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

Schedule 11

Allocation of Costs on Termination

Payments on Termination

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Anticipated Contract Life Profit Margin" means the anticipated Contractor Profit Margin over WHP Contract Period;

"Compensation Payment" means the payment calculated in accordance with Paragraph 6;

"Contract Breakage Costs" means the amounts payable by the Contractor to its Sub-contractors for terminating all relevant Sub-contracts as a direct result of the early termination of this WHP Contract as at the Termination Date as determined in accordance with Paragraph 3;

"Contractor Profit" means the difference between the total Fees (in nominal cash flow terms but excluding any deductions paid or payable to the Contracting Body under this WHP Contract) and total Costs (in nominal cash flow terms) paid or payable to the Contractor under this WHP Contract;

"Contractor Profit Margin" means in relation to a period, the Contractor Profit for the relevant period divided by the total Fees over the same period and expressed as a percentage;

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

- (i) costs incurred in respect of those Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Assets by the Contractor to the Contracting Body or (to the extent that risk and title in any Asset is not held by the Contractor) any cost actually incurred by the Contractor in respect of those Assets; and
- (ii) operational costs which are not included within (i) above, to the extent that such costs are necessary and properly incurred by the Contractor in the delivery of the WHP Services;

but excluding:

- (i) redundancy costs or any costs related to Staff;
- (ii) Overhead;
- (iii) financing or similar costs;
- (iv) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the WHP Contract Period, whether in relation to Assets or otherwise;
- (v) taxation;
- (vi) fines and penalties; and

- (vii) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

"Overhead" means those amounts which are intended to recover a proportion of the Contractor's 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 Staff;

"Profit Already Paid" means the Contractor Profit paid or payable to the Contractor under this WHP Contract for the period from the WHP Commencement Date up to (and including) the Termination Date;

"Request for Estimate" means a written request sent by the Contracting Body to the Contractor, requiring that the Contractor provide it with an accurate estimate of the Termination Payment and Compensation Payment that would be payable if the Contracting Body exercised its right under Clause H1 (Termination by the Contracting Body) to terminate this WHP Contract for convenience on a specified Termination Date;

"Risk Register" means the register of risks and contingencies that have been factored into any Costs due under this WHP Contract;

"Shortfall Period" has the meaning given in Paragraph 6.2;

"Termination Estimate" has the meaning given in Paragraph 11.2;

"Total Costs Incurred" means the Costs incurred by the Contractor up to the Termination Date in the performance of this WHP Contract (but excluding any costs relating to Staff, Contract Breakage Costs and any costs the Contractor would not otherwise be able to recover through the Charges) less any Deductions up to (and including) the Termination Date;

"Unrecovered Costs" means the Costs incurred by the Contractor in the performance of this WHP Contract to the extent that the same remain at the Termination Date to be recovered through Charges that but for the termination of this WHP Contract would have been payable by the Contracting Body after the Termination Date in accordance with Schedule 4 (Fees and Payment);

"Unrecovered Payment" means an amount equal to the lower of:

- (a) the sum of the Unrecovered Costs and the Unrecovered Profit; and
- (b) the amount specified in Paragraph 4; and

"Unrecovered Profit" means (Total Costs Incurred x Anticipated Contract Life Profit Margin) - Profit Already Paid remaining unpaid at the Termination Date.

2 TERMINATION PAYMENT

The Termination Payment payable pursuant to Clause H6.1 (Payments by the Contracting Body) shall be an amount equal to the aggregate of the Contract Breakage Costs and the Unrecovered Payment.

3 CONTRACT BREAKAGE COSTS

- 3.1 The Contractor may recover through the Contract Breakage Costs only those costs incurred by the Contractor directly as a result of the termination of this WHP Contract which:

- (a) would not have been incurred had this WHP Contract continued until the scheduled expiry of the WHP Contract Period;
- (b) are unavoidable, proven, reasonable, and not capable of recovery;
- (c) are incurred under arrangements or agreements that are directly associated with this WHP Contract;
- (d) are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Contractor; and
- (e) relate directly to the termination of the WHP Contract.

Limitation on Contract Breakage Costs

3.2 The Contract Breakage Costs shall not exceed the lower of:

- (a) 100% of the Average Annual Contract Value; and
- (b) 120% of the estimate for the Contract Breakage Costs set out in any relevant Termination Estimate.

Contract Breakage Costs

3.3 The Contractor shall be entitled to Contract Breakage Costs only in respect of Sub-contracts which:

- (a) are not assigned or novated to a Replacement Contractor at the request of the Contracting Body in accordance with Schedule 10 (Exit Management); and
- (b) the Contractor can demonstrate:
 - (i) are surplus to the Contractor's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other customers; and
 - (ii) have been entered into by it in the ordinary course of business.

3.4 The Contractor shall seek to negotiate termination of any Sub-contracts with the relevant Sub-contractor using all reasonable endeavours to minimise the cancellation or termination charges.

3.5 Except with the prior written agreement of the Contracting Body, the Contracting Body shall not be liable for any costs (including cancellation or termination charges) that the Contractor is obliged to pay in respect of:

- (a) the termination of any contractual arrangements for occupation of, support of and/or services provided for Contractor premises which may arise as a consequence of the termination of this WHP Contract; and/or
- (b) Assets not yet installed at the Termination Date.

4 UNRECOVERED PAYMENT

The Unrecovered Payment shall not exceed the lowest of:

- (a) 100% of the Average Annual Contract Value;
- (b) 120% of the estimate for the Unrecovered Payment set out in any relevant Termination Estimate; and
- (c) the Charges that but for the termination of this WHP Contract would have been payable by the Contracting Body after the Termination Date in accordance with Schedule 4 (Fees and Payment) as forecast in the Financial Model.

5 MITIGATION OF CONTRACT BREAKAGE COSTS AND UNRECOVERED COSTS

5.1 The Contractor agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs and Unrecovered Costs by:

- (a) the appropriation of Assets, employees and resources for other purposes;
- (b) at the Contracting Body's request, assigning any Sub-contracts to the Contracting Body or a third party acting on behalf of the Contracting Body;

and

- (c) in relation to Sub-contracts that are not to be assigned to the Contracting Body or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.

5.2 If Assets, employees and resources can be used by the Contractor for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs and Unrecovered Costs payable by the Contracting Body or a third party to the Contractor. In the event of any Dispute arising over whether the Contractor can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the Dispute shall be referred to an Expert for determination in accordance with the procedure detailed in Schedule 16 (Dispute Resolution Procedure).

6 COMPENSATION PAYMENT

6.1 The Compensation Payment payable pursuant to Clause H6.1 (Payments by the Contracting Body) shall be an amount equal to the total forecast Fees over the Shortfall Period multiplied by the Anticipated Contract Life Profit Margin.

6.2 For the purposes of Paragraph 6.1, the "**Shortfall Period**" means:

- (a) where the Contracting Body terminates this WHP Contract pursuant to Clause H1.1 (Termination by the Contracting Body), a number of days equal to the number of days by which the notice given (or deemed given pursuant to Clause A5.2 (Notices)) falls short of 365 days; or
- (b) where the Contractor terminates this WHP Contract pursuant to Clause H2.1 (Termination by the Contractor), a number of days equal to the number of days by which the period from (and including) the date of the non-payment by the Contracting Body to (and including) the Termination Date falls short of 365 days, but in each case subject to the limit set out in Paragraph 6.3.

6.3 The Compensation Payment shall be no greater than the lower of:

- (a) 100% of the Average Annual Contract Value; and
- (b) 120% of the estimate for the Compensation Payment set out in the relevant Termination Estimate.

7 FULL AND FINAL SETTLEMENT

Any Termination Payment and/or Compensation Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Contractor in relation to any termination by the Contracting Body pursuant to Clause H.11 (Termination by the Contracting Body) or termination by the Contractor pursuant to Clause H1.2 (Termination by the Contractor) (as applicable), and the Contractor shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

8 INVOICING FOR THE PAYMENTS ON TERMINATION

All sums due under this Schedule shall be payable by the Contracting Body to the Contractor in accordance with the payment terms set out in Schedule 4 (Fees and Payments).

9 SET OFF

The Contracting Body shall be entitled to set off any outstanding liabilities of the Contractor against any amounts that are payable by it pursuant to this Schedule.

10 NO DOUBLE RECOVERY

- 10.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that the Contracting Body makes any payments pursuant to Schedule 10 (Exit Management) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.
- 10.2 The value of the Termination Payment and/or the Compensation Payment shall be reduced or extinguished to the extent that the Contractor has already received the Charges or the financial benefit of any other rights or remedy given under this WHP Contract so that there is no double counting in calculating the relevant payment.
- 10.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

11 ESTIMATE OF TERMINATION PAYMENT AND COMPENSATION PAYMENT

- 11.1 The Contracting Body may issue a Request for Estimate at any time during the WHP Contract Period provided that no more than 2 Requests for Estimate may be issued in any 6 month period.
- 11.2 The Contractor shall within 20 Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination Payment and the Compensation Payment that would be payable by the Contracting Body based on a postulated Termination Date specified in the Request for Estimate (such estimate being the "Termination Estimate"). The Termination Estimate shall:
 - (a) include:
 - (i) details of the mechanism by which the Termination Payment is calculated;

- (ii) full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract and appropriate supporting documentation; and
 - (iii) such information as the Contracting Body may reasonably require; and
 - (b) state the period for which that Termination Estimate remains valid, which shall be not less than 20 Working Days.
- 11.3 The Contractor acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Contracting Body to terminate this WHP Contract.
- 11.4 If the Contracting Body issues a Termination Notice to the Contractor within the stated period for which a Termination Estimate remains valid, the Contractor shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Contractor and the Contracting Body.

Schedule 12

ESF Requirements

A Evaluation Requirements

- 1 Because the Contracting Body may fund this WHP Contract using ESF monies, or use this WHP Contract as match for contracts funded using ESF monies, the Contractor shall within four (4) weeks of expiry or termination of this WHP Contract provide evaluation information to the Contracting Body which:
 - (a) summarises the project, focusing on how it has helped to achieve the project objectives set out in the specification;
 - (b) is concise, being no more than one A4 page in length; and
 - (c) indicates whether the objectives have been fully achieved or only partly achieved and sets out any other relevant issues in this context.
- 2 The Contractor acknowledges the obligation the Contracting Body has to evaluate all ESF projects by ESF priorities and to submit, within strict timescales, a final claim to the Managing Authority including an assessment of performance in each of the priorities.
- 3 The Contractor understands and shall comply with the regular ESF Management Information reporting obligations set out in Schedule 20 (Management Information). The Contractor acknowledges that the Contracting Body depends on timely provision of this information in order to claim and receive ESF funds from the Managing Authority.

B Records

The Contractor and any Sub-contractors appointed by it shall maintain the Open Book Data and any other records referred to in clause E9.1, any documents and records referred to in the WHP Specification and such other documents as the Contracting Body may reasonably require throughout the period of this WHP Contract; and the Contractor and any Sub-contractors appointed by it shall maintain such Open Book Data and other records and documents until at least the Records Retention End Date in accordance with clause E14.

C EU and National Requirements

- 1 The Contractor must comply with the relevant European Union (EU) Structural Fund Regulations as issued and updated from time to time by the EU, as well as any relevant guidance or requirements, including without limitation:
 - (a) the European Social Fund (ESF) Programme for England 2014-2020 National Eligibility Rules;
 - (b) Selection Criteria: 2014-2020 European Regional Development Fund and European Social Fund; and
 - (c) issued by the ESF Managing Authority and published on www.gov.uk/european-growth-funding.

- 2 The following Regulations set out in this section (d) are particularly relevant. Regulation (EU) No 1303/2013 of 17 December 2013 defines common principles, rules and standards for the implementation of the five European Structural and Investment Funds (ESIF): the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF) and replaces Council Regulation (EC) No 1083/2006.
- 3 Regulation (EU) No 1304/2013 of 17 December 2013 establishes the missions of the European Social Fund (ESF), including scope of its support, specific provisions and the types of expenditure eligible for assistance and replaces Council regulation (EC) 1081/2006.
- 4 Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation (EU) No 1303/2013 and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund.
- 5 Where applicable, Directive 2014/24/EU on public procurement, implemented in England, Wales and Northern Ireland by the Public Contracts Regulations 2015 (2015 No. 102) and any amendments or replacements.
- 6 European Community State Aid rules applicable at the date that the Aid is granted to the recipients of the Aid.
- 7 If there are areas of doubt, the interpretation of the Contracting Body shall prevail.
- 8 The Contracting Body acting in its capacity as ESF Co-Financing Organisation will publish DWP Generic Provider Guidance on ESF requirements via the GOV.UK website.
- 9 The Contracting Body acting in its capacity as ESF Co-Financing Organisation will provide DWP WHP specific Provider Guidance on ESF requirements to the Contractor.
- 10 The Contracting Body acting in its capacity as Managing Authority will publish information and guidance on the England ESF Operational Programme 2014-2020 via the GOV.UK website (ESF pages).
- 11 The Contractor will:
 - (a) comply with all DWP Generic Provider Guidance on ESF requirements, DWP WHP specific Provider Guidance on ESF requirements, European Union (EU) Structural Fund Regulations, State Aid requirements, public procurement requirements (where applicable) and ESF guidance and rules produced by the MA in performing its obligations under this WHP Contract.
 - (b) ensure that the Sub-contractors from time to time are fully aware of, and procure that the Sub-contractors at all times comply with, all DWP Generic Provider Guidance on ESF requirements, DWP WHP specific Provider Guidance on ESF requirements, European Union (EU) Structural Fund Regulations, State Aid requirements, public procurement requirements (where applicable) and ESF guidance and rules produced by the MA in performing its obligations under this WHP Contract the requirements of the EU Structural Fund Regulations, procurement and State Aid requirements for ESF and match funding.

- (c) repay any ESF expenditure that is deemed ineligible in accordance with EU law or the MA's guidance or National Eligibility Rules.
- (d) seek to minimise and recover expenditure which is ineligible by virtue of EU law or the MA's guidance or National Eligibility Rules.

D Changes to Guidance and Rules

- 1 All amendments, variations or additions made to guidance or the National Eligibility Rules by the MA from time to time, for the distribution and / or payment of monies and / or administration of any ESF provision or programme will be notified to the Contractor via the GOV.UK website (ESF pages). Changes will be effective from the date they are placed on the website unless stated otherwise.

E Financial Accountability

- 1 The Contractor must ensure compliance with the conditions set out in this WHP Contract in particular they must:
 - (a) establish effective procurement (if applicable), monitoring and financial systems, so that the cost of activities, and the results, outputs and indicators generated can be clearly identified and the reliability of profiled payments and handling of ESF can be ensured; this includes the establishment of appropriate document retention systems to ensure and evidence the requirements of the EU Structural Funds Regulations, State Aid and public procurement requirements (where applicable). The Contractor must retain and be in a position to provide all appropriate data as required by the regulations governing structural fund support. They must also ensure that such data is both accurate and reliable;
 - (b) apply appropriate terms and conditions to Sub-contracts to ensure that the Sub-contracts comply with all the terms of this WHP Contract and associated guidance and National Eligibility Rules;
 - (c) immediately notify the Contracting Body if any financial irregularity in the use of ESF is suspected and indicate the steps being taken in response. (Irregularity means: infringement of a provision of Community law resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the Communities by charging an unjustified item of expenditure to the Community budget); and
 - (d) make documents available and provide reasonable access for:
 - (i) inspection visits and scrutiny of files by, but not limited to, representatives of the Contracting Body, the DWP Audit Contracting Body, the MA, the Certifying Contracting Body, Government Departments, the European Commission National Audit Office (NAO), the European Court of Auditors or European Commission;
 - (ii) external audits and reviews of activity and of financial, appraisal and monitoring systems; and

- (iii) the Contracting Body, the European Commission, the European Court of Auditors, NAO, DWP Audit Contracting Body and other regulatory bodies as required by or on behalf of the Contracting Body will have right of access to the Contractor and the Sub-contractors for audit and inspection purposes. Auditors may wish to visit the Contractor and the Sub-contractors to verify that participant results claimed have actually been achieved.

F Audit Arrangements

- 1 Without prejudice to any other provision of this WHP Contract, the Contractor will ensure that all documents relating to the WHP Contract including without limitation its implementation and financing are retained until the Records Retention End Date, in order that these may be made available to the European Commission and European Court of Auditors upon request in accordance with Article 140 of Regulation 1303.
- 2 Further to clause E14, the Contractor shall make available all such documents if and when required to do so by the Contracting Body, Secretary of State for Work and Pensions, the European Court of Auditors, the European Commission auditors, the National Audit Office (and also their respective auditors).
- 3 The Contractor shall keep such documents referred to in clause E14 and shall make such documents available either in the form of the originals or certified true copies of the originals or on commonly accepted data carriers including electronic versions of original documents or documents existing in electronic version only in accordance with guidance published by the ESF Managing Authority from time to time.
- 4 Where documents exist in electronic form only, the computer systems used shall meet accepted security standards. These standards will be provided by the Managing Authority. Documents and records must be maintained for the purpose of:
 - (a) the examination and certification of the accounts of the Organisation referred to in paragraph F2 of this Schedule;
 - (b) any examination pursuant to the Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Organisation named at 1.2 above has used its resources; and
 - (c) any form of investigation or audit by the bodies referred to in paragraph F2 of this Schedule.
- 5 The Contracting Body, the ESF Managing Authority, the Certifying Contracting Body and DWP Audit Contracting Body acting on its own or others behalf and those acting on its behalf may examine such documents connected with European Structural Funds as may reasonably be required which are owned, held or otherwise in the control of the Contractor and the Sub-contractors, and to require the Sub-contractors to produce oral or written explanations as considered necessary for the purposes of that examination or that certification.
- 6 The Contractor shall provide (and shall require the Sub-contractors to provide) access to premises where the relevant documentation is held and all reasonable assistance (including the provision of onsite, photocopying, facsimile, and telecommunications facilities) at all times during the term of the WHP Contract and for the period until the Records Retention End Date.

G Marketing and Publicity

- 1 The Contractor and the Sub-contractors must comply with the Contracting Body's, the European Commission's and the ESF Managing Authority marketing and publicity requirements specified in the Provider Guidance, the England 2014-2020 European Structural and Investment Funds Growth Programme Branding and Publicity Requirements (for beneficiaries) published on Gov.uk. The Contractor shall publicise EU funding from ESF to the Sub-contractors, the Participants and to the general public.

H Cross Cutting Themes

- 1 The Contractor must comply with the EU and the ESF Managing Authority's requirements on gender equality, equal opportunities and sustainable development as specified in guidance and rules produced by the ESF Managing Authority for the 2014 - 2020 ESF Programme for England.

I Indemnity

- 1 The Contractor shall, within three (3) Working Days of demand, indemnify fully, keep the Contracting Body indemnified and hold harmless the Contracting Body at all times from and against:
 - (a) all claims, proceedings, actions, damages, costs and expenses (including, but not limited to, legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities caused to the Contracting Body whether directly or indirectly in whole or in part by reason of any action and /or inaction of the Contractor in respect of its obligations under this Schedule 12; and
 - (b) all claims, demands, actions, costs (including legal costs and disbursements) and losses howsoever incurred resulting from any liabilities imposed on the Contracting Body by the European Court of Auditors, the European Commission auditors or any successor or substitute person which may include any clawback of monies, repayment of funds or fines as a result of or related to verification of the eligibility of Participants by the Contractor and/or failure by the Contractor to comply with or causing the Contracting Body to comply with any of the ESF requirements.

Schedule 13

Change Control Procedure

1 General Principles Of Change Control Procedure

- 1.1 This Schedule sets out the procedure for dealing with Contract Changes and Operational Changes and Substantial Changes.
- 1.2 If either Party is in doubt about whether a change falls within the definition of an Operational Change or a Substantial Change, it must be processed as a Contract Change.
- 1.3 For any Change Communication to be valid under this Schedule, it must be sent in accordance with the provisions of clause A5 (Notices) as if it were a notice.

2 Costs

- 2.1 The Contractor shall be entitled to increase the Fees only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources.
- 2.2 The Contractor shall decrease the Fees if the Impact Assessment demonstrates that the proposed Contract Change would result in fewer resources being required to deliver the WHP Services after that Contract Change is implemented than before that Contract Change is implemented.
- 2.3 Any change to the Fees resulting from a Contract Change, whether the change will cause an increase or a decrease in the Fees, will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the WHP Services affected by the change.
- 2.4 Both Parties costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Contractor shall be paid for by the Contractor.

3 Substantial Change Procedure

- 3.1 Subject to the Parties following the dispute resolution procedure set out at Schedule 16 (Dispute Resolution Procedure), any Substantial Change which is identified within a settlement and/or compromise agreement that is entered into by the Parties under or in connection with this WHP Contract shall constitute a binding change to this WHP Contract and may be implemented by the Parties without following the Change Control Procedure provided that:

- (a) the Substantial Change relates to:
 - (i) the scope of the WHP Services (including any change which limits, amends or extends the WHP Services to be provided by the Contractor); and/or
 - (ii) an agreement between the Parties to waive the application of remedies for breach of this WHP Contract; and/or
 - (iii) the standards by which the WHP Services must be performed by the Contractor (including any change that limits, amends or extends the Customer Service Standards and/or the Tender Minimum Performance Levels (tMPLs) and/or the RNOs); and/or
 - (iv) an agreement by the Parties to change the amounts payable by the Contracting Body to the Contractor under or in connection with this WHP

Contract (including any change to the manner in which the Delivery Fee, Employed Outcome Payments or Self Employed Outcome Payments are calculated),

provided always that such Substantial Change would not alter the overall nature of the WHP Contract.

4 Operational Change Procedure

- 4.1 Any Operational Changes identified by either Party to improve operational efficiency of the WHP Services may be implemented by the Contractor without following the Change Control Procedure provided they do not:
- (a) involve the Contracting Body in paying any additional Fees or other costs;
 - (b) have an impact on the business of the Contracting Body;
 - (c) require a change to the WHP Terms and Conditions; or
 - (d) have a direct impact on use of the WHP Services.
- 4.2 Either Party may request an Operational Change by submitting an Operational Change Request to other Party at any time during the WHP Contract Period.
- 4.3 If the Party that receives an Operational Change Request wishes to agree to the Operational Change it must submit an Operational Change Confirmation to the other Party.
- 4.4 The Contractor shall inform the Contracting Body of any impact on the WHP Services that may arise from the proposed Operational Change.
- 4.5 The Contractor shall complete the Operational Change by the date agreed by the Parties in the Operational Change Confirmation and shall promptly notify the Contracting Body when it is completed.

5 Contract Change Procedure

- 5.1 Either Party may issue a Change Request to the other Party at any time during the WHP Contract Period. A Change Request shall be substantially in the form of Appendix 1.
- 5.2 If the Contracting Body issues a Change Request, then the Contractor shall provide as soon as reasonably practical, and in any event within ten (10) Working Days of the date of receiving the Change Request, an Impact Assessment to the Contracting Body.
- 5.3 If the Contractor issues the Change Request, then it shall provide an Impact Assessment to the Contracting Body at the same time as the Change Request.
- 5.4 If the Contractor requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall make a request for clarification to the Contracting Body within three (3) Working Days of the date of receiving the Change Request.
- 5.5 Provided that sufficient information is received by the Contracting Body to fully understand the nature of the request for clarification and the reasonable justification for the request, the time period to complete the Impact Assessment shall be extended by the time taken by the Contracting Body to provide that clarification. The Contracting Body shall respond to the request for clarification as soon as is reasonably practicable.

6 Impact Assessment

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

- (a) details of the impact the proposed Contract Change will have on the WHP Services and the Contractor's ability to meet its other obligations under this WHP Contract;
- (b) any additional changes to the terms of this WHP Contract that will be required as a result of that impact which may include changes to:
 - (i) the WHP Services and/or the Customer Service Standards and/or the Tender Minimum Performance Levels (tMPLs) and/or the RNOs;
 - (ii) the format of Contracting Body Data, as set out in the WHP Services;
 - (iii) the Implementation Plan and any other timetable previously agreed by the Parties; and
 - (iv) other services provided by third party contractors to the Contracting Body, including any changes required by the proposed Contract Change to the Contracting Body ICT System;
- (c) a timetable for the implementation, together with any proposals for the testing of the Contract Change;
- (d) details of how the proposed Contract Change will ensure compliance with any applicable change in Law which impacts on the performance of the WHP Services which comes into force after the WHP Commencement Date;
- (e) any amendments to the WHP Contract wording proposed in the Change Request Form;
- (f) such other information as the Contracting Body may reasonably request in (or in response to) the Change Request;
- (g) details of the cost of implementing the proposed Contract Change; and
- (h) details of any ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Fees, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party.

6.2 The calculation of costs for the purposes of paragraphs 6.1(g) and (h) shall:

- (a) include estimated volumes of each type of resource to be employed and the applicable rate card, where appropriate;
- (b) include full disclosure of any assumptions underlying such Impact Assessment;
- (c) include evidence of the cost of any assets required for the Change; and
- (d) include details of any new Sub-contracts necessary to accomplish the Change.

6.3 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to clause E2 (Protection of Personal Data).

- 6.4 Subject to the provisions of paragraph 6.5, the Contracting Body shall review the Impact Assessment and respond to the Contractor in accordance with paragraph 7 within fifteen (15) Working Days of receiving the Impact Assessment.
- 6.5 If the Contracting Body is the Receiving Party and the Contracting Body reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment or that a Change Request or Impact Assessment contains errors it shall notify the Contractor of this fact and detail any further information that it requires. The Contractor shall then re-issue the relevant Impact Assessment to the Contracting Body within ten (10) Working Days of receiving such notification.
- 6.6 At the Contracting Body's discretion, the Parties may repeat the process described in paragraph 6.5 until the Contracting Body is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment to enable it to take one of the steps prescribed by paragraph 7.

7 Contracting Body's Right of Approval

- 7.1 Subject to paragraph 7.5, within fifteen (15) Working Days of receiving the Impact Assessment from the Contractor, the Contracting Body shall do one of the following:
- (a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in paragraph 7.5; or
 - (b) in its absolute discretion reject the Contract Change, in which case it shall notify the Contractor of the rejection. The Contracting Body shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Contractor or the WHP Services to comply with any changes in Law.
- 7.2 No proposed Contract Change shall be implemented by the Contractor until a Change Authorisation Note has been signed and issued by the Contracting Body in accordance with paragraph 7.5.
- 7.3 Unless the Contracting Body expressly agrees (or requires) otherwise in writing, the Contractor shall continue to supply the WHP Services in accordance with the existing terms of this WHP Contract as if the proposed Contract Change did not apply.
- 7.4 Any discussions, negotiations or other communications which may take place between the Contracting Body and the Contractor in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this WHP Contract.
- 7.5 If the Contracting Body approves the proposed Contract Change pursuant to paragraph 7.1 and it has not been rejected by the Contractor in accordance with paragraph 8, then the Contracting Body shall prepare two copies of a Change Authorisation Note in the form of Appendix 2 and send them to the Contractor, the Contractor shall sign both copies and deliver both signed copies to the Contracting Body for its signature. Following receipt by the Contracting Body of the Change Authorisation Note, it shall sign both copies and return one copy to the Contractor. On the Contracting Body's signature the Change Authorisation Note shall constitute a binding change to this WHP Contract.

8 Contractor's Right of Rejection

8.1 Following an Impact Assessment, if the Contractor reasonably believes that any proposed Contract Change which is requested by the Contracting Body would:

- (a) materially and adversely affect the risks to the health and safety of any person; and/or
- (b) require the WHP Services to be performed in a way that infringes any Law,

then the Contractor shall be entitled to reject the proposed Contract Change and shall notify the Contracting Body of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to paragraph 5.2.

8.2 The Contractor shall have the right to reject a Change Request solely in the manner set out in paragraph 8.1.

9 Contract Management

9.1 The Parties shall update their contracts to reflect all Contract Changes or Operational Changes agreed in the relevant Change Authorisation Note or Operational Change Letter and annotate with a reference to the Change Authorisation Note or Operational Change Letter pursuant to which the relevant Contract Changes or Operational Changes were agreed.

Appendix 1

Change Request Form

(For Completion by Party Requesting Change)

C.R. No:	WHP Contract Title & Contract Number:	Contractor Name:
Contract Change Title:		Contract Change Implementation Date:
Full Description of Requested Contract Change (including proposed changes to wording of the contract):		
Reasons for and Benefits of Requested Contract Change:		
Name of Requesting Change Owner:		
Signature of Requesting Change Owner:		
Date of Request:		
(For Completion by Contractor)		
Disadvantages of Requested Contract Change, if any:		
Details of any proposed alternative scenarios, if any:		
Assigned for Impact Assessment by (Name?):		
Assigned for Impact Assessment to (Name?):		
Assigned for Impact Assessment (Date?):		

Appendix 2

Change Authorisation Note

(For Completion by the Contracting Body)

C.R. No:	Contract Title & Contract No:	Contractor Name:
Contract Change Title:		Contract Change Implementation Date:
Detailed Description of Agreed Contract Change for which the Impact Assessment has been prepared. Provide details;		
Details of Agreed adjusted Fees resulting from the Contract Change for which the Impact Assessment has been prepared. Provide details;		
Amended/New Contract Wording – must include details of Cross Referencing to Original Contract Documents;		
In consideration of the rights and obligations created, granted and assumed by each party to the other party pursuant to this Change Authorisation Note, the parties have agreed to enter into this Change Authorisation Note.		
The provisions of the Contract shall, save as amended in this Change Authorisation Note, continue in full force and effect, and shall be read and construed as one document with this Change Authorisation Note.		

SIGNED ON BEHALF OF THE CONTACTING BODY:	SIGNED ON BEHALF OF THE CONTRACTOR:
Signature:	Signature:
Name:	Name:
Position:	Position:
Date:	Date:

Schedule 14

Key Personnel

Contractor and Sub-contractor Key Staff

Name	Position Held	Period of involvement in the Contract
[REDACTED]	Chief Executive	Complete
[REDACTED]	Service Delivery Director	Complete
[REDACTED]	Commercial Operations Director	Complete
[REDACTED]	Finance Director	Complete
[REDACTED]	Director of Employer Services	Complete
[REDACTED]	Contract Director WHP	Complete

* To denote Staff dedicated full time to the project

Schedule 15

Sub-contractors

Part A – Supply Chain Rights and Protections

1 Appointment of Sub-contractors

- 1.1 The Contractor shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Contractor is able to:
- (a) manage any Sub-contractors in accordance with Good Industry Practice;
 - (b) comply with its obligations under this WHP Contract in the delivery of the Services; and
 - (c) assign, novate or otherwise transfer to the Contracting Body or any Replacement Contractor any of its rights and/or obligations under each Sub-contract that relates exclusively to this WHP Contract.
- 1.2 Unless it has obtained Approval, the Contractor shall advertise any Sub-contract to deliver any part of the WHP Services:
- (a) in England on Contracts Finder (or any successor or replacement service); or
 - (b) in Wales on Sell2Wales (or any successor or replacement service).
- 1.3 When requesting Approval for sub-contracting any of its obligations under this WHP Contract, the Contractor shall notify the Contracting Body in writing of:
- (a) the proposed Sub-contractor's name, registered office and company registration number;
 - (b) the scope of any Services to be provided by the proposed Sub-contractor; and
 - (c) where the proposed Sub-contractor is an Affiliate of the Contractor, evidence that demonstrates to the reasonable satisfaction of the Contracting Body that the proposed Sub-contract has been agreed on "arm's-length" terms.
- 1.4 If requested by the Contracting Body within 10 Working Days of receipt of the Contracting Body's request the Contractor shall also provide:
- (a) a copy of the proposed Sub-contract or the Sub-contract; and
 - (b) any further information reasonably requested by the Contracting Body.
- 1.5 The Contractor shall, as soon as reasonably practicable after appointing such Sub-contractor in accordance with this Schedule, provide to the Contracting Body an up-to-date list of all of the Contractor's Sub-contractors that have been appointed in connection with the performance of the WHP Services under this WHP Contract, in a form substantially similar to the list annexed to this Schedule (or in such other form as notified to the Contractor by the Contracting Body from time to time).

- 1.6 The Contractor notes and acknowledge that the inclusion of SMEs in the supply chain is an important policy driver for the Contracting Body and when requesting Approval for a replacement Sub-contractor the Contractor notes that whilst the Contracting Body would normally expect the replacement Sub-contractor to be an organisation of equal standing to the incumbent Sub-contractor, the Contracting Body would consider favourably a request for a replacement Sub-contractor which was an SME.

2 Supply chain protection

- 2.1 The Contractor shall ensure that each Sub-contract (which in this paragraph includes any contract in the Contractor's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this WHP Contract) shall include:

- (a) provisions which will enable the Contractor to discharge its obligations under the WHP Contract, including but not limited to adherence to the Tender Minimum Performance Levels and the Customer Service Standards and achievement of the RNOs;
- (b) a right under the Contracts (Rights of Third Parties) Act 1999 for the Contracting Body to enforce any provisions under each Sub-contract which are capable of conferring a benefit on the Contracting Body;
- (c) a provision enabling the Contractor to assign, novate or otherwise transfer any of its rights and/or obligations under each Sub-contract to the Contracting Body or any Replacement Contractor without restriction (which for the avoidance of doubt shall mean without any need to obtain any consent or approval from any Sub-contractor) or payment by the Contracting Body;
- (d) obligations no less onerous on each Sub-contractor than those imposed on the Contractor under this WHP Contract in respect of
 - (i) data protection requirements set out in clause E;
 - (ii) FOIA requirements set out in clause E;
 - (iii) the obligation not to cause material adverse publicity or damage the reputation of the Contracting Body set out in clause E;
 - (iv) the keeping of records in respect of the services being provided under the Sub-contract; and
 - (v) the conduct of audits set out in clause E
- (e) provisions enabling the Contractor to terminate each Sub-contract on terms no more onerous on the Contractor than those imposed on the Contracting Body under clause H of the WHP Contract;
- (f) provisions enabling the Contractor to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations under applicable Law, including but not limited to legal obligations in the fields of environmental, social or labour law;

- (g) provisions enabling the Contractor to terminate the Sub-contract if (in the opinion of the Contracting Body), any Sub-contractor has or may have engaged in any agreement, arrangement, practice or conduct which would amount to an infringement of competition law and the Contracting Body elects in its absolute discretion to require the Contractor to terminate the Sub-contract with immediate effect. For the avoidance of doubt, the Contracting Body shall not be liable for any costs incurred by the Contractor (or the Sub-contractor) in connection with the termination of such Sub-contract;
- (h) a provision restricting the ability of the Sub-contractor to sub-contract all or any part of the services supplied under each Sub-contract without first seeking Approval;
- (i) a provision enabling the Contractor, the Contracting Body or any other person on behalf of the Contracting Body to itself supply or procure the supply or all or part of the services being supplied under each Sub-contract on substantially the same terms as are set out in clause B19;
- (j) requiring the Contractor or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- (k) that if the Contractor or other party fails to consider and verify an invoice in accordance with sub-paragraph (j), the invoice shall be regarded as valid and undisputed for the purpose of sub-paragraph (l) after a reasonable time has passed;
- (l) requiring the Contractor or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
- (m) giving the Contracting Body a right to publish the Contractor's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (n) requiring the Sub-contractor to include a clause to the same effect as this paragraph 2.1 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this WHP Contract; and
- (o) all such other provisions as may be required to be set out elsewhere in this WHP Contract.

2.2 The Contractor shall pay any undisputed sums which are due from it to a Sub-contractor within 30 days of verifying that the invoice is valid and undisputed.

2.3 For the avoidance of doubt, the Contracting Body does not expect that all the WHP Terms and Conditions will be replicated through the supply chain and the Contractor shall ensure that each Sub-contract is drafted on the basis of good industry practice reflecting the nature of the services and of the Sub-contractor.

2.4 Notwithstanding any provision of Clause E4 (Confidentiality) if the Contractor notifies the Contracting Body that the Contractor has failed to pay a Sub-contractor's undisputed invoice within 30 days of receipt, or the Contracting Body otherwise discovers the same, the Contracting Body shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

3 Termination of Sub-contracts

3.1 The Contractor shall not terminate or materially amend the terms of any Sub-contract without Approval.

3.2 The Contracting Body may require the Contractor to terminate a Sub-contract where:

- (a) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Contracting Body's right of termination pursuant to Clause H1 (Termination by the Contracting Body);
- (b) the relevant Sub-contractor or any of its Affiliates have embarrassed the Contracting Body or otherwise brought the Contracting Body into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Contracting Body, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
- (c) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law;
- (d) (in the opinion of the Contracting Body), any Sub-contractor has or may have engaged in any agreement, arrangement, practice or conduct which would amount to an infringement of Law, the Contracting Body may require the Contractor to terminate the Sub-contract with immediate effect; and/or
- (e) the Contracting Body has found grounds for exclusion of the Sub-contractor in accordance with paragraph 6.1,

for the avoidance of doubt, the Contracting Body shall not be liable for any costs incurred by the Contractor (or the Sub-contractor) in connection with the termination of such Sub-contract.

4 Competitive Terms

4.1 If the Contracting Body is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Contractor or the Staff in the supply of the WHP Services, then the Contracting Body may:

- (a) require the Contractor to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Contracting Body in respect of the relevant item; or
- (b) subject to paragraph 3.1, enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.

4.2 If the Contracting Body exercises either of its options pursuant to paragraph 4.1, then the Fees shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.

4.3 The Contracting Body's right to enter into a direct agreement for the supply of the relevant items is subject to:

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

5 Retention of Legal Obligations

5.1 Notwithstanding the Contractor's right to sub-contract pursuant to this Schedule 15, the Contractor shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.

6 Exclusion of Sub-contractors

6.1 Where the Contracting Body considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:

- (a) if the Contracting Body finds there are compulsory grounds for exclusion, the Contractor shall replace or shall not appoint the Sub-contractor;
- (b) if the Contracting Body finds there are non-compulsory grounds for exclusion, the Contracting Body may require the Contractor to replace or not to appoint the Sub-contractor and the Contractor shall comply with such a requirement.

Part B – Sub-contractors as at the WHP Commencement Date

See Schedule 1 Appendix B Part 1 – Appendix 2 Supply Chain Partners

NB Remploy do not have a Supply Chain

Schedule 16

Dispute Resolution Procedure

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"CEDR"	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
"Counter Notice"	has the meaning given in paragraph 7.2;
"Expert"	in relation to a Dispute, a person appointed in accordance with paragraph 6.2 to act as an expert in relation to that Dispute;
"Expert Determination"	determination by an Expert in accordance with paragraph 6;
"Mediation Notice"	has the meaning given in paragraph 4.2;
"Mediator"	the independent third party appointed in accordance with paragraph 5.2 to mediate a Dispute;
"Multi-Party Dispute"	a Dispute which involves the Parties and one or more Related Third Parties;
"Multi-Party Dispute Representatives"	
"Multi-Party Dispute Resolution Board"	
"Related Third Party"	a party to: (a) another contract with the Contracting Body or the Contractor which is relevant to this WHP Contract; or (b) a Sub-contract; and
"Contractor Request"	a notice served by the Contractor requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

2 DISPUTE NOTICES

2.1 If a Dispute arises then:

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

2.2 A Dispute Notice:

- (a) shall set out:
 - (i) the material particulars of the Dispute;
 - (ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
 - (iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 3, the reason why; and
- (b) may specify in accordance with the requirements of paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Contracting Body) or considers (in the case of the Contractor) that the Dispute is a Multi-Party Dispute, in which case paragraph 2.3 shall apply.

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

- (a) if it is served by the Contracting Body it shall be treated as a Multi-Party Procedure Initiation Notice; and
- (b) if it is served by the Contractor it shall be treated as a Contractor Request, and in each case the provisions of paragraph 9 shall apply.

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

- (a) first by commercial negotiation (as prescribed in paragraph 4);
- (b) then, if either Party serves a Mediation Notice, by mediation (as prescribed in paragraph 5); and
- (c) lastly by recourse to arbitration (as prescribed in paragraph 7) or litigation (in accordance with clause 11 (Governing Law and Jurisdiction)).

- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 6) where specified under the provisions of this WHP Contract and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 6.1.
- 2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this WHP Contract regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under paragraph 8 (Urgent Relief).

3 EXPEDITED DISPUTE TIMETABLE

- 3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within five (5) Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Contracting Body.
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of paragraph 3.1 or is otherwise specified under the provisions of this WHP Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:
- (a) in paragraph 4.2(b), ten (10) Working Days;
 - (b) in paragraph 5.2, ten (10) Working Days;
 - (c) in paragraph 6.2, five (5) Working Days; and
 - (d) in paragraph 7.2, ten (10) Working Days.
- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within two (2) Working Days after the deadline has passed, the Contracting Body may set a revised deadline provided that it is no less than five (5) Working Days before the end of the period of time specified in the applicable paragraphs (or two (2) Working Days in the case of paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Contracting Body fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

4 COMMERCIAL NEGOTIATION

- 4.1 Following the service of a Dispute Notice, then, so long as the Contracting Body has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Contracting Body and the Contractor shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between a person nominated in writing by the Contracting Body by notice to the Contractor and a person nominated in writing by the Contractor by notice to the Contracting Body.

4.2 If either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution:

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

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

5 MEDIATION

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

5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within twenty (20) Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.

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

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

6 EXPERT DETERMINATION

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

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

- (a) if the Dispute relates to any aspect of the technology underlying the provision of the WHP Services or a matter of an IT technical nature, on the instructions of the

President of the British Computer Society (or any other association that has replaced the British Computer Society);

- (b) if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
- (c) if the Dispute relates to a matter of a technical nature not falling within paragraphs 6.2(a) or (b), on the instructions of the president (or equivalent) of:
 - (i) an appropriate body agreed between the Parties; or
 - (ii) if the Parties do not reach agreement on the relevant body within fifteen (15) Working Days of the relevant request made pursuant to paragraph 6.1, such body as may be specified by the President of the law Society on application by either Party.

6.3 The Expert shall act on the following basis:

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

7 ARBITRATION

- 7.1 Subject to compliance with its obligations under paragraph 4.1 and to the provisions of paragraph 6, the Contracting Body may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 7.5.
- 7.2 Before the Contractor commences court proceedings or arbitration, it shall serve written notice on the Contracting Body of its intentions and the Contracting Body shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Contractor requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 7.5 or be subject to the exclusive jurisdiction of

the courts of England and Wales. The Contractor shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.

7.3 If the Contracting Body serves a Counter Notice, then:

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

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

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

- (a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("LCIA") (subject to paragraphs 7.5(e), (f) and (g));
- (b) the arbitration shall be administered by the LCIA;
- (c) the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this WHP Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) if the Parties fail to agree the appointment of the arbitrator within ten (10) Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the chair of the arbitral tribunal shall be British;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the seat of the arbitration shall be London.

8 URGENT RELIEF

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

- (a) for interim or interlocutory remedies in relation to this WHP Contract or infringement by the other Party of that Party's Intellectual Property Rights; and/or

- (b) where compliance with paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

9 MULTI-PARTY DISPUTES

- 9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this paragraph 9 (the **"Multi-Party Dispute Resolution Procedure"**).
- 9.2 If at any time following the issue of a Dispute Notice, the Contracting Body reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Contracting Body shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Contractor which sets out the Contracting Body's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a **"Multi-Party Procedure Initiation Notice"**.
- 9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with paragraph 7, the Contractor has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Contractor may serve a Contractor Request on the Contracting Body.
- 9.4 The Contracting Body shall (acting reasonably) consider each Contractor Request and shall determine within five (5) Working Days whether the Dispute is:
 - (a) a Multi-Party Dispute, in which case the Contracting Body shall serve a Multi-Party Procedure Initiation Notice on the Contractor; or
 - (b) not a Multi-Party Dispute, in which case the Contracting Body shall serve written notice of such determination upon the Contractor and the Dispute shall be treated in accordance with paragraphs 3 to 8.
- 9.5 If the Contracting Body has determined, following a Contractor Request, that a Dispute is not a Multi-Party Dispute, the Contractor may not serve another Contractor Request with reference to the same Dispute.
- 9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the **"Multi-Party Dispute Resolution Board"**) comprising representatives from the following parties to the Multi-Party Dispute, at least one of whom from each of the parties shall be of a suitable level of seniority and have full authority to finalise any agreement with the other parties to settle the Multi-Party Dispute:
 - (a) the Contracting Body;
 - (b) the Contractor;
 - (c) each Related Third Party involved in the Multi-Party Dispute; and
 - (d) any other representatives of any of the Parties and/or any Related Third Parties whom the Contracting Body considers necessary,

(together "**Multi-Party Dispute Representatives**").

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

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

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

- (a) either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case paragraph 5 shall apply;
- (b) either Party may request that the Multi-Party Dispute is referred to an expert in which case paragraph 6 shall apply; and/or
- (c) subject to paragraph 9.9, paragraph 7 shall apply to the Multi-Party Dispute,

and in each case references to the "Contractor" or the "Parties" in such provisions shall include a reference to all Related Third Parties.

9.9 If a Multi-Party Dispute is referred to arbitration in accordance with paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Contracting Body or the Contractor may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-contractor, by the Contractor.

Schedule 17

Life Chances

1 General

- 1.1 The Contractor acknowledges that the Crown is committed to assisting people to move from welfare to employment and driving forward improvements in economic, social and environmental well-being.
- 1.2 The Contractor (a) acknowledges that the Authority has a responsibility to support and promote wider social sustainability objectives for the benefit of society; and (b) agrees to cooperate with the Authority to improve life chances for those most disadvantaged and furthest from the labour market.
- 1.3 The Contractor acknowledges that the Authority is supporting the Crown's life chances and social value agendas by aiming to promote opportunities for groups of persons ("**DWP Priority Groups**") which the Authority regards as meriting priority assistance including but not limited to Apprentices, Disabled People, Young People, Older Workers, Ex-Offenders and Black and Minority Ethnic People.

2 Diversity and Equality Delivery Plan

- 2.1 In addition to complying with its obligations set out in clause D2 and this Schedule 17 (Life Chances), the Authority requires the Contractor to provide such information as the Authority may request on (a) the action(s) the Contractor is taking in the course of supplying the WHP Services to comply with its obligations set out in clause D2 and in this Schedule 17 (Life Chances) and (b) the effect such action(s) have on the Staff used in the performance of its obligations under the WHP Contract.
- 2.2 As part of the information to be provided by the Contractor under paragraph 2.1 of this Schedule 17 (Life Chances), the Authority requires the Contractor to provide to the Authority:
 - (a) a diversity and equality delivery plan ("**Diversity and Equality Delivery Plan**") six (6) Months after the WHP Commencement Date, and annually thereafter. The Diversity and Equality Delivery Plan must be specific to the WHP Contract and include details of all Staff including but not limited to all Sub-contractors involved in the performance of the Contractor's obligations under the WHP Contract.
 - (b) details of the action(s) the Contractor is taking to support the Crown's social value agenda including but not limited to the action(s) the Contractor is taking to meet its obligations under paragraph 2.3 of this Schedule.
- 2.3 The Contractor shall, and shall ensure that its Sub-contractors, take the following action(s) in respect of DWP Priority Groups:
 - (a) **Apprentices**
 - (i) Ensure that (5) % of the Staff used in the performance of the Contractor's obligations under the WHP Contract are Apprentices.
 - (ii) Make available to potential members of Staff used in the performance of the Contractor's obligations information about the National Apprenticeship Service.

(b) **Disabled People**

- (i) Take steps to become a Disability Confident Employer and achieve level 3 within 12 months of the WHP Commencement Date and maintain such Disability Confident Employer status at all times thereafter during the WHP Contract Period. For the purposes of this Schedule, the term "**Disability Confident Employer**" (including the levels associated with such definition) is more particularly described in the Authority's Disability Confident accreditation publication, as updated and/or replaced by the Authority and notified to the Contractor from time to time. Any breach by the Contractor of this paragraph 2.3(b)(i) shall entitle the Contracting Body to terminate this WHP Contract by issuing a Termination Notice to the Contractor.
- (ii) Make appropriate use of Access to Work to support recruit and retain disabled workers.
- (iii) When recruiting Staff to be used in the performance of the Contractor's obligations under the WHP Contract, offer Disabled People interviews under a guaranteed interview scheme for vacancies for Staff where the Disabled People meet the minimum criteria for such vacancies.
- (iv) Offer Work Trials to Disabled People to support filling vacancies for Staff.
- (v) Provide Employment Experience to Disabled People as members of Staff used in the performance of the Contractor's obligations under the WHP Contract to develop their skills and experience and increase their employability.

(c) **Young People – Under 25**

- (i) Offer Work Trials to Young People to support filling vacancies for Staff.
- (ii) Provide Employment Experience to Young People as members of Staff used in the performance of the Contractor's obligations under the WHP Contract to develop their skills and experience and increase their employability.

(d) **Older Workers – Over 50**

- (i) Offer Work Trials to Older Workers to support filling vacancies for Staff.
- (ii) Provide Employment Experience to Older People as members of Staff used in the performance of the Contractor's obligations under the WHP Contract to develop their skills and experience and increase their employability.

(e) **Ex-Offenders**

- (i) Offer Work Trials to Ex-Offenders to support filling vacancies for Staff.
- (ii) Provide Employment Experience to Ex-Offenders as members of Staff used in the performance of the Contractor's obligations under the WHP Contract to develop their skills and experience and increase their employability.

(f) **Black and Minority Ethnic People**

- (i) Offer Work Trials to Black and Minority Ethnic people to support filling vacancies for Staff.
 - (ii) Provide Employment Experience to Black and Minority Ethnic people as members of Staff used in the performance of the Contractor's obligations under the WHP Contract to develop their skills and experience and increase their employability.
- (g) **Employee Vacancies**
- (i) Advertise all vacancies for Staff via Universal Jobmatch in addition to any other recruitment agencies with whom the Contractor advertises such vacancies and any other actions the Contractor takes to recruit Staff.

2.4 The Diversity and Equality Delivery Plan must also include:

- (a) an overview of Contractor and any Sub-contractor's policies and procedures for preventing unlawful discrimination and promoting equality of opportunity in respect of:
 - (i) age;
 - (ii) disability;
 - (iii) gender reassignment;
 - (iv) marriage and civil partnership;
 - (v) pregnancy and maternity;
 - (vi) race;
 - (vii) religion or belief;
 - (viii) sex; and
 - (ix) sexual orientation.
- (b) an overview of Contractor and any Sub-contractor's policies and procedures covering:
 - (i) harassment
 - (ii) bullying
 - (iii) victimisation
 - (iv) Staff training and development
- (c) details of the way in which the above policies and procedures are, or will be (and by when), communicated to Staff;
- (d) details of what general diversity and equality related training has been, or will be delivered (and by when), to Staff;

- (e) details of what structure and resources are currently directed towards active promotion of diversity and equality within the Staff used in the performance of the Contractor's obligations under this WHP Contract, or if not currently in place, what will be put in place and by when.
- 2.5 The Authority will consider and must agree the contents of Diversity and Equality Delivery Plan. Any issues will be raised with the Contractor by the contract manager acting on behalf of the Authority. If an issue relates to a Sub-contractor, the Contractor must raise and resolve the issue with the Sub-contractor.

Life Chances Workforce Monitoring Template

- 2.6 The Contractor shall provide the Life Chances Workforce Monitoring template (contained in Appendix 1 to this Schedule 17 (Life Chances)), as may be updated and amended by the Authority from time to time, duly completed in full by the Contractor in respect of all Staff (including but not limited to all Sub-contractors used in the performance of the Contractor's obligations under the Contract), six (6) Months after the WHP Commencement Date and annually thereafter.
- 2.7 The Contractor shall complete the Life Chances Workforce Monitoring template in line with the 'Life Chances through Procurement Guidance for DWP Contractors' and the contract definitions.
- 2.8 The Contractor will compare figures in all categories listed in the Appendix 1 - Workforce Monitoring template and provide (where possible) comparisons against any official national/regional statistics that are publicly available in accordance with the "Social Value Guidance for Contractors" provided by the Authority to the Contractor.
- 2.9 The 'Social Value Guidance for Contractors' provides links to a number of data collection sources, this is not an exhaustive list and other sources are available. The Authority recognises that there may be regional variations in terms of population demographics and some data categories and coverage may not be complete or fully aligned, however, the Contractor agrees to provide high level analysis and identification of trends as and when requested by the Authority.
- 2.10 The Contractor shall provide and shall ensure that its Sub-contractors provide such evidence as the Authority may require of action(s) undertaken or planned by the Contractor and/or any Sub-contractor to improve the numbers in the Social Value Workforce Monitoring template (contained in Appendix 1 to this Schedule 17 (Life Chances)) to the satisfaction of the Authority.
- 2.11 Diversity and Equality, the Crown's social value agenda and DWP Priority Groups will be discussed jointly by the Authority and the Contractor as an on-going item at WHP Contract review meetings. Such meetings will discuss the information provided by the Contractor in accordance with paragraph 2.2 of this Schedule 17 (Life Chances).

APPENDIX 1 – LIFE CHANCES WORKFORCE MONITORING

The format of appendix is subject to change from time to time at the Contracting Body's
absolute discretion

Important – the figures the Contractor provides must relate specifically to the staff used in the performance of the contractor's obligations under the contract only, which for the avoidance of doubt includes any Sub-contractor.

Date of Return Month: Year	
Name of Contract:	
Contract Number:	
Name of Contractor:	
WHP Commencement Date:	
Total Number of Staff, which for the avoidance of doubt includes any Sub-contractors	

1 – Number of new Staff posts created in the performance of the Contractor's obligations under the Contract

New Staff Posts	Number of new Staff posts created in period	
	1-34 hr per week posts	35 hr + per week posts
Baseline return (at 6 months for months 0-6)		
1 st annual return (at 18 months for months 7-18)		
2 nd annual return (at 30 months for months 19 - 30)		
3 rd annual return		

(at 42 months for months 31-42)		
4 rd annual return (at 54 months for months 43-54)		
5 rd annual return (at 66 months for months 55-66)		

2 – Number of Apprentices in Staff used in the performance of the Contractor's obligations under the Contract

DWP Group - Priority Apprentices	Number of Apprentices in Staff which have been employed for 26 weeks or longer in period	% of Apprentices in Staff at the end of the period	Number of Apprentices who began apprenticeships as part of the Staff during the period
Baseline return (at 6 months for months 0-6)			
1 st annual return (at 18 months for months 7-18)			
2 nd annual return (at 30 months for months 19 - 30)			
3 rd annual return (at 42 months for months 31-42)			
4 rd annual return			

(at 54 months for months 43-54) .			
5 rd annual return (at 66 months for months 55-66)			

3 – Number of Disabled People in Staff used in the performance of the Contractor's obligations under the Contract

DWP Priority Group - Disabled People	Number of Disabled People in Staff which have been employed for 26 weeks or longer in period	% of Disabled People in Staff at end of period	Number of Disabled People who began employment as part of the Staff during the period
Baseline return (at 6 months for months 0-6)			
1 st annual return (at 18 months for months 7-18)			
2 nd annual return (at 30 months for months 19 - 30)			
3 rd annual return (at 42 months for months 31-42)			
4 rd annual return (at 54 months for months 43-54)			
5 rd annual return			

(at 66 months for months 55-66)			
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4 – Number of Disabled People, who had been interviewed by the Contractor under the Guaranteed Interview Scheme (GIS) for Staff posts used in the performance of the Contractor's obligations under the Contract,

DWP Priority Group – Disabled People in the Staff who had been interviewed by the Contractor under the GIS	Number of Disabled People who have been interviewed for Staff posts by the Contractor under the GIS during the period
Baseline return (at 6 months for months 0-6)	
1 st annual return (at 18 months for months 7-18)	
2 nd annual return (at 30 months for months 19 - 30)	
3 rd annual return (at 42 months for months 31-42)	
4 rd annual return (at 54 months for months 43-54)	
5 rd annual return (at 66 months for months 55-66)	

5 – Number of Young People in Staff used in the performance of the Contractor's obligations under the Contract

DWP Priority Group - Young People	Number of Young People in Staff which have been employed for 26	% Young People in Staff at end of period	Number of Young People who began employment as part of the Staff during the period

	weeks or longer in period		
Baseline return (at 6 months for months 0-6)			
1 st annual return (at 18 months for months 7-18)			
2 nd annual return (at 30 months for months 19 - 30)			
3 rd annual return (at 42 months for months 31-42)			
4 rd annual return (at 54 months for months 43-54)			
5 rd annual return (at 66 months for months 55-66)			

6 – Number of Older Workers in Staff used in the performance of the Contractor's obligations under the Contract

DWP Priority Group - Older Workers	Number of Older Workers in Staff which have been employed for 26 weeks or longer in period	% Older Workers in Staff at end of period	Number of Older Workers who began employment as part of the Staff during the period
Baseline return (at 6 months for months 0-6)			

1 st annual return (at 18 months for months 7-18)			
2 nd annual return (at 30 months for months 19 - 30)			
3 rd annual return (at 42 months for months 31-42)			
4 rd annual return (at 54 months for months 43-54)			
5 rd annual return (at 66 months for months 55-66)			

7 – Number of Ex-Offenders in Staff used in the performance of the Contractor's obligations under the Contract.

DWP Priority Group - Ex-Offenders	Number of ex-offenders in Staff which have been employed for 26 weeks or longer in period	% ex-offenders in Staff at end of period	Number of ex-offenders who began employment as part of the Staff during the period
Baseline return (at 6 months for months 0-6)			
1 st annual return (at 18 months for months 7-18)			
2 nd annual return (at 30 months for months 19 - 30)			

3 rd annual return (at 42 months for months 31-42)			
4 rd annual return (at 54 months for months 43-54)			
5 rd annual return (at 66 months for months 55-66)			

8 – Number of Black or Minority Ethnic (BME) in Staff used in the performance of the Contractor's obligations under the Contract.

DWP Priority Group - Ex-Offenders	Number BME in Staff which have been employed for 26 weeks or longer in period	% BME in Staff at end of period	Number of BME who began employment as part of the Staff during the period
Baseline return (at 6 months for months 0-6)			
1 st annual return (at 18 months for months 7-18)			
2 nd annual return (at 30 months for months 19 - 30)			
3 rd annual return (at 42 months for months 31-42)			
4 rd annual return (at 54 months for months 43-54)			

5 rd annual return (at 66 months for months 55-66)			
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9 – Number of Employment Experience placements conducted in the performance of the Contractor's obligations under the Contract

Employment Experience placements	Number of Employment Experience placements conducted during the period
Baseline return (at 6 months for months 0-6)	
1 st annual return (at 18 months for months 7-18)	
2 nd annual return (at 30 months for months 19 - 30)	
3 rd annual return (at 42 months for months 31-42)	
4 rd annual return (at 54 months for months 43-54)	
5 rd annual return (at 66 months for months 55-66)	

10 – Number of Work Trials conducted as part of the recruitment of Staff used in the performance of the Contractor's obligations under the Contract.

Work Trials	Number of Work Trials conducted during the period
Baseline return (at 6 months for months 0-6)	
1 st annual return (at 18 months for months 7-18)	
2 nd annual return (at 30 months for months 19 - 30)	
3 rd annual return (at 42 months for months 31-42)	
4 rd annual return (at 54 months for months 43-54)	
5 rd annual return (at 66 months for months 55-66)	

11 – Number of vacancies for Staff advertised via Universal Jobmatch

Staff vacancies advertised via Universal Jobmatch	Number of vacancies for Staff advertised via Universal Jobmatch during the period	% of all vacancies for Staff advertised via Universal Jobmatch during the period.
Baseline return (at 6 months for months 0-6)		
1 st annual return (at 18 months for months 7-18)		
2 nd annual return (at 30 months for months 19 - 30)		

3 rd annual return (at 42 months for months 31-42)		
4 rd annual return (at 54 months for months 43-54)		
5 rd annual return (at 66 months for months 55-66)		

Schedule 18

Business Continuity and Disaster Recovery

1. DEFINITIONS

1.1 In this Schedule 18, the following definitions shall apply:

"Business Continuity Plan"	has the meaning given to it in paragraph 2.2.1(b) of this Schedule 18;
"Contractor's Proposals"	has the meaning given to it in paragraph 6.2.3 of this Schedule 18;
"Disaster"	means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part thereof, will be unavailable (or could reasonably be anticipated to be unavailable) for the period specified in the Order Form or elsewhere in the WHP Contract;
"Disaster Recovery Plan"	has the meaning given to it in paragraph 2.2.1(c) of this Schedule 18;
"Disaster Recovery Services"	means the services embodied in the processes and procedures for restoring the provision of Services following the occurrence of a Disaster, as detailed further in this Schedule 18;
"Disaster Recovery System"	means the system embodied in the processes and procedures for restoring the provision of Services following the occurrence of a disaster;
"Related Supplier"	means any person who provides goods and/or services to the Contracting Body which are related to the Services from time to time;
"Review Report"	has the meaning given to it in paragraph 6.2 of this Schedule 18.

2. BCDR PLAN

2.1 Within sixty (60) Working Days from the WHP Commencement Date the Contractor shall prepare and deliver to the Contracting Body for the Contracting Body's written approval a plan, which shall detail the processes and arrangements that the Contractor shall follow to:

2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and

2.1.2 the recovery of the Services in the event of a Disaster.

2.2 The BCDR Plan shall:

2.2.1 be divided into three parts:

(a) Part A which shall set out general principles applicable to the BCDR Plan;

(b) Part B which shall relate to business continuity (the **"Business Continuity Plan"**); and

(c) Part C which shall relate to disaster recovery (the **"Disaster Recovery Plan"**); and

2.2.2 unless otherwise required by the Contracting Body in writing, be based upon and be consistent with the provisions of paragraphs 3, 4 and 5.

2.3 Following receipt of the draft BCDR Plan from the Contractor, the Contracting Body shall:

- 2.3.1 review and comment on the draft BCDR Plan as soon as reasonably practicable; and
- 2.3.2 notify the Contractor in writing that it approves or rejects the draft BCDR Plan no later than twenty (20) Working Days after the date on which the draft BCDR Plan is first delivered to the Contracting Body.
- 2.4 If the Contracting Body rejects the draft BCDR Plan:
 - 2.4.1 the Contracting Body shall inform the Contractor in writing of its reasons for its rejection; and
 - 2.4.2 the Contractor shall then revise the draft BCDR Plan (taking reasonable account of the Contracting Body's comments) and shall re-submit a revised draft BCDR Plan to the Contracting Body for Approval within twenty (20) Working Days of the date of the Contracting Body's notice of rejection. The provisions of paragraphs 2.3 and 2.4 of this Schedule 18 shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3. PART A OF THE BCDR PLAN AND GENERAL PRINCIPLES AND REQUIREMENTS

- 3.1 Part A of the BCDR Plan shall:
 - 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
 - 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the provision of the Services and any services provided to the Contracting Body by a Related Supplier;
 - 3.1.3 contain an obligation upon the Contractor to liaise with the Contracting Body and (at the Contracting Body's request) any Related Suppliers with respect to issues concerning business continuity and disaster recovery where applicable;
 - 3.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Contracting Body and any of its other Related Supplier in each case as notified to the Contractor by the Contracting Body from time to time;
 - 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Contracting Body;
 - 3.1.6 contain a risk analysis, including:
 - (a) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (b) identification of any single points of failure within the provision of Services and processes for managing the risks arising therefrom;
 - (c) identification of risks arising from the interaction of the provision of Services and with the services provided by a Related Supplier; and
 - (d) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
 - 3.1.7 provide for documentation of processes, including business processes, and procedures;
 - 3.1.8 set out key contact details (including roles and responsibilities) for the Contractor (and any Sub-contractors) and for the Contracting Body;
 - 3.1.9 identify the procedures for reverting to "normal service";

- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
- 3.1.11 identify the responsibilities (if any) that the Contracting Body has agreed it will assume in the event of the invocation of the BCDR Plan; and
- 3.1.12 provide for the provision of technical advice and assistance to key contacts at the Contracting Body as notified by the Contracting Body from time to time to inform decisions in support of the Contracting Body's business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
 - 3.2.1 the Services are provided in accordance with this WHP Contract at all times during and after the invocation of the BCDR Plan;
 - 3.2.2 the adverse impact of any Disaster, service failure, or disruption on the operations of the Contracting Body is minimal as far as reasonably possible;
 - 3.2.3 it complies with the relevant provisions of ISO22031 and all other industry standards from time to time in force; and
 - 3.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the provision of Services.
- 3.4 The Contractor shall not be entitled to any relief from its obligations to meet or exceed the Customer Service Standards and/or the RNOs or to any increase in the Fees to the extent that a Disaster occurs as a consequence of any breach by the Contractor of this WHP Contract.

4. BUSINESS CONTINUITY PLAN - PRINCIPLES AND CONTENTS

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the provision of Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Contracting Body expressly states otherwise in writing:
 - 4.1.1 the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Services; and
 - 4.1.2 the steps to be taken by the Contractor upon resumption of the provision of Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
 - 4.2.1 address the various possible levels of failures of or disruptions to the provision of Services;
 - 4.2.2 set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such goods, services and steps, the **"Business Continuity Services"**);
 - 4.2.3 specify any applicable Customer Service Standards, Tender Minimum Performance Levels or RNOs with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Customer Service Standards, Tender Minimum Performance Levels or RNOs in respect of the provision of other Services during any period of invocation of the Business Continuity Plan; and
 - 4.2.4 clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

5. DISASTER RECOVERY PLAN - PRINCIPLES AND CONTENTS

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Contractor ensures continuity of the business operations of the Contracting Body supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall include the following:
 - 5.3.1 the technical design and build specification of the Disaster Recovery System;
 - 5.3.2 details of the procedures and processes to be put in place by the Contractor in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
 - (a) data centre and disaster recovery site audits;
 - (b) backup methodology and details of the Contractor's approach to data back-up and data verification;
 - (c) identification of all potential disaster scenarios;
 - (d) risk analysis;
 - (e) documentation of processes and procedures;
 - (f) hardware configuration details;
 - (g) network planning including details of all relevant data networks and communication links;
 - (h) invocation rules;
 - (i) Service recovery procedures; and
 - (j) steps to be taken upon resumption of the provision of WHP Services to address any prevailing effect of the failure or disruption of the provision of WHP Services;
 - 5.3.3 any applicable Customer Service Standards or Tender Minimum Performance Levels or RNOs with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Customer Service Standards or Tender Minimum Performance Levels or RNOs in respect of the provision of other Services during any period of invocation of the Disaster Recovery Plan;
 - 5.3.4 details of how the Contractor shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
 - 5.3.5 access controls to any disaster recovery sites used by the Contractor in relation to its obligations pursuant to this Schedule; and
 - 5.3.6 testing and management arrangements.

6. REVIEW AND AMENDMENT OF THE BCDR PLAN

- 6.1 The Contractor shall review the BCDR Plan (and the risk analysis on which it is based):
 - 6.1.1 on a regular basis and as a minimum once every six (6) months;
 - 6.1.2 within three (3) Months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 7; and
 - 6.1.3 where the Contracting Body requests any additional reviews (over and above those provided for in paragraphs 6.1.1 and 6.1.2 of this Schedule 18) by notifying the Contractor to such effect in writing, whereupon the Contractor shall conduct such reviews in accordance with the Contracting Body's written requirements. Prior to starting its review, the Contractor shall provide an accurate written estimate of the total costs payable by the Contracting Body for the Contracting Body's approval. The costs of both Parties of any such additional reviews shall

be met by the Contracting Body except that the Contractor shall not be entitled to charge the Contracting Body for any costs that it may incur above any estimate without the Contracting Body's prior written approval.

- 6.2 Each review of the BCDR Plan pursuant to paragraph 6.1 of this Schedule 18 shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Contractor within the period required by the BCDR Plan or, if no such period is required, within such period as the Contracting Body shall reasonably require. The Contractor shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Contracting Body a report (a "**Review Report**") setting out:
- 6.2.1 the findings of the review;
 - 6.2.2 any changes in the risk profile associated with the provision of Services; and
 - 6.2.3 the Contractor's proposals (the "**Contractor's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Contractor can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any goods, services or systems provided by a third party.
- 6.3 Following receipt of the Review Report and the Contractor's Proposals, the Contracting Body shall:
- 6.3.1 review and comment on the Review Report and the Contractor's Proposals as soon as reasonably practicable; and
 - 6.3.2 notify the Contractor in writing that it approves or rejects the Review Report and the Contractor's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Contracting Body.
- 6.4 If the Contracting Body rejects the Review Report and/or the Contractor's Proposals:
- 6.4.1 the Contracting Body shall inform the Contractor in writing of its reasons for its rejection; and
 - 6.4.2 the Contractor shall then revise the Review Report and/or the Contractor's Proposals as the case may be (taking reasonable account of the Contracting Body's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Contractor's Proposals to the Contracting Body for the Contracting Body's approval within twenty (20) Working Days of the date of the Contracting Body's notice of rejection. The provisions of paragraphs 6.3 and 6.4 of this Schedule 18 shall apply again to any resubmitted Review Report and Contractor's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 6.5 The Contractor shall as soon as is reasonably practicable after receiving the Contracting Body's approval of the Contractor's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Contractor's Proposals. Any such change shall be at the Contractor's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

7. TESTING OF THE BCDR PLAN

- 7.1 The Contractor shall test the BCDR Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to paragraph 7.2 of this Schedule 18, the Contracting Body may require the Contractor to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Contracting Body considers it necessary, including where

there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.

- 7.2 If the Contracting Body requires an additional test of the BCDR Plan, it shall give the Contractor written notice and the Contractor shall conduct the test in accordance with the Contracting Body's requirements and the relevant provisions of the BCDR Plan. The Contractor's costs of the additional test shall be borne by the Contracting Body unless the BCDR Plan fails the additional test in which case the Contractor's costs of that failed test shall be borne by the Contractor.
- 7.3 The Contractor shall undertake and manage testing of the BCDR Plan in full consultation with the Contracting Body and shall liaise with the Contracting Body in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Contracting Body in this regard. Each test shall be carried out under the supervision of the Contracting Body or its nominee.
- 7.4 The Contractor shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Contracting Body. Copies of live test data used in any such testing shall be (if so required by the Contracting Body) destroyed or returned to the Contracting Body on completion of the test.
- 7.5 The Contractor shall, within twenty (20) Working Days of the conclusion of each test, provide to the Contracting Body a report setting out:
 - 7.5.1 the outcome of the test;
 - 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - 7.5.3 the Contractor's proposals for remedying any such failures.
- 7.6 Following each test, the Contractor shall take all measures requested by the Contracting Body, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Contractor, at no additional cost to the Contracting Body, by the date reasonably required by the Contracting Body and set out in such notice.
- 7.7 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Contractor of any of its obligations under this WHP Contract.
- 7.8 The Contractor shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Contracting Body.

8. INVOCATION OF THE BCDR PLAN

- 8.1 In the event of a complete loss of service or in the event of a Disaster, the Contractor shall immediately invoke the BCDR Plan (and shall inform the Contracting Body promptly of such invocation). In all other instances the Contractor shall invoke the BCDR Plan only with the prior consent of the Contracting Body.

Schedule 19

Employee Provisions and TUPE

Definitions

In this Schedule, the following definitions shall apply:

"Broadly Comparable"	<p>means:</p> <p>(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 demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate relating to the CSP Schemes and/or the LGPS as the context requires; and</p> <p>(b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,</p> <p>and "Broad Comparability" shall be construed accordingly;</p>
"Contractor's Final Contractor Personnel List"	a list provided by the Contractor of all personnel who will transfer under the TUPE Regulations on the Service Transfer Date;
"Contractor's Provisional Contractor Personnel List"	a list prepared and updated by the Contractor of all personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the WHP Services or any relevant part of the WHP Services which it is envisaged as at the date of such list will no longer be provided by the Contractor;
"CSPS Admission Agreement"	An admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into by the Contractor and/or Sub-contractor under which the Contractor and/or Sub-contractor agrees to participate in the CSP Schemes in respect of the WHP Services;
"CSPS Eligible Employee"	any CSPS Fair Deal Employee who at the relevant time remains an eligible to participate in the Admission Agreement;
"CSPS Fair Deal Employees"	in the event that Part B of this Schedule applies, and any Transferring Former Contractor Employees who originally transferred pursuant to a Relevant Transfer under the TUPE Regulations, from employment with a public sector employer and who were once eligible to participate in the CSP Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal);

"CSP Schemes"	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 Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; the Designated Stakeholder Pension Scheme and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;
"Eligible Employee"	any Fair Deal Employee who at the relevant time remains is an eligible employee as defined in the Admission Agreement;
"Fair Deal Employees"	those employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal (and, in the event that Part B of this Schedule applies, and any Transferring Former Contractor Employees who originally transferred pursuant to a Relevant Transfer under the TUPE Regulations (or the predecessor legislation to the TUPE Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal);
"Former Contractor"	a Contractor supplying services to the Contracting Body before the Relevant Transfer Date that are the same as or substantially similar to the WHP Services (or any part of the WHP Services) and shall include any Sub-contractor of such Contractor (or any sub-contractor of any such Sub-contractor);
"LGPS"	means the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;
"LGPS Broadly Comparable Scheme"	means the occupational pension scheme or schemes described in Paragraph 7 of the Pensions Annex;
"LGPS Eligible Employees"	means the Transferring Former Contractor Employees who immediately prior to the Relevant Transfer Date were active members of the LGPS by virtue of their employment with a local authority or other scheme employer that participates in the LGPS for so long as they remain employed in connection with the provision of the WHP Services;
"LGPS Regulations"	means the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS;

"New Fair Deal"	the revised Fair Deal position set out in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date;
"Notified contractor" Sub-	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Former Contractor Employees will transfer on a Relevant Transfer Date;
"Replacement contractor" Sub-	a sub-contractor of the Replacement Contractor to whom Transferring Contractor Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
"Relevant Transfer"	a transfer of employment to which the TUPE Regulations applies;
"Relevant Transfer Date"	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
"Schemes"	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 Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme the Designated Stakeholder Pension Scheme and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;
"Service Transfer"	any transfer of the WHP Services (or any part of the WHP Services), for whatever reason, from the Contractor or any Sub-contractor to the Contracting Body or any third party (whether during or on Expiry, Termination or after the WHP Contract Period);
"Service Transfer Date"	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
"Staffing Information"	<p>in relation to all persons identified on the Contractor's Provisional Contractor Personnel List or Contractor's Final Contractor Personnel List, as the case may be, such information as the Contracting Body may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:</p> <p>(a) their ages, dates of commencement of employment or engagement, gender and place of work;</p> <p>(b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;</p>

	<ul style="list-style-type: none"> (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; (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 TUPE Regulations;
"Transferring Former Contractor Employees"	in relation to a Former Contractor, those employees of the Former Contractor to whom the TUPE Regulations will apply on the Relevant Transfer Date; and
"Transferring Contractor Employees"	those employees of the Contractor and/or the Contractor's Sub-contractors to whom the TUPE Regulations will apply on the Service Transfer Date.

Interpretation

Where a provision in this Schedule imposes an obligation on the Contractor to provide an indemnity, undertaking or warranty, the Contractor shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Contracting Body, Former Contractor, Replacement Contractor or Replacement Sub-contractor, as the case may be.

PART A – NOT USED

PART B

Transferring Former Contractor Employees at commencement of Services

1 Relevant transfers

1.1 The Contracting Body and the Contractor agree that:

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

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

2 Former Contractor Indemnities

2.1 The Contracting Body is unable to procure that the Former Contractor shall indemnify the Contractor and any Notified Sub-contractor against any Employee Liabilities arising before the Relevant Transfer Date in relation to any Transferring Former Contractor Employees. Subject to Paragraph 3, the Contractor shall not be required to indemnify any Former Contractor against any Employee Liabilities arising on or after the Relevant Transfer Date in relation to any Transferring Former Contractor Employees.

2.2 If any person who is not identified as a Transferring Former Contractor Employee claims that his/her contract of employment has been transferred from a Former Contractor to the Contractor and/or any Notified Sub-contractor pursuant to the TUPE Regulations or the Acquired Rights Directive then the Contractor shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Contracting Body and, where required by the Contracting Body, to the Former Contractor.

3 Contractor indemnities and obligations

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

- (a) any act or omission by the Contractor or any Sub-contractor in respect of any Transferring Former Contractor Employee or any appropriate employee representative (as defined in

the TUPE Regulations) of any Transferring Former Contractor Employee whether occurring before, on or after the Relevant Transfer Date;

- (b) the breach or non-observance by the Contractor or any Sub-contractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Contractor Employee; and/or
 - (ii) any custom or practice in respect of any Transferring Former Contractor Employees which the Contractor or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Former Contractor Employees arising from or connected with any failure by the Contractor or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Contractor or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Contractor Employees to their material detriment on or after their transfer to the Contractor or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the TUPE Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Contractor or a Sub-contractor to, or in respect of, any Transferring Former Contractor Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Contracting Body and/or the Former Contractor in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Former Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Contractor Employee, and in respect of whom it is later alleged or determined that the TUPE Regulations applied so as to transfer his/her employment from the Former Contractor to the Contractor or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Contractor or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Contractor Employees in respect of the period from (and including) the Relevant Transfer Date; and

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

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 Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Contractor's failure to comply with its obligations under the TUPE Regulations.

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

4 Information

The Contractor shall, and shall procure that each Sub-contractor shall, promptly provide to the Contracting Body and/or at the Contracting Body's direction, the Former Contractor, in writing such information as is necessary to enable the Contracting Body and/or the Former Contractor to carry out their respective duties under regulation 13 of the TUPE Regulations. The Contracting Body shall procure that the Former Contractor shall promptly provide to the Contractor and each Notified Sub-contractor in writing such information as is necessary to enable the Contractor and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the TUPE Regulations.

5 Principles of good employment practice

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

- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
- (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
- (c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
- (d) the New Fair Deal.

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

6 Procurement obligations

Notwithstanding any other provisions of this Part B, where in this Part B the Contracting Body accepts an obligation to procure that a Former Contractor does or does not do something, such obligation shall be limited so that it extends only to the extent that the Contracting Body's contract with the Former Contractor contains a contractual right in that regard which the Contracting Body may enforce.

7 Pensions

The Contractor shall, and shall procure that each Sub-contractor shall, comply with the pensions provisions in the following Annex.

PART C

No transfer of employees at commencement of Services

1 Procedure in the event of Transfer

- 1.1 The Contracting Body and the Contractor agree that the commencement of the provision of the WHP Services or of any part of the WHP Services will not be a Relevant Transfer in relation to any employees of the Contracting Body and/or any Former Contractor.
- 1.2 If any employee of the Contracting Body and/or a Former Contractor claims that his/her contract of employment has been transferred from the Contracting Body and/or the Former Contractor to the Contractor and/or any Sub-contractor pursuant to the TUPE Regulations or the Acquired Rights Directive then the Contractor shall, and shall procure that the relevant Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Contracting Body and, where required by the Contracting Body, give notice to the Former Contractor.

PART D

EMPLOYMENT EXIT PROVISIONS

1 Pre-service transfer obligations

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

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

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

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

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

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

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

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

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

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

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

1.6 During the WHP Contract Period, the Contractor shall provide, and shall procure that each Sub-contractor shall provide, to the Contracting Body any information the Contracting Body may reasonably require relating to the manner in which the WHP Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the WHP Services;
- (b) the percentage of time spent by each employee engaged in providing the WHP Services;
- (c) the extent to which each employee qualifies for membership of any of the Schemes or any broadly comparable scheme set up pursuant to the provisions of paragraph 2.2 of the Annex (Pensions) to Part A of this Schedule or paragraph 2.3 of the Annex (Pensions) to Part B of this Schedule (as appropriate); and
- (d) a description of the nature of the work undertaken by each employee by location.

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

- (a) the most recent month's copy pay slip data;

- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

2 TUPE Regulations Exit Provisions

- 2.1 The Contracting Body and the Contractor acknowledge that subsequent to the commencement of the provision of the WHP Services, the identity of the provider of the WHP Services (or any part of the WHP Services) may change (whether as a result of termination or partial termination of this Agreement or otherwise) resulting in the WHP Services being undertaken by a Replacement Contractor and/or a Replacement Sub-contractor. Such change in the identity of the Contractor of such services may constitute a Relevant Transfer to which the TUPE Regulations and/or the Acquired Rights Directive will apply. The Contracting Body and the Contractor further agree that, as a result of the operation of the TUPE Regulations, where a Relevant Transfer occurs, the contracts of employment between the Contractor and the Transferring Contractor Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the TUPE Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Contractor and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Contractor Employee.
- 2.2 The Contractor shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Contractor Employees arising under the TUPE Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Contractor Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Contractor and/or the Sub-contractor (as appropriate); and (ii) the Replacement Contractor and/or Replacement Sub-contractor.
- 2.3 Subject to Paragraph 2.4, the Contractor shall indemnify the Contracting Body and/or the Replacement Contractor and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:
 - (a) any act or omission of the Contractor or any Sub-contractor in respect of any Transferring Contractor Employee or any appropriate employee representative (as defined in the TUPE Regulations) of any Transferring Contractor Employee whether occurring before, on or after the Service Transfer Date;
 - (b) the breach or non-observance by the Contractor or any Sub-contractor occurring on or before the Service Transfer Date of:

- (i) any collective agreement applicable to the Transferring Contractor Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Contractor Employees which the Contractor or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Contractor or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (ii) in relation to any employee who is not identified in the Contractor's Final Contractor Personnel List, and in respect of whom it is later alleged or determined that the TUPE Regulations applied so as to transfer his/her employment from the Contractor to the Contracting Body and/or Replacement Contractor and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Contractor or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Contractor or any Sub-contractor other than a Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List for whom it is alleged the Contracting Body and/or the Replacement Contractor and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the TUPE Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the TUPE Regulations) of any Transferring Contractor Employee relating to any act or omission of the Contractor or any Sub-contractor in relation to its obligations under regulation 13 of the TUPE Regulations, except to the extent that the liability arises from the failure by the Contracting Body and/or Replacement Contractor to comply with regulation 13(4) of the TUPE Regulations.

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

- (a) arising out of the resignation of any Transferring Contractor Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Contractor and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
 - (b) arising from the Replacement Contractor's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the TUPE Regulations.
- 2.5 If any person who is not identified in the Contractor's Final Contractor Personnel List claims, or it is determined in relation to any person who is not identified in the Contractor's Final Contractor Personnel List, that his/her contract of employment has been transferred from the Contractor or any Sub-contractor to the Replacement Contractor and/or Replacement Sub-contractor pursuant to the TUPE Regulations or the Acquired Rights Directive, then:
 - (a) the Contracting Body shall procure that the Replacement Contractor shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Contractor; and
 - (b) the Contractor may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Contractor and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Contractor or a Sub-contractor, the Contracting Body shall procure that the Replacement Contractor shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the 15 Working Day period specified in Paragraph 2.5(b) has elapsed:
 - (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved

the Replacement Contractor and/or Replacement Sub-contractor, as appropriate may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Contractor and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Contractor shall indemnify the Replacement Contractor and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Contractor takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
 - (a) shall not apply to:
 - (i) any claim for:

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

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

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

- (b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Contractor and/or Replacement Sub-contractor to the Contractor 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 Contractor or any Sub-contractor nor dismissed by the Replacement Contractor and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Contractor Employee.

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

- (a) the Contractor and/or any Sub-contractor; and
- (b) the Replacement Contractor and/or the Replacement Sub-contractor.

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

2.13 Subject to Paragraph 2.14, the Contracting Body shall procure that the Replacement Contractor indemnifies the Contractor on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:

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

Replacement Contractor or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

- (g) a failure of the Replacement Contractor or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List or any appropriate employee representative (as defined in the TUPE Regulations) of any such Transferring Contractor Employee relating to any act or omission of the Replacement Contractor or Replacement Sub-contractor in relation to obligations under regulation 13 of the TUPE 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 Contractor and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Contractor and/or any Sub-contractor (as applicable) to comply with its obligations under the TUPE Regulations.

PENSIONS ANNEX TO SCHEDULE 19

1 CONTRACTOR OBLIGATION

- 1.1 The Contractor shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

2 PROVISION OF INFORMATION

- 2.1 The Contractor and the Contracting Body respectively undertake to each other:
- (a) to provide all information which the other Party may reasonably request, accepting that the Contracting Body may need to request information from third parties, concerning matters (i) referred to in this Pensions Annex, (ii) set out in the CSPA Admission Agreement and (iii) to allow participation in an LGPS Broadly Comparable Scheme as set out in Paragraph 7, and to supply the information as expeditiously as possible; and
 - (b) not to issue any announcements to the CSPA Fair Deal Employees and or the LGPS Eligible Employees prior to the Relevant Transfer Date concerning the matters stated in this Pensions Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

3 SUB-CONTRACTORS

- 3.1 If the Contractor enters into a Sub-contract for the delivery of all or part of the WHP Services which will involve the transfer of employment of any CSPA Eligible Employee or LGPS Eligible Employee it will impose obligations on its Sub-contractor in identical terms as those imposed on the Contractor by this Pensions Annex.
- 3.2 The Contractor shall procure that each Sub-contractor provides indemnities to the Contracting Body that are identical to the indemnities set out in this Pensions Annex. Where a Sub-contractor fails to satisfy any claim made under such one or more indemnities, the Contractor will be liable for satisfying any such claim as if it had provided the indemnity itself.

4 DISPUTES

- 4.1 Any dispute between the Contracting Body and the Contractor or between their respective actuaries about any of the actuarial matters referred to in this Pensions Annex shall in the absence of agreement between the Contracting Body and the Contractor be referred to an independent actuary:
- (a) who will act as an expert and not as an arbitrator;
 - (b) whose decision will be final and binding on the Contracting Body and the Contractor; and
 - (c) whose expenses shall be borne equally by the Contracting Body and the Contractor unless the independent actuary shall otherwise direct.

5 THIRD PARTY RIGHTS

- 5.1 The Parties agree as stated in Clause D3 that the Contracts (Rights of Third Parties) Act 1999 will apply to the provisions of this Pensions Annex to the extent necessary to ensure that any CSPA Fair Deal Employee and any LGPS Eligible Employee will have the right to enforce any

obligation owed to him or her or it by the Contractor under this Pensions Annex, in his or her or its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

- 5.2 Further, the Contractor must ensure that the Contracts (Rights of Third Parties) Act 1999 will apply to any Sub-contract to the extent necessary to ensure that any CSPA Fair Deal Employee and any LGPS Eligible Employee will have the right to enforce any obligation owed to them by the Sub-contractor in his or her or its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

6 PENSION PRE-SERVICE TRANSFER OBLIGATIONS

- 6.1 The Contractor agrees that from the earliest of:

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

that it shall not, and agrees to procure that each Sub contractor shall not without the approval of the Contracting Body (not to be unreasonably withheld or delayed):

- (a) make, promise, propose or permit any material change to the pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Contractor;
- (b) not make pensionable any category of earnings which were not previously pensionable; or
- (c) reduce the pension contributions (if any) payable by such employees,

save that sub-paragraphs (a) – (c) above shall not apply to any change made as a consequence of participation in the CSPA Admission Agreement or the LGPS Broadly Comparable Scheme.

- 6.2 The Contractor shall not and shall procure that each Sub-contractor shall not adversely affect pension rights accrued by all and any CSPA Fair Deal Employees and or LGPS Eligible Employees in the period ending on the Service Transfer Date.

- 6.3 The Contractor shall and shall procure that each Sub-contractor shall provide all such co-operation and assistance as the CSP Schemes, the LGPS Broadly Comparable Scheme, the Replacement Contractor and/or the Contracting Body may reasonably require, including but not limited to:

- (a) promptly providing to the Contracting Body on request such documents and information as such bodies may reasonably require to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Contractor or any Sub-contractor in the provision of the WHP Services on the expiry or termination of this WHP

Contract (including without limitation identification of the LGPS and CSPA Eligible Employees); and

- (b) fully co-operating and assisting (and using reasonable endeavours to procure that the trustees of the LGPS Broadly Comparable Scheme shall fully co-operate and assist) with the reasonable requests of such bodies relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Contractor or any Sub-contractor in the provision of the WHP Services on the expiry or termination of this WHP Contract.

7 LGPS BROADLY COMPARABLE SCHEME

- 7.1 The Contractor shall before the Relevant Transfer Date nominate to the Contracting Body in writing the occupational pension scheme or schemes which it proposes shall be the "LGPS Broadly Comparable Scheme" for the purposes of this Paragraph 7. Such pension scheme or schemes must be:
 - (a) established on or before the Relevant Transfer Date;
 - (b) registered within the meaning of the Finance Act 2004; and
 - (c) certified by the Government Actuary's Department (or any actuary nominated by the Contracting Body in accordance with relevant guidance produced by the Government Actuary's Department) as providing benefits which are Broadly Comparable to those provided by the LGPS on the Relevant Transfer Date.
- 7.2 The Contractor must by the Relevant Transfer Date supply to the Contracting Body evidence of its (or its Sub-contractor's) participation in the LGPS Broadly Comparable Scheme and provide a full copy of the valid certificate of broad comparability covering all LGPS Eligible Employees.
- 7.3 All LGPS Eligible Employees must be admitted to the LGPS Broadly Comparable Scheme with effect on and from the Relevant Transfer Date.
- 7.4 The LGPS Broadly Comparable Scheme shall provide benefits in respect of the LGPS Eligible Employees' periods of service on and after the Relevant Transfer Date on the basis as originally certified and benefits under the LGPS Broadly Comparable Scheme shall not be changed without the written agreement of the Contracting Body.
- 7.5 In the event of any delay in establishing the LGPS Broadly Comparable Scheme on and from the Relevant Transfer Date, the Contractor shall ensure that death in service benefits are provided for and in respect of the LGPS Eligible Employees which are Broadly Comparable to those that would otherwise have been provided by the LGPS.
- 7.6 If the LGPS Broadly Comparable Scheme is terminated, a replacement pension scheme shall be provided with immediate effect for those LGPS Eligible Employees who are still employed by the Contractor. The replacement scheme must comply with this Paragraph 7 as if it was the LGPS Broadly Comparable Scheme.
- 7.7 The Contractor shall 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 LGPS Broadly Comparable Scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995.

8 CLAIMS FROM LGPS ELIGIBLE EMPLOYEES OR TRADE UNIONS

8.1 The Contractor hereby indemnifies the Contracting Body and/or any Replacement Contractor and, in each case, their sub-contractors from and against all Losses suffered or incurred by it or them which arise from claims by LGPS Eligible Employees of the Contractor and/or of any Sub-contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such LGPS Eligible Employees which losses:

- (a) relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this WHP Contract; or
- (b) arise out of the failure of the Contractor and/or any relevant Sub contractor to comply with the provisions of this Pensions Annex before the date of termination or expiry of this WHP Contract.

8.2 The indemnities in this Paragraph shall survive termination of this WHP Contract.

CSP Schemes

9 PARTICIPATION IN THE CSP SCHEMES

9.1 The Contractor undertakes to enter into the CSPS Admission Agreement .

9.2 The Contractor and the Contracting Body undertake to do all such things and execute any documents (including the CSPS Admission Agreement) as may be required to enable the Contractor to participate in the CSP Schemes in respect of the CSPS Fair Deal Employees.

9.3 The Contractor and the Contracting Body agree:

- (a) that the arrangements under Paragraph 9.1 of this Pensions Annex include the body responsible for the CSP Schemes notifying the Contracting Body if the Contractor breaches any obligations it has under the CSPS Admission Agreement;
- (b) notwithstanding sub-paragraph 9.3(a) of this Pensions Annex, the Contractor shall notify the Contracting Body in the event that it breaches any obligations it has under the CSPS Admission Agreement and when it intends to remedy such breaches; and
- (c) that the Contracting Body shall be entitled to terminate this WHP Contract in the event that the Contractor:
 - (i) commits an irremediable breach of the CSPS Admission Agreement; or
 - (ii) commits a breach of the CSPS Admission Agreement 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 giving particulars of the breach and requiring the Contractor to remedy it.

9.4 The Contractor shall bear its own costs and all costs that the Contracting Body reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Contractor participating in the CSP Schemes, including without limitation MyCSP's on-boarding costs .

10 FUTURE SERVICE BENEFITS

- 10.1 If the CSPA Fair Deal Employees are re-joining the CSP Schemes the Contractor shall procure that the CSPA Fair Deal Employees shall be admitted to the relevant section of the CSP Schemes that they became eligible to join on the Relevant Transfer Date and shall accrue benefits in accordance with the provisions governing the relevant section of the CSP Schemes for service from (and including) the Relevant Transfer Date.
- 10.2 The Contractor undertakes that should it cease to participate in the CSP Schemes for whatever reason at a time when it has CSPA Eligible Employees, that it will, at no extra cost to the Contracting Body, provide to any CSPA Fair Deal Employee who immediately prior to such cessation remained an CSPA Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Contracting Body in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are Broadly Comparable to those provided by the CSP Schemes on the date the CSPA Eligible Employees ceased to participate in the CSP Schemes. The Contractor must supply to the Contracting Body details of its (or its Sub-contractor's) CSP Scheme and provide a full copy of the valid certificate of broad comparability covering all CSPA Fair Deal Employees, as soon as it is able to do so.
- 10.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

11 FUNDING

- 11.1 The Contractor undertakes to pay to the CSP Schemes all such amounts as are due under the CSPA Admission Agreement and shall deduct and pay to the CSP Schemes such employee contributions as are required by the CSP Schemes.
- 11.2 The Contractor shall indemnify and keep indemnified the Contracting Body on demand against any claim by, payment to, or loss incurred by, the CSP Schemes in respect of the failure to account to the CSP Schemes for payments received and the non-payment or the late payment of any sum payable by the Contractor to or in respect of the CSP Schemes.

12 CSPA INDEMNITY

- 12.1 The Contractor undertakes to the Contracting Body to indemnify and keep indemnified the Contracting Body on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the CSPA Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the CSP Schemes. For the avoidance of doubt, the provisions of this Paragraph of this Pensions Annex, shall survive termination of this WHP Contract.

13 BULK TRANSFER OBLIGATIONS IN RELATION TO ANY BROADLY COMPARABLE SCHEME

- 13.1 Where the Contractor has set up a Broadly Comparable pension scheme in accordance with the provisions of Paragraph 7 above of this Pensions Annex, the Contractor agrees to:

- (a) fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department for the period ending on the Service Transfer Date; -
- (b) instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Contractor (and it's Sub-contractor) and/or the Contracting Body may reasonably require, to enable the Replacement Contractor (and it's Sub-contractor) to participate in the CSP Schemes in respect of any CSPA Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
- (c) allow, in respect of any CSPA Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the CSP Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the CSP Schemes to fund day for day service ("the Shortfall"), the Contractor agrees to pay the Shortfall to the CSP Schemes as required; provided that in the absence of any agreement between the Contractor and any Sub-contractor, the Shortfall shall be paid by the Contractor; and
- (d) indemnify the Contracting Body on demand for any failure to pay the Shortfall as required under Paragraph 13(c) above.

The obligations in this Paragraph shall survive termination of this WHP Contract.

ANNEX

LIST OF NOTIFIED SUB-CONTRACTORS

Schedule 20

Management Information

1 General

- 1.1 The Contractor grants the Contracting Body a non-exclusive, transferable, perpetual, irrevocable, royalty-free licence to:

- (a) use and share with:
 - (i) any Crown Body;
 - (ii) any other Contracting Authority; and
 - (iii) any other third party as may be agreed by the Contracting Body and the Contractor from time to time (such Contractor's agreement not to be unreasonably withheld); and/or
- (b) publish (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA being redacted),

any Management Information supplied to the Contracting Body for the Contracting Body's normal operational activities including but not limited to administering this WHP Contract, monitoring public expenditure, identifying savings or potential savings and planning future procurement activity.

2 Management Information and Format

- 2.1 The Contractor agrees to provide timely MI Reports to the Contracting Body which incorporates the data listed below, in the correct format, and which the Contractor represents and warrants are full, accurate and complete as at the date of provision to the Contracting Body.

Management Information required	Frequency or date required by
All MI relating to Customer Service Standards.	Each at the frequency required and immediately on request
Any material changes to the Contractor's and/or Guarantor's organisation that impacts on its ongoing financial viability including details of the revenue replacement strategy and impact awareness on the organisation's profitability and stability where significant contracts are due to end.	Immediately
Any proposed Change of Control, changes to the organisational control or group structure of the Contractor and/or the Guarantor, proposed mergers or	Immediately

acquisitions or proposed changes to the Contractor's financial viability.	
Any financial information relating to the Contractor which could include but is not limited to a copy of its Annual Accounts, Annual Returns, management accounts, evidence to the Contracting Body's satisfaction of its assets, liabilities and funding position, and copies of its board papers and board minutes.	Immediately on request
Where a Guarantee has been provided in accordance with clause G4, a copy of its Annual Accounts, Annual Returns, management accounts, evidence to the satisfaction of its assets, liabilities and funding position, and copies of its board papers and board minutes for the Guarantor, including a translation and conversion (Profit and Loss, Balance Sheet and key Balance Sheet Notes) into pounds sterling, stating the conversion rate used.	Immediately on request
Such evidence as the Contracting Body may request in relation to: (i) any Self Employed Participant Financial Incentives that have been received by any self employed Participant including but not limited to the business plan of any self-employed Participant who has received any Self Employed Participant Financial Incentives; and (ii) detailed information regarding any and all Self Employed Participant Financial Incentives that have been received by any self employed Participant.	Immediately on request
Details of the wages, salaries, bonuses and profit sharing arrangements as applicable in respect of all Staff	Immediately on request
Any further information as the Contracting Body may reasonably request.	Immediately on request

The Contractor is required to notify the Contracting Body in writing and complete the WHP Employment Business Customer Form of any Participant or Completer who is employed, whether directly as an employee under a contract of service, or on a self-employed basis, in an Employment Business.	5 Working Days prior to the first payment of earnings or remuneration to such Participant.
Any and all Self Employed Participant Financial Incentives that have been provided by the Contractor, directly or indirectly, to any self employed Participant	Monthly MI Report
The number of supplier and end-to-end supply chain staff working on this WHP Contract (including data on absences) and in what roles, including a full-time equivalent (FTE) breakdown.	Monthly MI Report
Caseload sizes per adviser (including the average and maximum caseload size each of your, and your end-to-end supply chain, advisers will be expected to manage).	Monthly MI Report
The number of people participating within the main element of the Delivery Model.	Monthly MI Report
Contractor performance against the Customer Service Standards.	Monthly MI Report
Participant fail to attend rates by Participant group/Segment for interviews, group sessions and other interventions.	Monthly MI Report
Participant attendance at face-to-face and group sessions and potentially other agreed channels of engagement within the last two months.	Monthly MI Report
The performance and management of the Sub-contractors (including cohort performance against the performance levels and customer service standards in the Contract).	Monthly MI Report
A summary of the Contractor's compliance with its obligation to pay any undisputed sums which are due from it to	Quarterly MI Report

a Sub-contractor within thirty (30) days from the receipt of a valid invoice	
Analysis of Participant complaints, analysis of trends and themes, and management action plans to reduce future occurrences	Quarterly MI Report
Marginal costs information, which is all costs, including financial and time costs, which the Contractor would have incurred to achieve one extra Outcome from each Cohort from which it has earned an Outcome in the immediately preceding 12 Months.	No less frequently than once in each Contract Year in an MI Report

- 2.2 The Contracting Body may from time to time make changes to the data it requires the Contractor to provide in a MI Report including to the data required or format of the report and notify such changes to the Contractor. The Contracting Body shall give notice in writing of any such change to the MI Report and shall specify the date from which such changes to the content or format of the MI Reports shall be effective which date shall be at least thirty (30) calendar days following the date of the notice.
- 2.3 If the Contracting Body changes the data required or format of the MI Report at any time, then the Contractor agrees to provide all future MI Reports in accordance with such notification.
- 2.4 The Contracting Body may provide the Contractor with supplemental guidance for completing the MI Report or submitting MI Reports from time to time which may for example indicate which fields are mandatory and which are optional. The Contractor agrees to complete the MI Report in accordance with any such guidance.
- 2.5 The Contracting Body shall have the right from time to time (on reasonable written notice) to amend the nature of the Management Information which the Contractor is required to supply to the Contracting Body.

3 Frequency and Coverage

- 3.1 All MI Reports must be returned to the Contracting Body on or prior to the Reporting Date every Month during the WHP Contract Period and thereafter, until all transactions relating to WHP Contracts to which the Contractor is a party have permanently ceased.
- 3.2 The MI Report should be used (among other things) to report activity and transactions occurring during the Month(s) to which the MI Report relates.
- 3.3 Unless otherwise notified to the Contractor by the Contracting Body, the Contractor must return the MI Report for each Month(s) even where there are no transactions to report in the relevant Month (a "Nil Return").
- 3.4 The Contractor must inform the Contracting Body of any errors or corrections to the Management Information:

- (a) in the next MI Report due immediately following discovery of the error by the Contractor;
or
- (b) as a result of the Contracting Body querying any data contained in an MI Report.

4 Submission of the MI Report

The completed MI Report shall be completed electronically and returned to the Contracting Body by uploading and/or sending the MI Report in accordance with the instructions notified by the Contracting Body to the Contractor from time to time. The Contractor agrees to comply with any such instructions provided they do not materially increase the burden on the Contractor.

5 Defective Management Information

- 5.1 The Contractor acknowledges that it is essential that the Contracting Body receives timely and accurate Management Information pursuant to this WHP Contract because Management Information is used by the Contracting Body to inform strategic decision making.
- 5.2 Following an MI Failure the Contracting Body may issue reminders to the Contractor or require the Contractor to rectify defects in the MI Report provided to the Contracting Body. The Contractor shall rectify any deficient or incomplete MI Report as soon as possible and not more than five (5) Working Days following receipt of any such reminder.

6 Meetings

The Contractor agrees to attend meetings between the Contracting Body and the Contractor in person to discuss the circumstances of any MI Failure(s) at the request of the Contracting Body (without prejudice to any other rights the Contracting Body may have). If the Contracting Body requests such a meeting the Contractor shall propose measures to ensure that the MI Failures are rectified and do not occur in the future. The Contracting Body and the Contractor shall document these measures and continue to monitor the Contractor's performance.

7 Admin Fees

- 7.1 If, in any rolling three (3) Month period, two (2) or more MI Failures occur, the Contractor acknowledges and agrees that the Contracting Body shall have the right to invoice the Contractor Admin Fees and (subject to paragraph 7.2) in respect of any MI Failures as they arise in subsequent Months.
- 7.2 If, following activation of the Contracting Body's right to charge Admin Fee(s) in respect of MI Failures pursuant to paragraph 7.1, the Contractor submits the Monthly MI Report for two (2) consecutive Months and no MI Failure occurs then the right to charge the Admin Fee(s) shall lapse. For the avoidance of doubt the Contracting Body shall not be prevented from exercising such right again during the WHP Contract Period if the conditions in paragraph 7.1 are met.
- 7.3 The Contractor acknowledges and agrees that the Admin Fees are a fair reflection of the additional costs incurred by the Contracting Body as a result of the Contractor failing to supply Management Information as required by this WHP Contract.
- 7.4 The Contracting Body shall notify the Contractor if any Admin Fees arise pursuant to paragraph 7.1 above and shall be entitled to invoice the Contractor for such Admin Fees, which shall be payable by the Contractor within thirty (30) days of the date of the relevant invoice. Any exercise

by the Contracting Body of its rights under this paragraph 7.4 shall be without prejudice to any other rights that may arise pursuant to the terms of this WHP Contract.

Schedule 21

Insurance Requirements

1 OBLIGATION TO MAINTAIN INSURANCES

- 1.1 Without prejudice to its obligations to the Contracting Body under this WHP Contract, including its indemnity obligations, the Contractor shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 and any other insurances as may be required by applicable Law (together the **"Insurances"**). The Contractor shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are:
- (a) of good financial standing;
 - (b) appropriately regulated; and
 - (c) except in the case of any Insurances provided by an Affiliate of the Contractor, of good repute in the international insurance market.
- 1.4 Where any Insurances are provided by an Affiliate of the Contractor, the Contractor shall provide to the Contracting Body on the WHP Commencement Date (or inception of the relevant Insurances if later) and thereafter within 10 Working Days of written request from the Contracting Body evidence of good financial standing of the relevant Affiliate in a form satisfactory to the Contracting Body. In the absence of a Financial Distress Event, the Contracting Body shall not make any such request more than annually.
- 1.5 The Contractor shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Contracting Body shall be indemnified in respect of claims made against the Contracting Body in respect of death or bodily injury or third party property damage arising out of or in connection with the WHP Services and for which the Contractor is legally liable.

2 GENERAL OBLIGATIONS

- 2.1 Without limiting the other provisions of this WHP Contract, the Contractor shall:
- (a) take or procure the taking of all reasonable risk management and risk control measures in relation to the WHP Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
 - (b) promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Contractor is or becomes aware; and

- (c) hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3 FAILURE TO INSURE

- 3.1 The Contractor 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 Contractor has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Contracting Body may elect (but shall not be obliged) following written notice to the Contractor to purchase the relevant Insurances, and the Contracting Body shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.

4 EVIDENCE OF INSURANCES

The Contractor shall upon the WHP Commencement Date and within 15 Working Days after the renewal or replacement of each of the Insurances, provide evidence, in a form satisfactory to the Contracting Body, that the Insurances are in force and effect and meet in full the requirements of this Schedule. Receipt of such evidence by the Contracting Body shall not in itself constitute acceptance by the Contracting Body or relieve the Contractor of any of its liabilities and obligations under this WHP Contract.

5 AGGREGATE LIMIT OF INDEMNITY

- 5.1 Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":
 - (a) if a claim or claims which do not relate to this WHP Contract are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Contractor shall immediately submit to the Contracting Body:
 - (i) details of the policy concerned; and
 - (ii) its proposed solution for maintaining the minimum limit of indemnity specified; and
 - (b) if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this WHP Contract are paid by insurers, the Contractor shall:
 - (i) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this WHP Contract; or
 - (ii) if the Contractor is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Contracting Body full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

6 CANCELLATION

- 6.1 Subject to paragraph 6.2, the Contractor shall notify the Contracting Body in writing at least 5 Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2 Without prejudice to the Contractor's obligations under paragraph 4, paragraph 6.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

7 INSURANCE CLAIMS

- 7.1 The Contractor shall promptly notify to insurers any matter arising from, or in relation to, the WHP Services and/or this WHP Contract for which it may be entitled to claim under any of the Insurances. In the event that the Contracting Body receives a claim relating to or arising out of the WHP Services and/or this WHP Contract, the Contractor shall co-operate with the Contracting Body and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.
- 7.2 Except where the Contracting Body is the claimant party, the Contractor shall give the Contracting Body notice within 20 Working Days after any insurance claim relating to or arising out of the provision of the WHP Services or this WHP 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 Contracting Body) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Contractor 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 Contractor shall be liable for such excess or deductible. The Contractor shall not be entitled to recover from the Contracting Body any sum paid by way of excess or deductible under the Insurances whether under the terms of this WHP Contract or otherwise.

ANNEX 1: REQUIRED INSURANCES

PART A: THIRD PARTY PUBLIC & PRODUCTS LIABILITY INSURANCE

1 Insured

The Contractor

2 Interest

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

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

(b) loss of or damage to property;

happening during the period of insurance (as specified in Paragraph 5 of this Annex 1 to this Schedule 21 (Insurance Requirements)) and arising out of or in connection with the provision of the WHP Services and in connection with this WHP Contract.

3 Limit of Indemnity

Not less than the limits of the indemnity under the insurance policy that the Insured has in place as at the WHP Commencement Date (i) in respect of any one occurrence, the number of occurrences being unlimited, and (ii) in the aggregate per annum in respect of products and pollution liability.

4 Territorial limits

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

5 Period of Insurance

From the WHP Commencement Date for the WHP Contract Period and renewable on an annual basis unless agreed otherwise by the Contracting Body in writing.

6 Cover Features and Extensions

Indemnity to principals clause.

7 Principal Exclusions

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.

7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

8 Maximum Deductible Threshold

Not to exceed the applicable maximum deductible threshold in the insurance policy that Insured has in place as at the WHP Commencement Date for each and every third party property damage claim (personal injury claims to be paid in full).

PART B: PROFESSIONAL INDEMNITY INSURANCE

1 Insured

The Contractor

2 Interest

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

3 Limit of Indemnity

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

4 Territorial Limits

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

5 Period of Insurance

From the WHP Commencement Date and renewable on an annual basis unless agreed otherwise by the Contracting Body in writing (a) throughout the WHP Contract Period or until earlier termination of this WHP Contract and (b) for a period of six (6) years thereafter.

6 Cover Features and Extensions

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

7 Principal Exclusions

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

8 Maximum Deductible Threshold

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

PART C: UNITED KINGDOM COMPULSORY INSURANCES

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

Schedule 22

Financial Distress Events

1 Definitions

1.1 In this Schedule, the following definitions shall apply:

"Key Sub-contractor" means any Sub-contractor with a Sub-contract with a contract value which at the time of appointment equal to or exceeding 15% of the maximum aggregate Fees which may be payable under this WHP Contract; and

"Rating Agencies" means each of Standard & Poors, a division of the McGraw-Hill Corporation, Moody's Investor Services, a subsidiary of Moody's Corporation and Fitch Ratings, a subsidiary of Fimalac SA.

2 Credit Rating and Duty to Notify

2.1 The Contractor shall promptly notify (or shall procure that its auditors promptly notify) the Contracting Body in writing if there is any downgrade in any credit rating issued by any Rating Agency for either the Contractor or the Guarantor (and in any event within 5 Working Days of the occurrence of the downgrade).

2.2 If there is any downgrade credit rating issued by any Rating Agency for either the Contractor or the Guarantor, the Contractor shall ensure that the Contractor's auditors or Guarantor's auditors (as the case may be) thereafter provide the Contracting Body within 10 Working Days of the end of each Contract Year and within 10 Working Days of written request by the Contracting Body (such requests not to exceed 4 in any Contract Year) with written calculations of the quick ratio for the Contractor or the Guarantor as the case may be as at the end of each Contract Year or such other date as may be requested by the Contracting Body. 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 Contractor or the Guarantor (as the case may be);
- B is the value of all marketable securities held by the Contractor or the Guarantor (as the case may be) 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 Contractor or the Guarantor (as the case may be); and

- D is the value at the relevant date of the current liabilities of the Contractor or the Guarantor (as the case may be).

2.3 The Contractor shall:

- (a) regularly monitor the credit ratings of the Contractor, the Guarantor and each Key Sub-contractor with the Rating Agencies; and
- (b) promptly notify (or shall procure that its auditors promptly notify) the Contracting Body in writing following the occurrence of a Financial Distress Event or a Key Sub-contractor 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 Contractor first becomes aware of the Financial Distress Event or a Key Sub-contractor Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-contractor Financial Distress Event).

3 Consequences of a Financial Distress Event

3.1 In the event of:

- (a) any downgrade in any credit rating issued by any Rating Agency for either the Contractor or the Guarantor;
- (b) the Contractor, the Guarantor or the relevant Key Sub-contractor issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Contractor, the Guarantor or the relevant Key Sub-contractor;
- (d) the Contractor, the Guarantor or the relevant Key Sub-contractor committing a material breach of covenant to its lenders;
- (e) a Key Sub-contractor notifying the Contracting Body that the Contractor has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or
- (f) any of the following:
 - (i) commencement of any litigation against the Contractor, the Guarantor or any Key Sub-contractor with respect to financial indebtedness greater than £5,000,000 or obligations under a service contract with a total contract value greater than £5,000,000;
 - (ii) non-payment by the Contractor, the Guarantor or any Key Sub-contractor of any financial indebtedness;

- (iii) any financial indebtedness of the Contractor, the Guarantor or any Key Sub-contractor becoming due as a result of an event of default; or
- (iv) the cancellation or suspension of any financial indebtedness in respect of the Contractor, the Guarantor or any Key Sub-contractor,

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

then, immediately upon notification of the Financial Distress Event (or if the Contracting Body becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Contractor), the Contractor shall have the obligations and the Contracting Body shall have the rights and remedies as set out in Paragraphs 3.3 to 3.6.

3.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1(e), the Contracting Body shall not exercise any of its rights or remedies under Paragraph 3.3 without first giving the Contractor 10 Working Days to:

- (a) rectify such late or non-payment; or
- (b) demonstrate to the Contracting Body's reasonable satisfaction that there is a valid reason for late or non-payment.

3.3 The Contractor shall (and shall procure that the Guarantor and/or any relevant Sub-contractor shall):

- (a) at the request of the Contracting Body, meet the Contracting Body as soon as reasonably practicable (and in any event within 3 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Contracting Body may permit and notify to the Contractor in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the WHP Services in accordance with this WHP Contract; and
- (b) where the Contracting Body reasonably believes (taking into account the discussions and any representations made under Paragraph 3.3(a)) that the Financial Distress Event could impact on the continued performance and delivery of the WHP Services in accordance with this WHP Contract:
 - (i) submit to the Contracting Body for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Contracting Body may permit and notify to the Contractor in writing); and

- (ii) provide such financial information relating to the Contractor or the Guarantor as the Contracting Body may reasonably require.
- 3.4 The Contracting Body shall not withhold its approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Contracting Body does not approve the draft Financial Distress Service Continuity Plan, it shall inform the Contractor 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 the Contracting Body within 5 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the Contracting Body or referred to the Dispute Resolution Procedure under Paragraph 3.5.
- 3.5 If the Contracting Body 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 ensure the continued performance of the Supplier's obligations in accordance with the Agreement, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.
- 3.6 Following approval of the Financial Distress Service Continuity Plan by the Contracting Body, the Contractor shall:
 - (a) 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 and delivery of the WHP Services in accordance with this WHP Contract;
 - (b) where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 3.6(a), submit an updated Financial Distress Service Continuity Plan to the Contracting Body for its approval, and the provisions of Paragraphs 3.4 and 3.5 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and
 - (c) comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 3.7 Where the Contractor reasonably believes that the relevant Financial Distress event under Paragraph 3.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Contracting Body and the Parties may agree that the Contractor shall be relieved of its obligations under Paragraph 3.6.

4 Termination Rights

- 4.1 The Contracting Body shall be entitled to terminate this WHP Contract under Clause H1.1(b) (Termination by the Contracting Body) if:

- (a) the Supplier fails to notify the Contracting Body of a Financial Distress Event in accordance with Paragraph 2.3(b);
- (b) the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 3.3 to 3.5; and/or
- (c) the Contractor 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 3.6(c).

5 Primacy of Credit Ratings

5.1 Without prejudice to the Contractor's obligations and the Contracting Body's rights and remedies under Paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of Paragraphs 3.1(b) to 3.1(f), the Rating Agencies review and report subsequently that no Rating Agency downgrades any credit rating issued by any Rating Agency for either the Contractor or the Guarantor, then:

- (a) the Contractor shall be relieved automatically of its obligations under Paragraphs 3.3 to 3.6; and
- (b) the Contracting Body shall not be entitled to require the Contractor to provide financial information in accordance with Paragraph 3.3(b)(ii).

